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FOR

THE YEAR 1883.

CASES RELATING TO

THE POOR LAW, THE CRIMINAL LAW,

AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

The Duties and Office of Magistrates

DECIDED IN THE

QUEEN'S BENCH DIVISION

AND IN THE

COURT FOR CROWN CASES RESERVED,

MICHAELMAS 1882 TO MICHAELMAS 1883.

REPORTED

In the Court for Crown Cases Reserved,

By WALTER HENRY MACNAMARA,

BARRISTER-AT-LAW.

In the Queen's Bench Division,

W. DECIMUS I. FOULKES, J. H. ETHERINGTON SMITH,
GILBERT GEORGE KENNEDY, RICHARD HOLMDEN AMPHLETT,
FRANCIS PARKER AND EDWARD BENNETT CALVERT,

BARRISTERS-AT-LAW.

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SUPREME COURT OF JUDICATURE.

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MICHAELMAS 1882 TO MICHAELMAS 1883.

46 *Victoriæ.*

[IN THE COURT OF APPEAL.]

1882. Nov. 23. SMITH AND SON *v.* THE ASSESSMENT COMMITTEE FOR LAMBETH AND OTHERS.*

Poor—Rating—Exclusive Occupation—Bookstalls at a Railway Station—Demise or Licence—43 *Eliz. c.* 2; 32 *&* 33 *Vict. c.* 67.

Newsagents, by agreement with a railway company, obtained, in consideration of yearly payments, the exclusive right to sell newspapers, books and certain other articles at a railway station. The agreement described them as tenants; provided that the yearly payments should be recoverable as rent in arrear; gave them power to erect bookstalls; secured to them access at reasonable times to the stations; reserved to the company power to choose and vary the places for the bookstalls and to prevent the sale of objectionable papers; and gave the station-master control over the newsagents' servants. Bookstalls fixed to the structure of the stations were erected by the newsagents, and of these they retained the keys:— Held (*affirming the judgment of the Queen's Bench Division*), *that the agreement did not amount to a demise; that it only gave the newsagents licence to do the acts specified; and that they were not liable to be assessed to the poor-rate in respect of the bookstalls so erected and used by them.*

* *Coram* Baggallay, L.J.; Brett, L.J., and Lindley, L.J.

Appeal from the Queen's Bench Division.

The case is reported 51 Law J. Rep. M.C. 106.

A Special Case was stated in four appeals against a poor-rate made by the rating authorities for the parish of Lambeth, in which the Waterloo Station of the London and South Western Railway Company is situated.

The question raised by the Case was, whether Messrs. Smith & Son were liable to be assessed to the poor-rate as occupiers of four bookstalls at the Waterloo Station.

These bookstalls were held by Messrs Smith & Son under an indenture which was expressed to be made between the railway company and the firm of W. H. Smith & Son, "hereinafter called the tenants." It witnessed that in "consideration of the yearly payments hereinafter reserved," the company gave and granted to "the tenants" from year to year the sole and exclusive licence and privilege to sell articles therein specified, with liberty for the tenants to erect bookstalls, with full and free ingress and egress at all reasonable times for the tenants, their servants or agents, to and from the stations. The servants of

the tenants were to obey all the reasonable orders of the station-master. The tenants covenanted to pay a certain "rent or sum" by monthly payments, which were to be "recoverable by the company, in addition to any other remedies, by distress, as in the case of rent in arrear." Power was reserved to the company to regulate the places where the bookstalls should be fixed.

Messrs. Smith & Son accordingly erected at Waterloo Station four bookstalls.

The Queen's Bench Division gave judgment that Messrs. Smith were not liable to be rated in respect of the bookstalls.

The assessment committee appealed.

Clarke, Q.C., and *Archibald*, for the appellants.—The most satisfactory test to apply to these cases is to examine whether there is or is not a permanent continuous occupation; and the contention is that there is such an occupation here, so that the occupiers of these stalls are liable to be rated, for their occupation satisfies all the conditions laid down by Lush, J., in *The Queen* v. *The St. Pancras Assessment Committee* (1).

[BRETT, L.J. — The occupiers of the stalls cannot go to them at night.]

That may well be; yet there may be a demise of a space, with an agreement limiting the time for using it. The thing occupied is attached to the freehold, and there is permanent occupation, and that is sufficient.

Reliance is placed by the respondents on *The London and North Western Railway Company* v. *Buckmaster* (2), in which, the Exchequer Chamber being equally divided, the judgment of the Queen's Bench remained unaffected; but there the character of the occupation was different. So in *The Queen* v. *Morrish* (3) the property remained in the commissioners, a space was let which the commissioners could enter at pleasure; whereas here Messrs. Smith have the keys of these stalls. In *The Electric Telegraph Company* v. *The Overseers of Salford* (4) it was held that the fact that the company could be compelled to move its posts made no difference in the liability to assessment; and so with regard to pipes laid in the ground. A tramway company, which has no other right than that of a user of a road, is yet rateable—*The Pimlico Tramway Company* v. *The Greenwich Union* (5); and in *Cory* v. *Bristow* (6), a derrick and hulk, which could be removed at a week's notice, was held liable to assessment. Even if it should be held that there is no rent issuing out of the property demised, the liability to assessment is not affected, for in *The Electric Telegraph Company* v. *The Overseers of Salford* (4) no rent at all was paid; and here, if the indenture be examined, there will be found to be a demise such as gives the tenants an occupation which satisfies all the conditions required to render the premises in question liable to assessment.

M'Intyre, Q.C. (*D. Kingsford* with him), for Messrs. Smith & Son, was not called on.

BAGGALLAY, L.J.—This case comes before us on appeal from the judgment of the Queen's Bench Division, by which it was decided that Messrs. Smith & Son are not liable to be rated in respect of certain bookstalls at the Waterloo Station of the London and South Western Railway. No question arises whether the stalls so used by Messrs. Smith & Son are rateable in the sense that a rate levied on them must be paid by some one. The question which is raised is, whether the railway company ought to be rated, or whether Messrs. Smith & Son are liable. It is admitted that the property on which the bookstalls stand is rated, and that the rates are paid by the company. It is, however, urged that Messrs. Smith & Son are liable to be rated. I think that Mr. Justice Field stated the real question when he said, "The company have granted something. What was it? Was it exclusive occupation or exclusive enjoyment?" And the learned Judge then adds, "From the beginning to the end of this document the parties care-

(1) 46 Law J. Rep. M.C. 243; Law Rep. 2 Q.B.D. 581.

(2) 44 Law J. Rep. M.C. 180; Law Rep. 10 Q.B. 444.

(3) 32 Law J. Rep. M.C. 245.

(4) 11 Exch. Rep. 181; 24 Law J. Rep. M.C. 146.

(5) 43 Law J. Rep. M.C. 29; Law Rep. 9 Q.B. 9.

(6) 46 Law J. Rep. M.C. 273; Law Rep. 2 App. Cas. 262.

fully avoid all expression of intention to create a tenancy." I am of the same opinion, and concur in that view. This being so, the learned Judge, following certain decisions of Judges of great experience in rating cases, held that Messrs. Smith were not liable. It is true that in certain parts of the indenture of agreement Messrs. Smith & Son are for convenience referred to as "tenants," but only in that way does the agreement in any way indicate a tenancy. I do not think it necessary to go through the indenture, for I agree with the opinion of Mr. Justice Field, that "it is quite clear that the company in this case did not part with the exclusive possession or occupation of any portion of their railway premises to Messrs. Smith & Son, but merely gave them such an exclusive enjoyment of their bookstands, and liberty to use the walls, &c., as was necessary to enable them to carry on their trade at the several stations;" and I agree with the conclusion to which he came, that, as a consequence, Messrs. Smith & Son are not rateable in respect of these stalls. The railway company have here granted an easement, or licence, or privilege, and nothing more. In the cases to which reference has been made, but which I do not think it necessary to discuss in detail, the Judges held that where there was exclusive occupation there was a liability to assessment; but that where there was no exclusive occupation, but only a licence for certain enjoyment, then there was no liability to assessment. I am, therefore, of opinion that this appeal must be dismissed.

BRETT, L.J.—The question in these cases is not always whether there has or has not been a demise; but in this case the question is, whether the indenture does amount to a demise, or whether it is really merely a licence to sell books and the other articles mentioned therein at different positions in the stations of the company, with a subsidiary auxiliary necessary leave to keep and store books and other articles at different parts of the stations. The question must be decided on the construction of the whole indenture. Certain parts taken by themselves might give the impression that there was a demise; but then there are other parts which are wholly inconsistent with that view. It is an ordinary fallacy to take each part of an agreement by itself alone, and to argue that that part will tell in favour of the contention of the person arguing, supposing that all the other parts are also in favour of that argument; and so on with the remainder, each being taken by itself, and the assumption being that there is in the rest of the agreement nothing that tells against the argument. Here a particular clause is taken, and it is argued that that by itself points to a demise. But when it is found that the persons who are supposed to be tenants can only go at particular times for limited purposes; when it is found that there is undoubtedly a licence, and that the money payment which is charged is paid, not for the occupation of a particular place, but for what is entirely a licence; and when it is found that that which is supposed to be demised is to be removed at the will of the person who is supposed to demise; all these things taken together shew that there has been here no demise, but only a licence to sell goods of the specified kind. There is no occupation of any special place by Messrs. Smith within the rating Acts, and the only way in which this property can be rated is, when the rate is made in respect of the station, to levy a rate on the value of the station as increased by the licence given to Messrs. Smith & Son. As to the cases which have been cited we need not give any opinion as to any of them; but if it were necessary I should desire to say that I reserve my opinion on the case of *The Electric Telegraph Company* v. *The Overseers of Salford* (4).

LINDLEY, L.J.—I think that it is impossible to hold that this indenture creates a demise. It is a grant of a certain right or privilege. There is no *reddendum*, which is always a material part, and although the word "tenant" is used, still the agreement carefully avoids the creation of a tenancy at will, as distinguished from the granting of an easement. There may well be a right to enter and occupy, in a certain sense, a portion of the station. The analogy of a seatholder at a theatre may illustrate this, for in that case, omitting those

questions which were discussed in *Wood* v. *Leadbitter* (7), the ticket gives a right to enter the theatre and to occupy for a certain time a seat therein; but no one would suggest that there was, in such a case, a rateable occupation of the seat so occupied.

In this case the company are careful to make the managers of these bookstalls subject to the orders of the representatives of the company, and the company does not grant to Messrs. Smith & Son any exclusive right in any particular portion of any particular station. There is then a grant of an easement, and of nothing else. The argument on behalf of the rating authority therefore fails. The cases referred to are distinguishable, as in every case in which it was held there was liability the Courts held also that there was some kind of tenancy. I agree that the appeal must be dismissed.

Appeal dismissed.

Solicitors—Harvey, Oliver & Capron, for appellants; G. W. Barnard, for respondents.

[IN THE COURT OF APPEAL.]

1882. Nov. 3, 4, 6. THE QUEEN (*on the prosecution of the Penarth Local Board*) *v.* THE LOCAL GOVERNMENT BOARD AND GEORGE TAYLOR.*

Public Health Act, 1875 (38 *& 39 Vict. c.* 55), *ss.* 150, 257 *and* 268—*Paving Streets—Apportionment of Expenses—Notice of Demand of Payment—Decision of Local Authority—Appeal by Party Aggrieved—Time for Appeal—Memorial to Local Government Board—Grounds of Appeal—Prohibition.*

Under section 150 *of the Public Health Act*, 1875, *the Local Board of Penarth, on the 4th of May*, 1881, *gave notice to T. to pave certain streets fronting premises of which he was the owner. T. failed to comply with the notice, and thereupon the board executed the work. On the* 21*st of September notice of apportionment of the expenses payable by T. was served upon him by the surveyor to the board, and on the* 20*th of December*, 1881, *a demand of payment of the amount apportioned was made upon T. by the collector of the board. T. did not dispute the apportionment within the period of three months allowed by section* 257, *but within twenty-one days from the service of the demand of payment he addressed a memorial by way of appeal to the Local Government Board, in which the grounds of his complaint were stated:*—Held, *that the demand of payment was the only decision of the local board, within the meaning of section* 268, *in respect of which T. was aggrieved, and from which a memorial by way of appeal could be addressed to the Local Government Board.*

Semble (*per* BRETT, L.J.), *that prohibition will lie against the Local Government Board where they exceed the powers given to them by statute.*

Appeal by the prosecutors from a decision of the Queen's Bench Division (reported 51 Law J. Rep. M.C. 121), discharging a rule, calling upon the Local Government Board and G. Taylor to shew cause why a writ of prohibition should not issue directed to them to prohibit them from proceeding in the matter of a certain appeal brought by G. Taylor against the demand made upon him by the Penarth Local Board for the payment of several sums, amounting in the aggregate to 252*l.* 10*s.* 9*d.*, alleged to be due from him for private improvement works in respect of premises in Kymin Lane and certain other streets within the parish of Penarth, Glamorganshire.

The facts, which are stated at length in the report of the case in the Court below, are as follows:—

On the 4th of May, 1881, the Penarth Local Board, being the urban sanitary authority for the district of Penarth, gave notice to Taylor and others to pave certain streets fronting, adjoining or abutting on premises of which they were the owners or occupiers within twenty-one days from the date of the notice. Taylor failed to comply with the notice; and thereupon the Penarth Local Board executed the works under the

(7) 13 Mee. & W. 838; 14 Law J. Rep. Exch. 161.

* *Coram* Baggallay, L.J., and Brett, L.J.

powers given by section 150 of the Public Health Act, 1875 (1).

On the 21st of September, 1881, a notice, dated the 19th of September, and signed by the surveyor of the local board, was served on Taylor, in which it was stated that the urban sanitary authority had executed the works in question, and that Taylor's apportionment amounted in the aggregate to 252*l.* 10*s.* 9*d.* The notice further stated that the apportionment would be binding upon Taylor, unless the same was disputed by written notice to the urban sanitary authority before the expiration of three months from the date of the notice.

On the 20th of December, 1881, a written notice was served upon Taylor by the collector to the Penarth Local Board, demanding payment of the total sum apportioned as payable by Taylor.

On the 10th of January, 1882, and within twenty-one days from the date of the notice demanding payment of the sums apportioned, Taylor addressed a memorial to the Local Government Board, under section 268 of the Public Health Act, 1875 (1). The memorial in effect appealed against the amount apportioned to Taylor, and complained that a considerable portion of the works in respect of which the demand was made was not required, and that the cost of executing the whole works was excessive.

The Queen's Bench Division (Grove, J., and North, J.) discharged the rule for a prohibition, and the Penarth Local Board now appealed.

A. Charles, Q.C., and *A. T. Lawrence*, for the appellants.—The Local Government Board had jurisdiction under section 268 (1) to entertain an appeal only as to the mode of payment—namely, whether the expenses incurred should be spread over a term of years or should be recovered in

(1) 38 & 39 Vict. c. 55. s. 150: "Where any street within any urban district . . . . is not sewered, levelled, paved, metalled, flagged, channelled and made good . . . . to the satisfaction of the urban authority, such authority may by notice addressed to the respective owners or occupiers of the premises fronting, adjoining or abutting on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged or channelled . . . . require them to sewer, level, pave, metal, flag, channel, or make good . . . . the same within a time to be specified in such notice. . . . If such notice is not complied with the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses."

Section 257: "Where any local authority have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred; and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand. Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same. The local authority may by order declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid. . . . ."

Section 268: "Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said board may seem equitable, and the order so made shall be binding and conclusive on all parties."

a summary manner. The appeal to the Local Government Board was in fact an appeal with respect to the initial propriety of the work done. The last clause of section 268 does not shew that the "loss, damage or grievance" sustained by the appellant may be considered by the central authority, but refers only to acts by which the local authority may have affected the premises of the owner. The section, therefore, does not apply. But assuming that it does apply, then the appeal to the central authority is out of time. No appeal now lies on the question whether the works ought or ought not to have been executed; but even if there were an appeal on that question, it ought to have been brought within twenty-one days from the date of the notice to execute the work. Again, if the appellant desires to dispute the apportionment, he must do so within three months from service of notice on him by the local authority—section 257 (1); and if he desires to appeal against the cost of the works he must do so within twenty-one days.

[BRETT, L.J.—The contention is that there is no decision against which an appeal will lie until an order for the payment of money has been made.]

It is true that in *Cook* v. *The Ipswich Local Board of Health* (2) it was stated by Blackburn, J., and Lush, J., that, under section 120 of the Public Health Act, 1848 (11 & 12 Vict. c. 63), which is to the same effect as the section now under consideration, a person aggrieved could appeal by memorial to the Secretary of State; but these amount to mere *dicta*, incorrect in themselves and not binding on the Court of Appeal. *Hesketh* v. *The Atherton Local Board* (3), *Dryden* v. *The Overseers of Putney* (4), *The Attorney-General* v. *The Wandsworth District Board of Works* (5) and *The Tunbridge Wells Local Board* v. *Akroyd* (6) were also referred to.

Prohibition will lie to the Local Government Board, because there is a statutory condition precedent as to the time of appeal which has not been complied with; so that the board have no jurisdiction to entertain the appeal. The proceeding is a judicial one, and the orders of the Local Government Board can be brought up by *certiorari* and quashed, in the same way as orders of the Poor Law Board, who were the predecessors of the Local Government Board, could have been brought up and quashed.

The Solicitor-General (*Sir F. Herschell, Q.C.*), (with him *Channell*), for the Local Government Board.—Prohibition will not lie to the central board, for it is not a body which acts judicially. The word "appeal" is not to be found in section 268, whereas it does appear in section 269. The act of the local authority is purely administrative, and the central authority acts in an administrative capacity in controlling the local authority. In *Comyn's Digest*, tit. "Prohibition," the general proposition is laid down that prohibition is the remedy where Courts exceed their jurisdiction. But that remedy is only applicable where the Court in question has been exercising judicial functions as an appeal Court. The nearest authority in point is *Breedon* v. *Gill* (7); but the commissioners there were unquestionably exercising judicial functions. This is not an appeal from a judicial decision, but from an administrative act. The power given to the central board is to review the acts of an administrative body; the question before them is not, therefore, whether the lower body has rightly decided the rights of an individual.

[BRETT, L.J., referred to *The Hammersmith Railway Company* v. *Brand* (8)].

Even if a right of appeal is given to the controlling body against an administrative act of the lower body, that of itself would not make the lower body a Court. Where a body acts *ultra vires*, a remedy is given; but the present case is one of the improper exercise of discretion; and, assuming that the body acted within its powers, there is no remedy.

(2) 40 Law J. Rep. M.C. 169; Law Rep. 6 Q.B. 451.

(3) 43 Law J. Rep. M.C. 37; Law Rep. 9 Q.B. 4.

(4) Law Rep. 1 Ex. D. 223.

(5) 46 Law J. Rep. Chanc. 771; Law Rep. 6 Ch. D. 539.

(6) 49 Law J. Rep. Exch. 403; Law Rep. 5 Ex. D. 199.

(7) 5 Mod. 271.

(8) 38 Law J. Rep. Q.B. 265; Law Rep. 4 H.L. Cas. 171.

In *Ex parte Death* (9) it was held that an order to discommune made by a Vice-Chancellor of the University of Cambridge was not a judicial act which the Superior Courts could restrain by prohibition.

[BRETT, L.J., referred to *Cooper* v. *The Wandsworth Board of Works* (10).

That case was not an application for a prohibition, and only decided that the district board could not demolish a building under the powers given by 18 & 19 Vict. c. 120. s. 76, without giving the party guilty of the omission of an act required by the statute an opportunity of being heard. The protection given to subjects is that the act of a body which exceeds its powers is null and void. *The Queen* v. *The Local Government Board* (11) was also referred to.

In order to entitle the appellants to a prohibition it must be shewn that every matter complained of in the memorial is beyond the jurisdiction of the board, because if any one of the matters is within the jurisdiction, no prohibition will lie—*The South Eastern Railway Company* v. *The Railway Commissioners* (12).

Next, until a notice of demand for payment has been made, there is no appeal. Upon the hearing of the appeal on that point, the whole of the matters previously done can be gone into in order to see whether the order is right or wrong. An appeal can be brought after notice of the decision by which a party is, or deems himself to be, aggrieved. Where the notice is given under section 150, *non constat* that the work ever will be executed and the charge incurred, because a discretion is left to the local authority, under the words "if they shall think fit," as to whether they will execute it or not. Until the local authority determine, and this is an absolutely discretionary act, to do the work, it cannot be said that the person to whom notice has been given to do it himself has been aggrieved. Notice given by the local authority to do the work is not a notice of a decision by which a person is aggrieved; consequently it is not a notice of a decision which entitles them to recover the expenses incurred either in a summary manner or as private improvement expenses. The surveyor has power only to make the apportionment—*Grece* v. *Hunt* (13); mere notice thereof is not sufficient, there must also be a notice of demand of payment. Upon the hearing of the memorial the Local Government Board can enquire into any matters which shew that the sum apportioned is inequitable. Section 268 (1) applies only to the decision of the local authority, and that must be the decision which fixes and determines the liability of the owner, for that is the time when he is aggrieved; a memorial can then be addressed within twenty-one days to the Local Government Board, who may deal with it as they think equitable.

A. L. Smith, for G. Taylor.—The true construction of section 268 is that the decision of the local authority by which Taylor is aggrieved is the decision which makes him liable to pay a sum of money. When notice of demand of payment has been given, then an appeal lies, if brought within twenty-one days from the date of the notice.

Lawrence replied.

BAGGALLAY, L.J. (14)—The question in this appeal arises under the Public Health Act, 1875, which makes provision for other matters besides paving streets. The three sections to which our attention has been called are sections 150, 257 and 268. The last two sections have a more general application than section 150, which has reference to the paving of streets in towns. The question in this case arises with reference to the paving of certain streets within the district of the Penarth Local Board. Notice to pave the street, under section 150, was given by the local board to Taylor, and under that section, if the notice is not complied with, power is conferred upon the local authority, if they think fit, to execute the works. That is

(9) 18 Q.B. Rep. 647; 21 Law J. Rep. Q.B. 337.

(10) 14 Com. B. Rep. N.S. 180; 32 Law J. Rep. C.P. 185.

(11) Law Rep. 2 Q.B. 316 (Ir.).

(12) 50 Law J. Rep. Q.B. 201; Law Rep. 6 Q.B. D. 586.

(13) 46 Law J. Rep. M.C. 202; Law Rep. 2 Q.B. D. 389.

(14) Lord Coleridge, C.J., was present during part of the argument, but not when the argument was concluded and judgment was delivered.

the second step—namely, the local board may execute the works, and then are empowered to recover in a summary manner from the owners in default the expenses incurred by them in so doing, or may by order declare the expenses so incurred to be private improvement expenses.

Moreover, there is a further provision (section 257) that the local board, instead of demanding payment in one whole sum, may by order declare any such expenses to be payable by certain annual instalments. The Local Board of Penarth gave notice to Taylor, under section 150, that they required the street in question to be paved within twenty-one days from the date of the notice. Taylor did not execute the works, and the local board, in the exercise of the authority given to them by that section, gave instructions for the work to be executed. The work was executed, and the aggregate expenses to be paid by Taylor having been ascertained, notice of demand of payment was given to Taylor. Within twenty-one days from the notice being given Taylor appealed by memorial to the Local Government Board, and the case now is that he has no right to appeal. Section 257 makes provision that after the expenses have been incurred an apportionment of the aggregate amount of such expenses, payable by the owner, is to be made by the urban authority, and that such apportionment is to be binding upon the owner unless within three months from the service of notice of the amount settled by the surveyor to be due from such owner he shall by written notice dispute the same. The owner, therefore, after he has received notice of apportionment, has three months within which to dispute the matter; but if he does not do so, then the amount of apportionment is binding upon him. Then comes section 268, under which any person who feels aggrieved by the decision of the local authority, in any case in which the board are empowered to recover expenses incurred in a summary manner or to declare the expenses to be private improvement expenses, may within twenty days from the notice of such decision address a memorial to the Local Government Board stating the grounds of his complaint. In this case, after the works had been executed and the apportionment ascertained, a demand was made upon Taylor for the payment of the sum of money apportioned; and then for the first time he moved against the proceedings which had been adopted by the local board, and addressed a memorial to the Local Government Board, in which he stated two substantial grounds of complaint, namely, that the local board had executed more works than were necessary, and that the total expenses incurred were excessive. After the memorial by way of appeal had been presented, a rule *nisi* was obtained to prohibit the Local Government Board from taking any further proceedings with reference to that appeal. That application was resisted, partly on the ground that no prohibition will lie as against the Local Government Board, and also that, even assuming that prohibition will lie, there are no grounds for interfering in this case. I am of opinion that we ought not to interfere, and that there are no grounds for prohibiting the Local Government Board from entertaining the appeal. It was contended by the appellants that there were three decisions of the local authority from which an appeal might have been brought. The first decision was to flag and pave the street; the second, that the local authority would themselves execute the works; and the third decision was when the urban authority demanded that payment should be made in a summary manner instead of declaring the expenses to be private improvement expenses. I cannot take the view that the first two matters were decisions. I am unable to see on what grounds it can be said that any decisions were come to by the urban authority until it was determined that the amount should be levied from the particular owner in a summary manner. There was no decision except that the local board called upon Taylor to pave the street, and that was a thing which he was not bound to do. The urban authority also are not bound to do the works; but they can do them "if they think fit." These, therefore, are not decisions under section 268, from which an appeal can be brought. The next stage of the proceedings is when the works have been completed; and here there is no decision by the local authority, but solely a

notice which the surveyor was authorised to give of the execution of the works and the amount of apportionment payable by Taylor. Here also I cannot find any decision on the part of the local authority from which an appeal could have been brought within twenty-one days under section 268. But the three months having expired from the notice given by the surveyor, the apportionment became binding upon Taylor, and then an election could be exercised on the part of the local authority as to whether the money should be recovered in a summary manner or should, by order, be declared to be private improvement expenses. At any rate that matter was a decision which was communicated to Taylor by the notice of the 21st of December demanding payment of the amount apportioned within fourteen days. The notice demanding payment was notice of a decision, and within twenty-one days from the receipt of that notice Taylor had a right to appeal to the Local Government Board if he thought himself aggrieved. Moreover, having regard to the provisions of section 268 that the Local Government Board may make such order as to them may seem equitable, I think that the question as to the aggregate amount of expenses incurred and the apportionment of the amount assessed might be enquired into. But the Local Government Board are not bound to travel beyond the grounds of complaint contained in the memorial.

BRETT, L.J.—I agree with the decision of the Divisional Court that a writ of prohibition should not issue; but I do not agree with the grounds upon which that decision is based. Taylor had three different notices served upon him. The first notice was that given on the 4th of May by the Penarth Local Board that they were dissatisfied with the state of the street, and required him to pave it within twenty-one days. I am inclined to think that that notice expresses a decision by the local board, for they must have decided that the street required to be paved. Taylor, therefore, had notice of this decision, and a demand was made by the local board that he should pave the street. On the 21st of September Taylor received a second notice, which was given by the surveyor, that the local board had expended a certain sum upon the works which Taylor had declined to execute, and that he, the surveyor, had apportioned a part of that sum, which was to be paid by Taylor, at 252*l.* 10*s.* 9*d.* But Taylor had received no notice that the local board had decided to expend that sum. The board had no authority to decide the amount of the apportionment, for the surveyor only had power to make the apportionment, and the notice which he gave was a notice that he had done his duty. On the 20th of December a third notice was given, signed by the collector, who seems to give the notice as the servant of the local board, and I think that that is a notice by the local board that they have decided to raise the sum expended in a summary manner. But at a period within twenty-one days after that last notice Taylor sent in a memorial by way of appeal to the Local Government Board, to the effect that it was not equitable to make him pay the sum demanded, on the grounds that the works themselves were unnecessary and that the costs of executing them were unreasonable. The memorial does not contain any complaint that the apportionment as between Taylor and the other owners was wrong; and I think it should be taken that the appellants have reason to suppose, as between Taylor and the Local Government Board, that upon this memorial the board are prepared to consider the two grounds of complaint set forth—namely, whether the works were unnecessary and the sum expended unreasonable, in order to determine whether it was equitable to call upon Taylor to pay this sum. Upon this state of facts the appellants asked for a prohibition against the Local Government Board proceeding any further in the matter. It was said that the claim for a prohibition ought to have been confined to two matters, and that supposing Taylor had a right to question the whole work as being unnecessary, and had a right to a prohibition as to the other grounds, yet because the rule for a prohibition asks for too much it ought not to be granted. If the Court below refused the rule upon that ground I am unable to agree with the decision. Where a party, in his rule for a prohibition, asks for more than he ought

to ask for, the Court ought, if part of the request turns out to be more than he wanted, to mould the rule so as to give him that to which he is entitled.

It was said on behalf of the appellants that there were three successive decisions given by the Penarth Local Board, within the meaning of section 268, from each of which, as they arose, Taylor had a right to appeal; but that as no appeal had been brought in time against the first two decisions he could only appeal against the third, and upon that appeal only one question could be raised, and that was on a point upon which no complaint had been made. It was asserted by the Solicitor-General that, assuming there were three successive decisions against which there is an appeal, and that Taylor is properly debarred as regards the first two, and that it would be an excess of jurisdiction to entertain an appeal against those two questions, yet the Local Government Board is not a body to whom prohibition would lie. It is not necessary, and I am sorry we do not consider it our duty, to decide whether that contention is true or not. If Lord Coleridge had been present I should have pressed for the opinion of the Court; but in his absence we ought not to give a decision upon a question of such importance. My view is that the Court should not be chary of exercising the power to prohibit; and that where the Legislature has entrusted to persons other than the Superior Courts power to impose obligations upon individuals, the Courts ought to exercise, as widely as possible, the power to control these bodies of persons when they exceed the powers given to them by Act of Parliament.

The next question is whether, if prohibition will lie against the Local Government Board, a case has been made out for interfering. Now that raises a question as to the construction of this statute, and also as to what matters may be enquired into by the Local Government Board. That which is called an appeal is given by section 268; and that in some sense it is an appeal is obvious. I do not agree with the Solicitor-General that the headings in an Act of Parliament are not to be considered as part of the Act itself; for I think that they may be used for the purpose of construing the Act. I take it, therefore, that an appeal is given by section 268. With regard to many things done, and with regard to the matter now before us, it was said that the appeal given is not an appeal against judicial decisions, and that the proceedings of the Penarth Local Board are not judicial; but I have a strong opinion that they are. When this memorial is presented, it is the duty of the Local Government Board to hear the party who has presented it. It is also obvious that the local authority are entitled to be heard, because the Local Government Board must transmit a copy of the memorial to the local authority. I doubt whether the Local Government Board are bound to hear the parties orally, but they are bound to let the party know the grounds of the answer given by the local board, in order that he may give an answer. The decision mentioned in section 268 is the decision by which the person deems himself aggrieved; it is a decision by which the local authority are empowered to recover in a summary manner any expenses incurred by them. We must therefore consider in what cases the local authority are entitled to recover the expenses in a summary manner. By section 150 the local authority may give notice to the owners to do certain works, but after that notice has been given, and even if they resolve to do the work, they are not in a position to recover anything in a summary manner. Then, after the works have been executed, the next act is to be done not by the local authority but by the surveyor, who is to apportion the sum which has been expended as between the different owners, and who is to say, assuming such a sum has been expended, what is the fair proportion to be paid by the owners. The local authority cannot determine that matter, but it is the surveyor who is to give notice to the persons with regard to whom the apportionment has been made, and such notice is given for the purpose of allowing those persons to complain to the local authority. Nothing, however, is to happen upon that notice alone; but if the apportionment is disputed within three months, then the local authority are to appoint an arbitrator to settle it; the apportionment, if not dis-

puted within the three months, is binding on the owner. The complaint as to the apportionment has nothing to do with the question whether the amount of the expenses incurred was right or not, but only with the question whether the sum apportioned to be paid by the owner is the right sum. It seems to me, therefore, that so far there is no ground for an appeal under section 268; for even if the apportionment is not disputed the local authority are not in a position to recover anything by summary process or to treat it as improvement expenses. Then what must they do to put themselves in that position? It is strange that the Act does not say what they are to do. By section 150 these expenses may be recovered in a summary manner; and then by section 257 it is provided that in all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand. Now that is the only enactment with regard to the necessity of giving a notice of demand, and the necessary inference is that notice of demand must be given by the local authority, and that until the notice is given the local authority is not entitled to recover anything by summary process. It seems to me that only after that notice of demand is there an appeal given by section 268.

There is only one appeal, namely, when the local authority demand payment of the sum apportioned, and then the appeal arises, because it is not until then that the case can be said to be one in which the local authority can recover any expenses in a summary manner. The appeal must be made by memorial addressed to the Local Government Board within twenty-one days after notice of demand has been given. Into what may the Local Government Board enquire upon that appeal? It is said the only question is whether the Local Government Board think it equitable that the local authority recover the expenses incurred in a summary manner, or declare them to be private improvement expenses. It would be a narrow construction to put upon the statute to hold that no appeal could be brought as to whether works ought to have been ordered to be executed, nor as to whether the sum expended and the amounts apportioned by the surveyor were unreasonable. It was said that there was no appeal on those points to the Local Government Board. The words of section 268 must be looked to. According to the argument, it was said that there was only one complaint which the person who deems himself aggrieved might make. If there were only one ground of complaint it would not be necessary to state it, for the memorial would state it. The words of the section are that the person who deems himself aggrieved may address a memorial to the Local Government Board, "stating the grounds of his complaint, and shall deliver a copy thereof to the local authority." It is clear that the section assumes there may be several grounds of complaint which could not be anticipated by the local authority; for, if there were only one ground of complaint, it would not be necessary to deliver a copy thereof to the local authority. The construction contended for is obviously a narrow, inconvenient and unjust construction. It is obvious from the construction which has been put upon the section that, upon the question which is the real ground of complaint—that it is inequitable to make the person pay the sum demanded—the Local Government Board have power to enquire into circumstances however remote. If that be so, the Board may enquire into these matters, not as decisions but as facts, and whether the particular sum is an equitable and fair sum for the owner to pay in respect of works executed against his will. I should be unwilling to fetter the power of the Local Government Board to enquire into such matters. If that be so, the two causes of complaint stated by Taylor in the memorial are facts into which the Local Government Board might properly enquire. I should be sorry to say that because Taylor had not mentioned such matters, he should not be able to do so, supposing ample opportunity was afterwards given. The largest power is given to the Local Government Board to enquire into all matters as between the local authority and the individual who presents the memorial.

The Queen v. *The Local Government Board, App.*

Assuming that prohibition will lie to the Local Government Board, and that they were about to enquire into the questions whether the works were unnecessary or the sum expended unreasonable, and whether it was fair and equitable to declare the expenses incurred to be private improvement expenses, or to be recovered in a summary manner, I cannot see that the Board would exceed their powers by enquiring into those matters. There is no ground, therefore, for issuing a prohibition to the Board. I think the Court below was right in refusing the rule, but I am unable to agree with the reason given for such refusal.

Appeal dismissed.

Solicitors—Torr & Co., agents for Griffiths & Corbett, Cardiff, for appellants; Sharpe, Parkers & Pritchard, for Local Government Board; Ingledew & Ince, agents for Ingledew, Ince & Vachell, Cardiff, for G. Taylor.

[CROWN CASE RESERVED.]

1882. Nov. 25. } THE QUEEN *v.* CARR.*

Larceny from British Ship—River within Foreign Territory—Admiralty Jurisdiction—Central Criminal Court.

Certain bonds were stolen from a British ocean-going merchant ship whilst she was lying afloat and moored to the quay, in the ordinary course of her trading, in the river Maas at Rotterdam in Holland. The place where the ship lay at the time of the said theft was below the bridges, where the tide ebbs and flows and where great ships go. It did not appear who the thief was or under what circumstances he was on board the ship. The bonds were afterwards received in England by the prisoners with a knowledge that they had been thus stolen:—Held, *that the prisoners were rightly tried for and convicted of such receiving at the Central Criminal Court, inasmuch as the larceny took place within the jurisdiction of the Admiralty of England.*

* *Coram* Lord Coleridge, C.J.; Pollock, B.; Lopes, J.; Stephen, J., and Williams, J.

CASE reserved by North, J.

The prisoners were tried before me at the Central Criminal Court for felony in respect of twenty-five bonds (20*l.* each) of Egyptian Preference Stock, two bonds of 1,000 dollars (ten shares) and 500 dollars (five shares) respectively of the Illinois Railway, and thirty other bonds of Egyptian Unified Stock.

The first count charged the prisoners with stealing these securities upon the high seas within the jurisdiction of the Admiralty of England. The second count charged that they being British subjects within the jurisdiction of the Admiralty of England upon the British ship *Avalon*, then being in a certain foreign port, to wit the port of Rotterdam, stole the same securities. The third count charged them with larceny of those securities within the jurisdiction of the Central Criminal Court. The fourth count charged them with receiving the same securities within the jurisdiction of that Court well knowing them to have been stolen. And the fifth and sixth counts respectively charged them with having been accessories after the fact to the theft, and the receiving respectively of the same securities by persons unknown.

The material facts proved were as follows:—

1. On the 12th of July last the above-mentioned Egyptian Preference Stock and Illinois bonds were made up by Messrs. Kelker & Co., bankers at Amsterdam, into a parcel which was marked outside "value 50*l.*," and was addressed to Messrs. Mercia, Backhouse & Co. in London. The Unified Stock was made up into another parcel similar to the first, except that it was marked outside as value 100*l.* These parcels were of a class known as "valued parcels." They were traced clearly from Amsterdam to Rotterdam, to the office of Messrs. Pieters & Co., the agents there of the Great Eastern Railway Company, on whose behalf they were received.

The Queen v. *Carr*, *C.C.R.*

2. There was evidence that these two parcels were (with two others) taken from Pieters & Co.'s office by a man employed by them for that purpose, and placed by him on board the steamship *Avalon* about half-past five p.m. on the same 12th of July.

3. The *Avalon* is a British vessel, registered at Harwich, and sailing under the British flag. She is about 240 feet in length, with a gross tonnage of 670 tons, and draws about 10 feet 6 inches of water when loaded. She is the property of the Great Eastern Railway Company, and is regularly employed by them in their trade between Harwich and Rotterdam. On the evening in question she was lying on the river Maas at Rotterdam, about 20 or 30 feet (the captain also described it as about the breadth of the Court) from the quay, and against a "dolphin," a structure of piles for the use of the company's ships, only projecting from the quay for the purpose of keeping the vessels off the quay. She was moored to the quay in the usual manner.

4. The place where the *Avalon* was lying was in the open river, sixteen or eighteen miles from the sea. There is not any bridge across the river between that point and the sea. The tide ebbs and flows there, and for many miles further up the river. The place where the *Avalon* was lying at the dolphin is never dry, and that vessel would not touch the ground there at low water. The Admiralty chart, shewing the river Maas from Rotterdam to the sea, was put in evidence at the suggestion of the counsel for the prisoners, and was proved by the captain of the *Avalon* to be correct.

5. While the *Avalon* was lying at the dolphin as above described persons were allowed to pass backwards and forwards between her and the shore without hindrance.

6. The *Avalon* sailed for England the same evening about six o'clock, and arrived at Harwich the following morning. Upon her arrival the two valued parcels above-mentioned (and one of the other parcels) were at once missed, and upon enquiry it was found that they had been stolen. The parcel containing the Unified Stock and the third parcel have never since been traced; but the parcel containing the Egyptian Preference Stock and the Illinois bonds was found in the prisoners' possession on the 1st of August.

7. The prisoners are British subjects.

8. It was contended for the prisoners that there was no evidence upon which the jury could find them guilty upon the counts charging them with stealing the securities. I was of that opinion, and so directed the jury: and the prisoners were accordingly acquitted upon those counts.

9. It was also contended for the prisoners that unless the jury found that the securities had been stolen from on board the *Avalon* the prisoners must be acquitted, as, if they had been stolen after leaving Pieters & Co's. office and before reaching the ship, the offence of stealing them was one which this Court had not jurisdiction to try, and therefore the prisoners could not be tried here for receiving. According to the case of *The Queen* v. *John Carr* (one of these prisoners), reported in vol. lxxxvii. p. 46 of the Sessions Papers at the Central Criminal Court, and the cases there cited, I took this view, and directed the jury that unless they were satisfied that the securities had been taken from the *Avalon* they must acquit the prisoners. They found both the prisoners guilty.

10. I was not asked to leave, and did not leave, any question to the jury whether the securities were stolen before or after the *Avalon* commenced her voyage from Rotterdam. There was no evidence upon which the jury could have found that the theft occurred after the voyage began: the evidence rather pointed to its having occurred before she sailed.

11. It was further argued on the prisoners' behalf that even if the securities had been stolen from the *Avalon* there was nothing to shew that they had been taken by a British subject, and therefore the case did not come within the Acts 17 & 18 Vict. c. 104. s. 267; 18 & 19 Vict. c. 91. s. 21; or 30 & 31 Vict. c. 124. s. 11; and the thief was amenable to the law in Holland only; and further, that the case of *The Queen* v. *Anderson* (1) was no authority to the contrary, inasmuch as the prisoner in that case, though a

(1) 38 Law J. Rep. M.C. 12; Law Rep. 1 C. C.R. 161.

foreigner, was one of the crew of a British vessel, and therefore owed allegiance to the law of England, and upon that ground could be tried here. The counsel of the Crown did not dispute that the offender might be tried in Holland, but insisted that he might be tried here also.

12. I expressed my opinion that if the *Avalon* had, at the time when the securities were stolen, been sailing up or down the river Maas, the person who took them, whether an Englishman or a foreigner, could clearly have been tried here, upon the authority of *The Queen* v. *Anderson* (1); that the law is the same, whether the ship be anchored or sailing, as appears from the cases of *The King* v. *Jemot* (2) and *The King* v. *Allen* (3), where the vessels were lying in port, and which cases are referred to by Lord Blackburn with approval in *The Queen* v. *Anderson* (1); and that it could not make any legal difference whether the vessel was made fast to the bottom of the river by anchor and cable, or to the side of the river by ropes from the quay. I also expressed my opinion that although the fact that the prisoner in *The Queen* v. *Anderson* (1) was one of the crew was referred to more than once in the judgment of Chief Justice Bovill, it was not mentioned by any of the other Judges, and was not the ground of the decision, and that it made no difference in the present case whether the securities stolen from the *Avalon* were taken by one of the crew or passengers, or by a stranger from the shore.

13. I directed the jury accordingly, telling them that if they came to the conclusion that the securities were taken from the ship, the taking them was an offence which could be tried here; and that if so, the prisoners could now be tried here for receiving, and could be found guilty of that offence if the jury thought the facts proved warranted such a finding. I stated at the same time that I should, if necessary, reserve the point for the consideration of this Court.

14. With respect to the receiving no difficulty of law arose and no point was reserved.

(2) Russell on Crimes, 5th ed. vol. i. p. 11 in note.

(3) 7 Car. & P. 664; 1 Moo. C.C. 494.

15. The jury found both prisoners guilty upon the fourth count.

The question for the opinion of this Court was whether under these circumstances there was any jurisdiction to try the prisoners at the Old Bailey for the offence of which they have been found guilty.

Sir H. Giffard, Q.C. (*Gorst, Q.C.*, and *Tickell* with him), for the prisoner Carr.—The question is, whether the stealing is a felony triable here. If the stealing is not within the jurisdiction, the receivers are not triable here. The prisoners cannot legally be tried here for the offence of receiving the bonds, because it appears that the theft was in Holland whilst the ship was moored to the quay at Rotterdam. The thief was probably a Dutchman, and the ship was at the time in a Dutch highway. It is not a case of larceny by a person on board a British ship on the high seas. The ship ceased, when moored to the quay, to have the character of a floating island separated from any country; it became part of Holland, and was no longer sailing under the British flag. In *The Queen* v. *Anderson* (1) the offence was committed by one of the crew of a British ship—one who by contract brought himself under English law. In *The King* v. *Allen* (3) the basis of the decision was the fact that the prisoner was one of the crew of the *Aurora*, of London.

E. Clarke, Q.C. (*Grain* with him), for the prisoner Wilson, referred to the judgment of Lindley, J., in *The Queen* v. *Anderson* (1).

Poland (*Goodrich* with him), for the prosecution.—When the ship came to Rotterdam it was within Dutch jurisdiction; but it never ceased to be subject to and to be within the jurisdiction of the Admiralty of England. The ship was in the course of its trade afloat within the ebb and flow of the tide. Anyone, including the thief, who came on board that ship was under the protection of English law, and therefore was under the jurisdiction of English law. The stealing, therefore, was within the jurisdiction, and *a fortiori* the receiving. In *The King* v. *Allen* (3) membership of the crew was not the ground of the decision. In *The*

Queen v. *Keyn* (4) the case of *The Queen* v. *Anderson* (1) is cited, but without any suggestion that it was decided upon the ground that the prisoner was one of the crew.

LORD COLERIDGE, C.J.—There were certain bonds on board a British ship, which lay in the river Maas, moored to the quay, at a dolphin. The ship was thus attached to the land of the country of Holland, but was at a place within the ebb and flow of the tide where she could and did lie afloat. There was no actual proof of who stole the bonds; but the evidence pointed to the stealing having taken place whilst the vessel was so moored and before she left her moorings to proceed upon her homeward voyage. How the bonds came to this country we know not, nor is it for our present purpose material. It is enough to know that they were here received under circumstances which, apart from the question now to be considered, clearly warranted a conviction of the receivers. The conviction is for the offence of feloniously receiving these bonds knowing them to have been stolen. Now it is obvious that the prisoner cannot be convicted here unless the stealing took place within the jurisdiction of our Courts. The question has therefore to be considered whether the ship was, when the bonds were stolen, within the jurisdiction of the Admiralty, so that the thief if he had been caught could have been tried at the Old Bailey.

The exact point has never yet, it would seem, been decided. None of the cases cited absolutely cover the precise question now before us. There are, indeed, two questions before us—first, was the ship within the jurisdiction of the Admiralty, so that the stealing took place locally within the jurisdiction of the Court which tried the prisoners? and secondly, was the person who stole the bonds a person subject to the jurisdiction of that Court? The first a question of place, the second a question of person. The place is clearly within the ebb and flow of the tide, where great ships are accustomed to go. The ship was accustomed to go there in its trading, and was there in the course of trading. There is enough to make it clear that the place is within the jurisdiction.

Without saying that in all the cases the reports are full or exact enough to enable us to say that this case is governed by any of them, yet it appears from the report of *The King* v. *Allen* (3) and *The King* v. *Jemot* (2) that those cases were such that to draw any tangible and sensible distinction between them and the case now before the Court would be difficult. Again, in *The Queen* v. *Anderson* (1) the ship was some forty or fifty miles up the Garonne, yet it was held that our Courts had jurisdiction. I cannot distinguish that case from the present as to the first point.

With regard to the second point, is there anything in the personality of the thief who thus stole from a place within the jurisdiction to render him not triable here? It is true that in *The Queen* v. *Anderson* (1) some of the Judges place great reliance upon the fact that the prisoner was one of the crew of the vessel, though the *Law Reports* differs in this respect from the report in the *Law Journal*. In the report of that case in the *Law Journal*, which is fuller than the report in the *Law Reports*, I find Mr. Justice Blackburn reported as insisting on the right of this country to legislate for persons who come on board its ships. The fact that the prisoner was one of the crew is prominently noticed; but not one of the Judges says that had it been otherwise their judgment would have been other than it was. The true principle appears to me to be this, that any person who comes on board a British ship where English law is reigning places himself under the protection of the British flag; and, as a correlative proposition, if he thus becomes entitled to our law's protection, he becomes amenable to its jurisdiction, and liable to the punishments it inflicts upon those who there infringe its requirements. I can draw no distinction between those who form part of the crew, those who come to work in or on the ship, those who are present involuntarily or those who come voluntarily as passengers. It is said that these bonds may have been stolen by a Dutch subject, who came, perhaps with-

(4) 46 Law J. Rep. M.C. 17; Law Rep. 2 Ex. D. 63.

out a right, on board for a short time, and who then went back with his plunder to Rotterdam, and forwarded it by post to the prisoners. If the ship had sailed for this country before he got ashore with the bonds thus stolen, instead of after, and brought him to this country, I say he could have been tried and convicted here. This conviction is right, and must be affirmed.

POLLOCK, B.—I also think this conviction should be affirmed. The broad question is, whether upon this trial of an indictment for receiving, it was proved that the property was so stolen as to give the Court trying it jurisdiction over the thief and theft. Does the rule apply enuntiated by Mr. Justice Blackburn in *The Queen* v. *Anderson* (1):—"All persons on board of a ship may be considered as within the jurisdiction of that nation whose flag is flying on the ship, and in the same manner as if they were within the territory of that nation." It is admitted that if the theft had been on the high seas, in mid-ocean, the conviction would have been proper. It is said that lying alongside the town the English jurisdiction ceased. I think the distinction is not one of substance. If the crew had been discharged and the ship had been under repair the circumstances would have been different, and there might have been a distinction, but here there was a large British ship taking or discharging its cargo and passengers in its ordinary course within tidal waters "where great ships do go." To draw distinctions such as we have been invited to do would be to fritter away the sound law on this subject as laid down in the cases cited.

LOPES, J.—This conviction should be affirmed. The position of the ship was within the jurisdiction, she was on the high seas "where great ships do go." It is said the thief may not have been a member of the crew. I think it matters not whether he was or not. The true test is, was he at the time on an English ship, protected by and amenable to English law?

STEPHEN, J.—I am of the same opinion. The whole question is, was the theft within the jurisdiction of the Admiralty of England? Ever since the time of Ric. 2 this jurisdiction has been defined to extend to places "where great ships do go." Many statutes regulate the procedure for applying that jurisdiction, but the extent of the jurisdiction has remained, so far as I can learn, unnarrowed. Of the cases cited *The King* v. *Jemot* (2) bears out that jurisdiction, and shews it is not limited to waters outside ports and harbours. *The King* v. *Allen* (3) is to a similar effect. But *The Queen* v. *Anderson* (1) goes further, it affects both place and person, for in that case it was a foreigner who was tried—although the case is less important in its bearing on the present case, because the foreigner was one of the ship's crew; whilst here we have to decide, following these authorities, whether jurisdiction extends to an English ship placed where great ships usually go as part of their voyage for the purposes of its trading, and to all persons who happen to be on board such ship so as to be entitled to the protection of English law. I see no reason founded on expediency or authority to induce us to say that a ship at anchor is within the jurisdiction, and that a ship moored to the land is not, or to introduce intricacies as to the mode of attachment of the ship to the land, or to enquire when the flag is lowered or when hoisted. Such rules would be to make law without meaning, and to narrow well-founded and beneficial jurisdiction. I prefer the obvious and wholesome principle that jurisdiction and protection in these cases are co-extensive.

WILLIAMS, J., concurred.

Conviction affirmed.

Solicitors—The Solicitor to the Treasury, for the prosecution; Goldberg & Langdon, for prisoners.

1882.
June 30.
August 3.

THE MADELEY UNION *v.* THE BRIDGNORTH UNION.

Poor—Settlement—Abolition of Derivative Settlement—39 & 40 *Vict. c.* 61. *s.* 35.

Under section 35 *of the Poor Law Amendment Act*, 1876, *abolishing in general derivative settlements, an order of removal of a wife, and three children under the age of sixteen, is not justified by proof that the father of the wife's husband was born in the union to which the removal is made, and that neither the husband nor his father acquired a settlement in his own right.*

The Guardians of Hollingbourne *v.* The Guardians of West Ham (50 Law J. Rep. M.C. 74) *commented on.*

CASE stated by the Recorder of Bridgnorth in an appeal to the Quarter Sessions of the borough against an order of Justices for the removal of Ellen Hughes and her three children, aged five years, three years and one year respectively, from the Bridgnorth Union to the Madeley Union.

Ellen Hughes and her three children were the lawful wife and children of William Hughes, and had become chargeable to the Bridgnorth Union. William Hughes was the lawful son of John Hughes, and acquired no settlement in his own right. John Hughes was born in the parish of Madeley, in the Madeley Union, about the year 1822, and acquired no settlement in his own right. The appellants, the Madeley Union, called no evidence at the conclusion of the respondents' case, but submitted that, as matter of law, it was not sufficient for the respondents to prove the place of birth of John Hughes, but that unless they could shew affirmatively a settlement of John Hughes at Madeley other than a birth settlement, his son William Hughes must be held to be settled in the place of his birth.

The Recorder quashed the order on the ground that it was not enough to make out a *prima facie* birth settlement for John Hughes, and that as the respondents had not established a settlement in the parish of Madeley for John Hughes other than a *prima facie* birth settlement, William Hughes must be held to be settled in the parish of his birth in virtue of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), subject to the opinion of the Court on the present Case.

By 39 & 40 Vict. c. 61. s. 35, it is enacted that "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another. An illegitimate child shall retain the settlement of its mother until such child acquires another settlement. If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child, or female, shall be deemed to be settled in the parish in which he or she was born."

Bosanquet for the respondents.

Archibald for the appellants.

The cases cited and arguments used appear in the judgments of the learned judges.

FIELD, J.—This was a Special Case stated by the Court of Quarter Sessions of the Peace for the borough of Bridgnorth upon an appeal by the Union of Madeley against an order by which two Justices had, upon the 9th of January, 1882, adjudged the last place of settlement of Ellen, the wife of William Hughes, and three children, aged five years, three years and one year, to be in the parish of Madeley. The Madeley Union or parish had appealed against that order, and the Court of Quarter Sessions quashed it subject to a case.

The question turns upon the construction of the 39 & 40 Vict. c. 61. s. 35. The paupers were the wife and three

children of William Hughes. The birthplace of William Hughes was not proved, and was assumed to be elsewhere than in Madeley Union, but his father John was born in Madeley; and the Justices below held that the settlement of John, the grandfather of the paupers, ought to be considered the settlement of William, and upon that ground made the order. The statute has been discussed in various cases, and in one or two of them I have expressed my opinion as to its true construction. Upon those occasions I had not taken time to consider, but I stated the construction which appeared to my mind to be the true one. Since then other cases have been decided, and in the very able argument that has been addressed to us in this case by Mr. Bosanquet those cases have been fully brought before us. I thought it right, therefore, to look into the subject *ab initio*, and see whether or not the view I had before expressed was correct, or whether an examination of the statute and authorities would enable me to acquiesce in Mr. Bosanquet's view. For that purpose I have gone further back than the statute in order to trace as far as I can the policy of the Legislature. There is no doubt but that by law every person unable from poverty to maintain himself is entitled to be maintained at the expense of the inhabitants of some parish or place which has the duty thrown upon it of maintaining its own poor; and that place is charged with the liability; and every other place in which a person is found who is likely to become chargeable to the funds for the relief of the poor in it has a right given to it of causing the removal of a person likely to become chargeable to what is popularly known as his or her place of settlement. That right of removal of poor persons existed before the pauper settlement laws. It was in existence so long ago as the reigns of Richard 2 and Henry 7, in which various Acts of Parliament were passed requiring that poor persons and persons of certain descriptions should resort to certain places; and it is remarkable in how much modern legislation agrees with the first legislation on the subject, because the whole spirit of the Acts of Richard 2 and Henry 7 was that persons of certain descriptions should resort to the places in which, in the language of the Act, they had become conversant, or had dwelt or abided. Therefore the policy in those days was to hold that the proper place for a vagrant or person not having means of support was the place where he was conversant and where he would find friends or persons likely to support him or associate with him. That continued to be the state of the law down to the time of Charles 2, when the Act was passed which defined the law of settlement, which law continued until recent changes were effected by this Act, and in one instance by the Poor Law Act of 4 & 5 Will. 4. The statute of 13 & 14 Car. 2 fixed the right of removal of persons likely to become chargeable to, and consequently their place of settlement was deemed to be in, the place where the paupers were "last legally settled." The pauper might have been settled in a dozen places, but the place where he was "last legally settled" was to be the one to which he was to be removed, and therefore it became technically known as "the place of settlement." The persons we have to deal with in the present case who are to be removed are a married woman and three children, all the children being under the age of sixteen, and of course unemancipated, and if any question had arisen about the removal of these four persons before the statute which we have to construe, namely, the 39 & 40 Vict. c. 61. s. 35, the wife, so far as she is concerned, would have been removed to the place of her husband's settlement, because she derived that settlement from him. Such would have been the state of things before the 39 & 40 Vict. c. 61, and is so still, because, although that Act intended to abolish, and did abolish, derivative settlement in general, it excepted a wife from such abolition, and therefore left the law as it was before upon that head. Therefore, in any view the wife must be removed to the place of her husband's settlement. The policy seems to be that it is very undesirable to separate husband and wife, and that if her derivative settlement by marriage were abolished she would have had to go to her place of birth, for women, as a rule, rarely have acquired any settle-

ment of their own, the probability being that a large percentage of married women have no other than the derivative settlement of their husbands or birth settlements. In a great majority of cases, therefore, if the wife were sent to her birth settlement it would be a different place from the husband's settlement, and the effect would be at once to separate them. It is also important to observe that the tendency of all modern legislation upon this subject has been to increase the facility of gaining a settlement. In this very Act which we have to construe the Legislature has shewn its intention of reducing removability and fixing the settlement as much as possible at the last place where the pauper has been conversant, by converting the status of irremovability of three years into a settlement, so that the effect is that any man having lived in a place for three years has acquired a settlement in his own right; and therefore his wife presumably would go to that settlement—that is to say, would go to the place where she had been recently dwelling—and therefore it would be a place probably much better for her to be removed to than the place of her birth (which she may have left for many years, and where, possibly, all her friends may be dead and gone). So stands the case with regard to the wife. By the old as well as by the new law she has the settlement of her husband.

Then with regard to the children, the case before the statute stood thus. They are legitimate children, and under the age of sixteen, and unemancipated, and consequently, before the statute, they would have derived their settlement from the father or mother, or would have been settled where they were born; but the foundation of this is that birth is only a *prima facie* settlement; it does not become a conclusive settlement, except in those cases where the derivative settlement is not known. I have said that these are legitimate children, and we have upon the present occasion, of course, nothing to do with bastard children, except by way of illustration. But in that view it is important to look at the legislation with reference to bastard children for the purpose of ascertaining the policy of the Legislature in the enactment now before us.

Originally bastard children were in a different position from legitimate children; they were the children of nobody, and could derive nothing from anybody; they could not derive a settlement, and consequently of necessity were always removed to the place of their birth, with one exception, which shews the anxiety on the part of the Legislature not to separate persons who cannot take care of themselves. This exception was in the case of nurslings who, up to a certain tender age, could not be separated from the mother. But the law as to bastards was altered by the 4 & 5 Will. 4. c. 76. s. 71, which made a bastard child follow the settlement of the mother until the age of sixteen or until it had acquired a settlement in its own right. I have adverted to that for the sake of pointing out by way of illustration the policy of the Legislature in regard to the removal to one and the same place of the mother and the child. As to legitimate children, they were first benefited by the Act we have to deal with. Before the passing of that Act the three children now in question would have taken the last settlement of their father, and it may be that that would have had the effect of separating them from their mother; but the statute in question not only excepts the mother from the abolition of derivative settlement, but also excepts the children; for section 35 says, "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen." Therefore, a child under sixteen is excepted, and may still derive a settlement by parentage. What is the settlement which it is to derive from parentage? It is to be the settlement of its father or widowed mother, as the case may be, up to the age of sixteen. Then the section goes on: "Which child may take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another." Therefore, again, the Legislature fixes the child's settlement at that of the parent

up to a particular age, and it prevents what was previously possible, namely, the removal of the child to any subsequent settlement acquired by the father. It therefore fixes the child's settlement at that place where it was most likely the child would be conversant, that is to say, the most recent place of the father's settlement; and inasmuch as the period in which a settlement may be acquired by residence is reduced now to one year, it would most probably be a settlement of recent date. "So far as possible," the Legislature seems to say, "let the child go to its parent and with its parent." But if the section had stopped there the child, being excepted from the abolition of derivative settlement, and still deriving its settlement, by the very Act, from its parent, it might turn out that the parent's settlement was a derivative settlement, gained at a period prior to the abolition of derivative settlement, but which might still, therefore, be the settlement of the child. The effect would have been that the child might still have to be sent a long way from where it was conversant; that, it appears to me, the Legislature intended to prevent, and it proceeds to legislate in regard to it, and says: "If any child in this section mentioned shall not have acquired a settlement for itself, or, being a female, shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born." Therefore, it being the intention to abolish derivative settlement, it would seem that the Legislature thought in that particular event that it would be better for a child to be sent to its place of birth rather than to a place to be ascertained by an enquiry into a derivative settlement which might have been gained by a distant connection many years before. Whether that is a wise policy, whether it was exactly right, and whether it has secured the very object the Legislature intended, I am not prepared to say, but I may say generally that it seems to me to have been wise and prudent, though no doubt it is open to the observations made by Mr. Bosanquet to the effect that some cases may arise where it will work the very mischief which the general policy of the Act, according to my view, intended to prevent. I have carefully examined all the recent authorities upon the construction of the section of the statute, but I do not go through them now, because I have read my brother Cave's commentary upon them, in which I concur. I am glad to find that my brother Cave concurs in the views I have expressed, but although we have arrived at the same conclusion our grounds are quite independent of each other. I continue to entertain the same view as I have before expressed, and therefore hold that the order of the Quarter Sessions is right, and must be affirmed.

CAVE, J.—The question in this case is, What construction is to be placed on 39 & 40 Vict. c. 61. s. 35?—a question not free from difficulty, owing partly to the language of the section, and partly to the interpretation which appears to have been placed upon it by judicial decisions.

The section first enacts that, "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise." Now stopping there for a moment, it may be observed that there are only two species of derivative settlements—namely, settlement by marriage and settlement by parentage. By the former, if a woman married a man who had a known settlement, she acquired the husband's settlement, and she took every subsequent settlement which he might obtain until his death. If the husband had no settlement, then the prior settlement of the wife continued. By the latter legitimate children took the settlement of their father; and they took successively any settlement which the father might from time to time acquire before their emancipation. If the father had not a settlement acquired by his own act they took the settlement he derived from his parents till it could be traced no further, and recourse was then had to the maiden settlement of the mother. If neither father nor mother had a known settlement, acquired or derivative, the children were settled in the

place of their birth until they acquired another settlement by their own act.

The case of an illegitimate child differed. Previous to the Poor Law Amendment Act, 1834, the settlement arising from the place of birth of a bastard was in general only superseded by a settlement subsequently acquired by the bastard in his own behalf; but by section 71 of that Act it was enacted that "every child born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen or shall acquire a settlement in its own right." In *The Queen* v. *St. Mary, Newington* (1) it was held that by virtue of this section illegitimate children (differing in this respect from legitimate children) followed the mother's settlement acquired by marriage after their birth, and while they were under sixteen years of age; and in *Bodenham* v. *St. Andrew's* (2) it was held that illegitimate children followed the mother's settlement only until they were sixteen, and that a bastard who had attained that age without having acquired any settlement of its own was settled in the place of its birth though the mother was settled elsewhere.

Now applying so much of 39 & 40 Vict. c. 61. s. 35, as has been already cited to the previous law, a wife could no longer have taken the settlement of her husband, nor a legitimate child that of its parents, nor a bastard that of its mother. The section, however, proceeds to make the following exceptions from the generality of this first part, "except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another."

Now the exception in the case of a wife has been held entirely to exclude derivative settlement by marriage out of the operation of the first part of the section so that a wife will take the settlement the husband has at the time of the marriage whether acquired or derivative, and every subsequent settlement which he may obtain until his death—*Great Yarmouth* v. *The City of London* (3). The subsequent exception seems to exclude derivative settlement by parentage out of the operation of the first part of the section to this extent, that a child will take the settlement of its father so long as he lives, and the subsequently acquired settlement of its widowed mother only up to the age of sixteen and not up to emancipation as before.

The latter part of this exception seems intended to preclude the interpretation which was put on section 71 of the Poor Law Amendment Act, 1834, in *Bodenham* v. *St. Andrew's* (2), since it goes on to provide that the child shall retain the settlement so taken (that is, the settlement of its father or widowed mother which it actually has at the age of sixteen) until it shall acquire another.

The next part of the section, "An illegitimate child shall retain the settlement of its mother until such child acquires another settlement," seems obviously intended to abrogate the rule laid down as to illegitimate children in *Bodenham* v. *St. Andrew's* (2).

Had the section stopped there a doubt might have arisen whether the settlement of its father or of its widowed mother, which the legitimate child was to take and retain, or the settlement of its mother, which the bastard was to retain, included not only their birth settlement or settlements acquired in their own right, but also in the case of the father a settlement derived by parentage, or in the case of the mother a settlement derived by parentage or marriage. The section accordingly goes on to provide as follows, "If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born," or, in other words, a legitimate

(1) 4 Q.B. Rep. 581; 12 Law J. Rep. M.C. 68.
(2) 1 El. & Bl. 465.
(3) 47 Law J. Rep. M.C. 61; Law Rep 3 Q.B. D. 232.

child will up to the age of sixteen take the last settlement which the widowed mother may have acquired in her own right after the death of its father, or, failing that, it will take the last settlement the father shall have acquired in his own right, or in the absence of any such settlement it will take the father's birth settlement, and it will retain the settlement which it had at the age of sixteen until it has acquired another in its own right; but it will in no case take any derivative settlement acquired by the widowed mother by a second marriage—*The Keynsham Union* v. *The Bedminster Union* (4)—or any derivative settlement acquired by either parent by parentage; while an illegitimate child up to the age of sixteen will take the last settlement which the mother may have acquired in her own right, and in the absence of any such settlement it will take her birth settlement and will retain the settlement which it had at the age of sixteen until it has acquired another in its own right, but will in no case take any derivative settlement acquired by the mother by parentage or (abrogating *Bodenham* v. *St. Andrew's* (2) by marriage.

This being, as it seems to me, the natural construction to put on the section in question, I am next led to enquire whether any other construction has been put upon the section by any previous case. The first case to which we were referred is that of *Westbury-on-Severn* v. *Barrow-in-Furness* (5). In that case the pauper, who was more than sixteen at the time of the passing of the 39 & 40 Vict. c. 61, had acquired no settlement of his own, but before he had attained the age of sixteen his father had acquired a settlement in his own right by estate. The appellants contended that the first two lines of the 35th section were retrospective, so as to take away the derivative settlement the pauper would otherwise have gained; but that the exception in the same clause of the Act was not retrospective, and consequently that the pauper had lost the old derivative settlement, and had not acquired the new modified one. It is not surprising that this contention was unsuccessful; but the decision (with which I entirely agree) in no respect conflicts with the view which I have taken above of the construction of the section. Indeed the observation at page 81 of the judgment directly supports that view. It is there said that—"If, in order to prove the place of settlement of the pauper as derived from the father, it had been necessary to prove the derivative settlement of the father, then by the direct enactment of the 3rd paragraph of the 35th section, the pauper would be deemed to be settled in the parish where he was born."

The next case which was cited to us was *Great Yarmouth* v. *The City of London* (3), in which it was held that the wife of a man who had, while under the age of sixteen, derived a settlement from his father took this derivative settlement of her husband, and not his birth settlement. There is no doubt that in that case the husband being within the clear language of the Act took a derivative settlement from his father; and all that that case decides is that, under those circumstances, the wife takes the derivative settlement of her husband under the exception in the 1st paragraph of the section, "except in the case of a wife from her husband."

For myself I should not like to express an opinion on this point without further consideration, but at any rate this case is no authority for holding that, notwithstanding the 3rd paragraph, the children of the husband would have taken the settlement which their father derived from his parent.

The next case in point of time is *Woodstock Union* v. *St. Pancras* (6), in which it was held that a female pauper whose father had never acquired a settlement of his own, did not take the derivative settlement which the father while under sixteen had acquired from his father, but was settled in the place of her birth by virtue of the 3rd paragraph of the section.

This decision again is entirely in conformity with the construction I place on the section in question, and I heartily subscribe to the judgment delivered in

(4) 47 Law J. Rep. M.C. 73; Law Rep. 3 Q.B. D. 344.

(5) 47 Law J. Rep. M.C. 79; Law Rep. 3 Ex. D. 88.

(6) 48 Law J. Rep. M.C. 1; Law Rep. 4 Q.B. D. 1.

that case, especially to that of my brother Field.

The next case is *Manchester* v. *St. Pancras* (7), in which it was held that an illegitimate child under sixteen is, by the 3rd paragraph of the section, precluded from taking the settlement of its mother where such settlement has been derived from her marriage. In that case the pauper, who was nine years of age, was born three years after his mother, who had since died, had been divorced from her husband; and Mr. Justice Lush says that the words in the 3rd paragraph, "any child in this section mentioned," mean any legitimate or illegitimate child, and that there is nothing to confine the expression "any child" to any particular class of children.

The next case is *The Guardians of Hollingbourne* v. *The Guardians of West Ham* (8), and as that case was much pressed upon us, and has caused me to hesitate greatly, it is necessary to examine it somewhat closely.

By an order of removal affirmed at Quarter Sessions it was adjudged that the last legal settlement of Sarah Thorndycraft and her four children, who were all under the age of sixteen, was in the parish of Sutton Valence. John Thorndycraft the younger, the husband of Sarah, was born in Hackney, but acquired no settlement in his own right; John Thorndycraft, sen., the father of the husband, was born in Sutton Valence in 1804, but lived and was married in the parish of Hackney, and never acquired any settlement in his own right.

It was admitted that Sarah Thorndycraft was legally settled in the parish of Sutton Valence, I presume on the ground that she took the derivative settlement of her husband, and not his birth settlement, and in deference to the authority of *Great Yarmouth* v. *The City of London* (3).

The question for the Court was what settlement the children took, and it was held that they took the settlement of the mother, although that settlement could only be arrived at by enquiring into her derivative settlement. Looking at the judgment, the Court there seems to have held that the 1st paragraph referred only to children who had a father or widowed mother alive, the 2nd to illegitimate children of any age, and the 3rd to legitimate children who had not a father or mother alive and to illegitimate children of any age. I find myself unable to assent to this decision. By the 1st paragraph, as I read it, children on their birth take their father's settlement, as they would have done before the Act, except that they take no settlement he may acquire after they have attained the age of sixteen years. If that is so they take on their birth the settlement their father then has, and they continue to follow each successive settlement acquired by him in his own right—*Cumner* v. *Milton* (9)—until they attain sixteen, when they no longer take any future settlement he may acquire, but retain that they had at sixteen until they acquire another in their own right. If the father dies before they are sixteen they retain the settlement they had at his death, unless the widowed mother subsequently acquires one in her own right, in which case they take each successive settlement she may so acquire in her own right up to the time of their attaining the age of sixteen, when they retain the settlement last acquired from her until they acquire another in their own right. The assumption that they only take the father or widowed mother's settlement so long as he or she is living is, it seems to me, inconsistent with the provision at the end of the 1st paragraph, that the child shall take the settlement of the father, &c., up to sixteen and shall retain the settlement so taken until it shall acquire another. To my mind the words "in the case of a child under the age of sixteen" include all legitimate children, whether the parents are alive or dead. I am also unable to assent to the proposition that the 2nd paragraph includes illegitimate children of any age. As I have shewn above, under the Act of 1834 illegitimate children took the settlement of their mother only up to the age of sixteen, and on arriving at that age lost her settlement and took their birth settlement only.

(7) Law Rep. 4 Q.B. D. 409.

(8) 50 Law J. Rep. M.C. 74; Law Rep. 6 Q.B. D. 580.

(9) 2 Salk. 528.

Madeley Union v. *Bridgnorth Union.*

The 2nd paragraph of the section in question does not say that illegitimate children shall take any settlement acquired by their mother after they have attained the age of sixteen, but only that they shall retain the settlement of the mother, which by the previous law they took only up to that age, until they have acquired another settlement. This construction puts an illegitimate child on the same footing with reference to a settlement derived from its mother as a legitimate child is with reference to a settlement derived from its father, or after his death from its widowed mother, except that had the section stopped there an illegitimate child would have taken the settlement acquired by its mother by marriage subsequently to its birth, while a legitimate child would not have done so—*The Keynsham Union* v. *The Bedminster Union* (4). I am also unable to accede to the view that the 3rd paragraph applies to legitimate children under sixteen not having a father or mother alive, and also to illegitimate children whether under or over sixteen. The words are, "any child in this section mentioned," which, to my thinking, must include both the legitimate children mentioned in the 1st paragraph and the illegitimate children mentioned in the 2nd, and cannot refer to any children not included in one or other of those paragraphs. If I am right, the effect of the 3rd paragraph is to cut down both the 1st and 2nd, so as to prevent children, whether legitimate or illegitimate, taking any derivative settlement of their parents, and also again to put legitimate and illegitimate children on the same footing, by preventing the latter from taking the settlement of the mother acquired by subsequent marriage; while if *The Guardians of Hollingbourne* v. *The Guardians of West Ham* (8) is right, a distinction is introduced between legitimate children under sixteen who have a parent alive and those who have not, and also between legitimate children under sixteen and illegitimate children of the same age in respect of the settlement they take from their respective mothers.

Although, however, I am unable to agree with the decision of the Court in this case, I should probably have felt myself bound by it had it not been, as it seems to me, inconsistent with the principles laid down in *Manchester* v. *St. Pancras* (7). Both cases were before the Court which decided the still later case of *The Queen* v. *The Guardians of Portsea* (10), and although the two cases cited were alleged in the argument to be inconsistent the Court there followed the case of *Manchester* v. *St. Pancras* (7), without attempting to distinguish it from the later case. I think, therefore, that I am free in this conflict of authority to follow that which approves itself to my judgment.

Applying the principles I have referred to to the present case, I am of opinion that the children in this case come within the 1st paragraph, and would have taken the settlement of their father William, or, failing that, the settlement of their mother, had they not also fallen within the 3rd paragraph, which precludes their taking the settlement of either, because neither father nor mother had any but a derivative settlement.

As to the argument drawn from the supposed policy of the law against separating the children from their parents, I am, I confess, unable to discover what that policy is; it is true that if a father has none but a derivative settlement, on my interpretation of the section, he will be separated from his children if all become chargeable together; but that, as it seems to me, will also be the case if the widowed mother marries again. Looking, however, at the facility given for acquiring a settlement by section 34 of the Act of 1876, it seems probable that questions as to derivative settlement will not be very frequent in future.

Order of Sessions confirmed.

Solicitors—Sole, Turner & Knight, agents for Cooper & Haslewood, Bridgnorth, for appellants; C. R. & H. Cuff, agents for G. Burd, Ironbridge, for respondents.

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(10) 50 Law J. Rep. M.C. 144; Law Rep. 7 Q.B. D. 384.

1882. Dec. 19. WINYARD (*appellant*) *v.* TOOGOOD (*respondent*). HANCE (*appellant*) *v.* FORTNUM (*respondent*).

Elementary Education Act, 1876 (39 & 40 *Vict. c.* 79), *s.* 11, *sub-s.* 1—*Child "prohibited from being taken into full time Employment"—Attendance Order.*

Under the Elementary Education Act, 1876, *s.* 11, *sub-s.* 1 (*providing for the making of an order compelling attendance at school where a parent habitually neglects to provide instruction for a child "who is under this Act prohibited from being taken into full time employment"*), *attendance orders were sought as to two children for whom their parent habitually neglected to provide instruction, and the employment of whom was, by section* 5, *in the case of one child prohibited generally, he being under ten years of age, and in the case of the other child prohibited, unless he should be employed and attending school under the Factory Acts or Elementary Education by-laws, he being, though over ten, yet under fourteen years of age, and not having any certificate of proficiency or of previous attendance at school*:—Held, *dissenting from* Saunders *v.* Crawford (51 Law J. Rep. Q.B. 460), *that section* 11, *sub-section* 1, *applied to children who were by section* 5 *prohibited either to a limited extent or generally from being taken into employment, and was not intended to be confined to children who were by section* 8 *prohibited only from being taken into full time employment.*

These were two appeals (by cases stated under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49. s. 33) from decisions of magistrates in relation to attendance orders under the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 11, sub-s. 1 (1).

(1) The following is, so far as it seems to need setting out, the text of the enactments referred to on the argument:—The Elementary Education Act, 1876 (39 & 40 Vict. c. 79), (reciting by its preamble that "it is expedient to make further provision for the education of children and for securing the fulfilment of parental responsibility in relation thereto, and otherwise to amend and to extend the Elementary Education Acts"):—

Section 4: "It shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction . . . . and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act."

Section 5: "A person shall not . . . . take into his employment (except as . . . . in this Act mentioned) any child — (1) who is under the age of ten years; or (2) who, being of the age of ten years or upwards, has not obtained" a "certificate either of . . . . proficiency in reading, writing and . . . . arithmetic, or of previous due attendance at . . . . school, . . . unless such child, being of the age of ten years or upwards, is employed and is attending school in accordance with the . . . . Factory Acts or . . . . any by-law . . . . made under section 74 of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1873, and this Act . . . ."

Section 6: "Every person who takes a child into his employment in contravention of this Act shall be liable . . . . to a penalty . . . ."

Section 7, enacting that "the provisions of this Act respecting the employment of children" are in general to "be enforced" by a school board or a school attendance committee, incidentally speaks of "every such school board and school attendance committee" as being "in this Act referred to as the local authority."

Section 8: "Whereas by sections 14 and 15 of the Workshop Regulation Act, 1867, provision is made respecting the education of children employed in workshops, and it is expedient to substitute for the said sections the provisions respecting education of the Factory Acts, 1844 and 1874: Be it . . . . enacted that sections 31, 38 and 39 of the Factory Act, 1844, and sections 12 and 15 of the Factory Act, 1874, shall apply to the employment and education of all children employed in factories subject to the Factory Acts, 1833 to 1871, and not subject to the Factory Act, 1874, or in workshops subject to the Workshop Acts, 1867 to 1871. . . ." [Section 8 is repealed, with the enactments referred to in it, by section 107 of the Factory and Workshop Act, 1878 (41 Vict. c. 16), which, however, enacts by section 102, that any enactment referring to the repealed enactments shall be construed to refer to that Act and to the corresponding enactment thereof. Section 12 of the Factory Act, 1874, enacted, ". . . . in the case of a factory to which this Act applies, a person of the age of thirteen years and under the age of fourteen years shall be deemed to be a child, and not a young person, unless he has obtained" a certain certificate of proficiency.]

Section 9: "A person shall not be deemed to have taken any child into his employment contrary to . . . . this Act if . . . . (1) . . . . there is not within two miles . . . . from the residence of such child any . . . . school open which the child can attend; or (2) . . . . such

politan police magistrate, sitting at the Southwark Police Court, the statements in which were in substance as follows:—

1. The appellant, an officer of the London School Board, obtained, in that capacity, on the 24th of June, 1882, a summons under the Elementary Education Act, 1876, s. 11, sub-s. 1 (1), charging that the respondent, being the parent of two children, Harry and Frederick, who were above the age of five years and under the age of fourteen years—to wit, Harry of the age of thirteen years or thereabouts, and Frederick of the age of nine years or thereabouts—and were, by the Elementary Education Act, 1876 (1), prohibited from being taken into full time employment, had, notwithstanding due warning, habitually and without reasonable excuse neglected to provide efficient elementary instruction for his said children, contrary to the said Act (1).

2. The summons was heard on the 1st of July, 1882, when it was proved—first, that the child Harry was of the age of thirteen years, and the child Frederick of the age of nine years; secondly, that neither of them had obtained such certificate, either of proficiency in reading, writing and elementary arithmetic, or of previous due attendance at a certified efficient school, as would exempt him, either partially or totally, from the obligation to attend school, and that nothing else had happened to enable them, or either of them, to be taken into full time employment, and that neither of them was in any employment, and they could not receive efficient elementary instruction if they were taken into full time employment; thirdly, that the respondent habitually and without reasonable excuse had neglected to provide efficient elementary instruction for both the said children; fourthly, that due warning had

employment by reason of being" while "the school is not open, or otherwise, does not interfere with the" child's "instruction . . .; or (3) the employment is exempted by" a notice of the local authority as to temporary employment of children above the age of eight years in husbandry.

Section 11: "If either (1) the parent of any child, above the age of five years, who is under this Act prohibited from being taken into full time employment, habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child; or (2) any child is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons or reputed criminals; it shall be the duty of the local authority, after due warning to the parent . . . . to complain to a court of summary jurisdiction; and such Court may . . . . order that the child do attend some certified efficient school, ... being, . . . if" the parent "do not select any, . . . such public elementary school as the Court think expedient, and the child shall attend that school every time that the school is open, or in such other regular manner as is specified in the order. An order under this section is in this Act referred to as an attendance order." It "shall be a reasonable excuse: (1) that there is not within two miles . . . . from the residence of such child any public elementary school open which the child can attend; or (2) that the absence of the child from school has been caused by sickness or any unavoidable cause."

Section 12: "Where an attendance order is not complied with, without any reasonable excuse, . . . a Court of summary jurisdiction, on complaint made by the local authority, may, if it think fit, order as follows: - (1) In the first case of non-compliance, if the parent . . . . fails to" shew "that he has used all reasonable efforts to enforce compliance, . . . the Court may impose a penalty; . . . but if the parent" does shew that, "the Court may, without inflicting a penalty, order the child to be sent to" an industrial school, "and (2) in . . . . any subsequent case of non-compliance, the Court may order the child to be sent to" an industrial school and may further inflict a penalty; "or it may for each such non-compliance inflict" a "penalty . . . . without ordering the child to be sent to an industrial school . . . ."

Section 48: "A child in this Act means a child between the ages of five and fourteen years . . . The term 'Factory Acts' in this Act where the Factory Act of any particular year is not referred to means [the Factory Acts, 1833 to 1874, as amended by this Act, and includes the Workshop Acts, 1867 to 1871, as amended by this Act and] any Acts for the time being in force regulating factories and workshops." The words within brackets are repealed by section 107 of the Factory and Workshop Act, 1878, of which see section 102, already mentioned.

The Elementary Education Act, 1880 (43 & 44 Vict. c. 23), section 4: ". . . . Proceedings may, in the discretion of the local authority or person instituting the same, be taken for punishing the contravention of a by-law, notwithstanding that the . . . . alleged . . . . contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of section 11 of the Elementary Education Act, 1876 . . . ."

been given to the parent before the complaint was preferred.

3. Having regard to the decision in *Saunders* v. *Crawford* (2), which was admitted on behalf of the school board to be expressly in point as to the child of thirteen years, and to be by its reasoning in point also as to the younger child, the magistrate refused to make any order upon the summons as to either child. But, the school board desiring to have the whole question re-argued, the magistrate stated this Case.

[4–7. These paragraphs contained statements as to the legal effect of certain enactments of the Elementary Education Acts.]

8. If the magistrate had power to make an order with respect to both or either of the children he would have done so.

The questions for the Court were—

First. Had the magistrate the power to make an attendance order in respect of the elder child?

Secondly. Had he the power to make an attendance order in respect of the younger child?

If the Court was of opinion that he had the power in respect of either or both of such children, the case was to be remitted to him, for him to make such order or orders.

The second appeal was by a Case stated by two Justices for the city of Liverpool, upon dismissing a complaint of non-compliance with an attendance order made under the Elementary Education Act, 1876, s. 11, sub-s. 1 (1), in respect of a child of the respondent. The Case stated that, if that order was valid, the respondent was liable to the making of an order under section 12 (1); and, for the purpose of the argument of the appeal, the facts were (without being stated to the Court) taken to be such that the question of its validity was covered by the questions arising in the first appeal.

Sir F. Herschell, Q.C. (*Solicitor-General*), (*Jeune* with him), for the appellant in the first appeal.—Each child was within the words of the Elementary Education Act, 1876, s. 11, sub-s. 1 (1), "any child above the age of five years who is under this Act prohibited from being taken into full time employment"; each being within the definition of a child in section 48 (1), that is, between the ages of five and fourteen years; and also a child prohibited by section 5 (1) from being taken into employment—the younger as being under the age of ten years, the elder as being a child over ten who had not obtained any certificate of proficiency or of previous attendance at school, and was not employed and attending school in accordance with the Factory Acts or with by-laws made under the Elementary Education Acts. No doubt *Saunders* v. *Crawford* (2) is in point to shew that no order could be made in respect of either child; but the Court had not in that case the material enactments properly before it, and the decision is clearly wrong and ought not to be followed. Section 11, sub-section 1, must be read as extending to every child prohibited by section 5 from being taken into employment, including a child prohibited from being taken into employment at all. It cannot be read as confined to children prohibited only from being taken into full time employment. The words "full time" are to be read as having been used (not perhaps very aptly) in order to include a child prohibited from being taken into full time though permitted to be taken into half time employment, and not in order to exclude a child prohibited from being taken into half time as well as from being taken into full time employment. That is the necessary construction of the sub-section, reading the words according to their proper meaning. A child prohibited from being taken into employment at all is necessarily prohibited from being taken into full time employment.

That construction is also the natural construction on other grounds than the proper meaning of the words. The opposite construction conflicts with the words "above the age of five years," for no child so young as to be merely above the age of five years is prohibited only from being taken into full time employment. Again, if the construction now contended for is not correct, then, though the Legislature has enacted by section 4 that it

(2) 51 Law J. Rep. Q.B. 460; Law Rep. 9 Q.B. D. 612.

shall be the duty of every parent to cause his child to receive efficient elementary instruction, and if the parent fail to do so "he shall be liable to such orders and penalties as are provided by this Act," no order or penalty answering to that general provision has been provided by the Act. Further, if that construction is not correct, and consequently, as considered in *Saunders* v. *Crawford* (2), section 11, sub-section 1, was intended to apply only to children affected by section 8, these two absurdities follow:—There being at the time of the passing of this Act three classes of statutes relating to the employment of children—(1) the Acts relating to textile factories; (2) the Acts relating to non-textile factories; (3) the Acts relating to workshops—the two latter of which differed from the first in protecting children, as such, only up to thirteen, and treating them when above thirteen as young persons, whilst the first class of Acts protected children, as such, up to fourteen, and prohibited their being taken into full time employment under that age, unless possessing certain educational proofs; and the effect of section 8 being to assimilate in that respect, by extension of section 12 of the Factory Act, 1874 (as also in respect of certain school certificates, by extension of other enactments), the law as to children in non-textile factories and workshops to the law as to children in textile factories, there follows from the construction adopted in *Saunders* v. *Crawford* (2), first, the absurdity that the Legislature left out of section 11, sub-section 1, all children save those in non-textile factories and workshops, and thus even the very class of children to which section 8 assimilated those two classes. And there follows this second absurdity—that the children thus left out of section 11, sub-section 1, were, although the Legislature shewed by section 48 an intention to provide for children up to fourteen years of age, left so far as they were between thirteen and fourteen years of age not only outside section 11, sub-section 1, but outside the Elementary Education Acts altogether, for the Elementary Education Acts passed before 1876 applied only to children up to the age of thirteen.

The force of these considerations cannot be met or lessened by saying that children up to thirteen were in general sufficiently provided for by the Act of 1870, and that the utmost it omitted to do was to provide for children between thirteen and fourteen, and such children as the waifs and strays and the like described in section 11, sub-section 2, of the Act of 1876. That was not the case. The Act of 1870, with the intermediate Acts between 1870 and 1876, provided no other method of enforcing the education of a child than proceeding against the parent under by-laws, which might or might not be made, for the purpose of imposing a fine; and there was full need as to all children, whether between thirteen and fourteen, or below thirteen, of the declaration by the Act of 1876, section 4, of the parent's duty, and also of the provisions of section 11 as to the making of attendance orders, and the provisions depending thereon of section 12, giving power to send a child in the last resort to an industrial school, a power which has been found very valuable towards securing the performance of the parent's duty. Moreover, the Elementary Education Act, 1880, section 4 (1), which, in consequence of the decision in *In re Murphy* (3) to the contrary, enacted that proceedings might be taken for punishing the contravention of a by-law, although there was habitual neglect within the Act of 1876, section 11, implied that section 11, sub-section 1, extended to children under thirteen, by-laws on the subject applying only to children under thirteen; and therefore that section 11, sub-section 1, was not intended to be confined to children specially prohibited by section 8 from being taken into full time employment, those being only certain children between thirteen and fourteen, who previously had been young persons.

If, notwithstanding these considerations, section 11, sub-section 1, was rightly held in *Saunders* v. *Crawford* (2) to have been intended to apply only to children affected by section 8, repealed, together with the enactments referred to in it, by the Factory and Workshop Act, 1878, s. 107, still *Saunders* v. *Crawford* (2) was wrong in holding that section 11, sub-section 1, had

(3) 46 Law J. Rep. M.C. 193; Law Rep. 2 Q.B. D. 397.

no longer any effect; for, by virtue of section 102 of the repealing Act, it must now be taken to refer to the corresponding provisions of the repealing Act. This, however, is a minor point.

W. R. Kennedy, for the appellant in the second appeal, did not desire to be heard save in reply.

Danckwerts, for the respondent in the first appeal.—The words of the Elementary Education Act, 1876, s. 11, sub-s. 1, "child . . . . who is under this Act prohibited from being taken into full time employment," clearly apply only to a child employed in a factory or workshop, and prohibited from being taken into full time employment there. And if, notwithstanding the repeal of section 8 by the Factory and Workshop Act, 1878, section 107, there still can be—by virtue of section 102 of the repealing Act substituting references to that Act for references to repealed enactments—a child prohibited under this Act from being taken into full time employment," section 11, sub-section 1, nevertheless does not apply to either child in the present case, neither child being in any employment at all, and therefore neither being employed in a factory or workshop. The construction now contended for is necessitated by the words "full time." "Full time employment" is a thing belonging to factory legislation, and clearly points to prohibition by section 8. As to the words "above the age of five years," they create no difficulty. The Factory Acts contained no bottom limit of age, and therefore it was natural in a section dealing with factory children to insert specially and distinctly (notwithstanding the general definition of a child in section 48) this bottom limit to the age at which they might be ordered to attend school. The construction now contended for harmonises better than the opposite construction with the intentions which it is reasonable to attribute to the Legislature. Section 11 is substantially only a step in the procedure for landing a child in an industrial school; and, having regard to the nature of an industrial school and the class of children for which it is meant—shewn by the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), especially section 14, to be such children as are mentioned in sub-section 2 of the section now in question,—the utmost application which section 11, sub-section 1, can reasonably be supposed to have been intended to have is application to factory children and children in workshops.

He also referred to *Mellor* v. *Denham* (4), and was proceeding to argue that the enactment of the Factory and Workshop Act, 1878, s. 102, substituting references to provisions of that Act for references to enactments repealed by that Act, did not affect the case, but was stopped from arguing that point.

R. S. Wright (*J. V. Austin* with him), for the respondent in the second case.—The decision in *Saunders* v. *Crawford* (2) ought to be followed. Though the Court may have power to depart from it, the Court ought to follow it, unless, at all events, it is most clearly made out to be wrong—*Hadfield's Case* (5). But it cannot be shewn to be thus clearly wrong. There are difficulties in either view of the matter. It is natural to suppose that section 11, sub-section 1, was intended to refer to section 8 rather than to section 5. Though a prohibition against being taken into full time employment may, perhaps, according to strict logic, be regarded as included in a prohibition against being taken into employment at all, still it is more natural to read the words "a child who is under this Act prohibited from being taken into full time employment" as referring to a case specifically answering to the words than to read them as extending to a case only inferentially within them. Parliament, moreover, has not thought fit to alter the law as laid down in *Saunders* v. *Crawford* (2).

No reply was heard.

LORD COLERIDGE, C.J.—We thought proper that these two cases should be heard by five Judges, in pursuance of an express statutory provision (6) that a Divisional Court may, if thought desirable, be constituted of a greater number of Judges than the number of which a Divisional

(4) 48 Law J. Rep. M.C. 113; 49 ibid. M.C. 89; Law Rep. 4 Q.B. D. 241; ibid. 5 Q.B. D. 467.

(5) 42 Law J. Rep. C.P. 146; Law Rep. 8 C.P. 306.

(6) See the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 17.

Court is in general to consist. And the reason why five Judges have been assembled is that a desire is entertained, on the part of the appellants, to question a decision of my brothers Grove and Huddleston on an important subject—that is to say, the decision in *Saunders* v. *Crawford* (2).

My brothers Grove and Huddleston are themselves desirous that that decision should be reconsidered; but, whether they were so or not, no objection to our reconsidering it could be maintained. I agree in the view taken in *Hadfield's Case* (5) as to the weight belonging to prior decisions. The view there taken, as I understand it, was, substantially, that the Court ought not to depart from a decision of a co-ordinate authority save in the clearest case. In such a case it may, in my opinion, be departed from. In days not quite recent, but within my own recollection, when the power of appealing was less open to litigants than it is now, it was common enough for a Court to disregard a decision of a co-ordinate Court if entirely dissatisfied with it. I should be of opinion that we ought to follow *Saunders* v. *Crawford* (2) if the case were not a clear one; but I think the case is a perfectly clear one.

I am of opinion that the decision of the learned magistrate from whose decision the first appeal is brought (the questions arising in which cover, as I understand, the questions arising in the second appeal) must be reversed, although his decision was correct according to *Saunders* v. *Crawford* (2), which he rightly followed. The facts are few and simple. The respondent is the father of two children, who are both between five and fourteen years of age, as to whom nothing has happened to enable either of them to be taken into full time employment, and for whom the respondent has habitually, and without reasonable excuse, neglected to provide efficient elementary instruction. The Elementary Education Act, 1876, says, by section 4, that if a parent fail to perform the duty declared by that section to be incumbent upon him of causing his child to receive efficient elementary instruction, he shall be liable to such orders and penalties as are provided by the Act; and attendance orders were applied for in respect of these two children under section 11, sub-section 1. The duty of the respondent being clear, and the breach of that duty being also clear, what is the ground on which it is contended that the orders applied for ought not to be made? It is contended that section 11, sub-section 1, in speaking of "any child . . . who is under this Act prohibited from being taken into full time employment," means a child who is prohibited from being taken into full time though permitted to be taken into part time employment. But the Act has not so limited its expressions. The Act, passed, as shewn by section 48, with the intention of extending the age of children for whom elementary instruction was to be provided to fourteen years of age, is, according to this construction, to be narrowed so as, notwithstanding the preamble, to allow a parent habitually, and without excuse, to neglect the duty imposed upon him of causing his child to receive efficient elementary instruction without making himself liable to any order under the Act. I see no ground for so limiting the effect of the Act. Possibly, though I think it is unlikely, the draftsman, when drawing section 11, sub-section 1, may have had in his mind, and may have intended to refer exclusively to, prohibition under section 8; but, if so, he has not used words to express that which he intended to express. And "*quod dixit lex*," not "*quod voluit parliamentum*," is that to which we have to give effect. For the reasons I have given, I am of opinion that the decision of the learned magistrate must be reversed.

I abstain from entering into any other question than such as I have already dealt with. I confess that I am not satisfied that there has been by section 102 of the Factory and Workshop Act, 1878, any substitution of a reference to any provision of that Act for a reference to the Elementary Education Act, 1876, s. 8, which has been repealed, together with the enactments referred to in it, by the Factory and Workshop Act, 1878, s. 107; but the point is immaterial.

FIELD, J.—I have arrived at the same conclusion as my Lord, and substantially on the same grounds; but out of respect to the learned Judges who decided *Saunders* v. *Crawford* (2) I will state shortly my reasons.

Wixyard v. *Twogood.*

If I entertained any doubt, or at all events if I entertained any serious doubt, upon the case, I should think it right to follow *Saunders* v. *Crawford* (2); but after listening to the arguments on both sides I think the case a clear one. How can it be said that the words "a child . . . . prohibited from being taken into full time employment" do not cover both the case of a child prohibited from being taken even into half-time employment and that of a child prohibited from being taken into more than half-time employment? The object of the Act was to secure proper elementary instruction for every child between five and fourteen years of age; and, looking to that object and to the terms of the Act, I think that section 11, subsection 1, clearly gave power to make the attendance orders asked for. The Act may perhaps result, in some cases, in a child of respectable parents being sent to an industrial school, there to associate with children of parents of a very different class; but we cannot, by our decision, prevent it.

HAWKINS, J.—I am of the same opinion as my Lord, and I do not think it necessary to add anything to the reasons which he has given.

STEPHEN, J.—I am also of the same opinion as my Lord, and for the same reasons; and the matter for our decision has, I think, been exhausted by him and my brother Field. I may, however, say that, although the arguments on the part of the respondents failed to raise any doubt in my mind upon the meaning of the Act, I at the same time feel strongly the necessity for the utmost caution being used with regard to the exercise of the power of sending a child to an industrial school.

WILLIAMS, J.—I am of the same opinion as the Lord Chief Justice, and for the reasons which he has given.

Appeals allowed, without costs.

Solicitors — In the first case, Gedge, Kirby, Millett & Morse, for appellant; the Solicitor to the Treasury, for respondent. In the second case, Gregory, Rowcliffes & Co., agents for Stone & Co., Liverpool, for appellant; F. Venn & Co., agents for J. Rayner, Town Clerk of Liverpool, for respondent.

1882. Dec. 5. } HARBOTTLE (*appellant*) *v.* TERRY (*respondent*).

Fishing—Salmon Fishery Acts—36 & 37 Vict. c. 71. s. 22—Licence—Tributary—Reservoir fed by Stream.

A reservoir of a water company, authorised by Parliament to impound the waters of a tributary stream for the purposes of their undertaking, supplied by such stream and discharging its surplus water, when there is any, into the old course of the stream, is not itself a "tributary" within the meaning of a certificate of the Secretary of State constituting a fishery district as comprising a "river and its tributaries" under the Salmon Fishery Acts, so as to render a licence necessary for any person fishing therein under section 22 of 36 & 37 Vict. c. 71, the Salmon Fishery Act, 1873.

This was a Case stated by Justices, under 20 & 21 Vict. c. 43, upon the hearing of an information against the respondent, under the Salmon Fishery Acts, for attempting to take trout in a piece of water, called the Great Southern Reservoir, without a licence, within the fishery district of the river Tyne, on the 29th of May, 1882. The reservoir was in the Tyne Fishery district, so duly constituted by the order of the Secretary of State in accordance with the Acts, and such district comprised all the tributaries of the Tyne. The question was whether this reservoir was a tributary of the Tyne or not. If it were so, then a licence was necessary. The Justices thought that it was not a tributary, and dismissed the information.

The facts were as follows:—Prior to 1845, a stream, called the Whittle Dean Burn, was, and the parts of its ancient course now existing above and below the reservoir constructed as hereinafter mentioned were, tributaries of the Tyne. In 1845, under a Local Act of Parliament, a waterworks company was authorised to and did dam the stream and form reservoirs, from which, by means of pipes, the neighbouring town was supplied.

The water from the stream above the dam was conveyed by underground pipes into the first of the chain of reservoirs, and

from that similarly to the others; and from the lowest reservoir, which was called the Great Southern Reservoir, there was an outlet by which it communicated with the ancient watercourse of the stream below. This old course, being continued from the upper dam, circled round outside the reservoirs and carried any surplus water which did not pass into the reservoirs or which overflowed from them. When the stream is in flood, salmon and trout can pass up from the Tyne into the Whittle Dean Burn, and thence, if the sluices are drawn up, into the reservoir.

In summer it is a frequent occurrence for no waste water to pass out of the reservoirs; but when they are full all the surplus water is sent into the Tyne. Between the 27th of April and the 15th of August, 1882, no waste water did pass from the reservoirs.

At times all the water of the stream is impounded in the reservoir and used for the purposes of the water company, none finding its way into the Tyne either through the reservoirs or down the old course.

The question for the Court was whether the Justices were right in holding that the Great Southern Reservoir was not a tributary of the Tyne.

Willis Bund, for the appellant.—The Justices ought to have convicted the respondent. The reservoir is tributary to the Tyne; it is not necessary that all the water should pass continuously to the river, and it would be impossible to draw a satisfactory distinction as to how much interference with the natural course of the flow of a stream would prevent its being properly called a tributary.

[FIELD, J.—Is not the water impounded at this place for the purpose of being taken away and used, and being no longer tributary?]

The company can only take the water for the particular purpose authorised by their Act; subject to their limited use it still contributes to the Tyne.

[STEPHEN, J.—Would not your argument apply to all private ponds and lakes in the district?]

Not necessarily, because the Secretary of State, in constituting a district, can exclude all such, and no doubt would do so, as the application to form a district emanates from the Justices in Quarter Sessions. In *Hall* v. *Reid* (1), the definition of tributary was that which contributes.

He referred to *Lyne* v. *Leonard* (2), as to the strictness of the Acts in requiring licences.

J. Edge, for the respondent, was not called on.

FIELD, J.—The case is not free from difficulty, but I have come to the best conclusion I can upon the construction of the Act, and I am unable to reverse the decision of the Justices. According to the ordinary rule let us see what the meaning of the Legislature was; and the words being general, we must look at the object in view in passing the Act, in order to see whether, under the general word "tributary," they intended to include such pieces of water as the reservoirs in the present case. The object, as recited in the preamble, was to prevent the destruction

(1) *Hall* v. *Reid* was decided in the Queen's Bench Division on the 12th of June, 1882. That was a case of an information by the Board of Conservators of the Trent Fishery District against the respondent, for unlawfully attempting to take trout at Bakewell, in the county of Derby, in the river Wye, which is a river flowing into the Derwent, and the Derwent flows into the Trent.

The certificate constituting the district states that it "shall comprise . . . so much of the river Trent and its tributaries as lies within the counties of Stafford, Nottingham, Derby, &c" The question was whether the certificate limited the district to the direct tributaries of the Trent.

Willis Bund, for the appellant.

Woolf, for the respondent.

FIELD, J.—I see no necessity whatever for putting any limitation, as it is suggested we ought, upon the word "tributary." We have to construe the certificate in which the Home Secretary states what the limits of the district are. He says, "The Trent and its tributaries." Why are we not to read it in its natural sense? A tributary is that which contributes to, and can any one doubt that the Wye is a tributary of the Trent? If you did not turn on in aid the water of the Derwent, it would be the whole and sole tributary of the Trent, and would be the Trent.

CAVE, J., concurred.

(2) 37 Law J. Rep. M.C. 55; Law Rep. 3 Q.B. 156.

of migratory fish, that they should not be intercepted when passing up and down, nor unfairly appropriated by land-owners or other people stopping the fish when in the course of their natural migration they chanced to come within their waters. And so a representative body was created to act as conservators, with power to appoint water bailiffs with special duties and powers.

Now the Whittle Dean Burn was undoubtedly a tributary of the Tyne throughout its whole course before the reservoirs were made; but in 1845 Parliamentary powers were granted to the waterworks company to appropriate so much of the water as they could impound in reservoirs authorised to be made in order to supply water to the town. This was a commercial undertaking, but still one beneficial to the community at large; and under those powers the Great Southern Reservoir was formed, into which they took as much water as they required from the Whittle Dean Burn—up to the whole of the water of the stream if they wanted it, as the side stream outside the reservoir was used for the purpose only of carrying off that which was not required to pass into the reservoir. The case finds that during every summer for some months no water passes down the brook into the Tyne, all being impounded in the reservoir, and in 1882, between the 27th of April and the 1st of June, a period which covers the date to which this information related, there was none so passing. That intermittent character, however, does not prevent it being a stream; because many streams tributary to larger rivers run dry at times, and it cannot be suggested that they cease to be properly called streams or tributaries on that account. In considering, however, what is a tributary to a stream, I do not *prima facie* look to find it something altogether different from a stream, and I think it must be something in the nature of a stream. Is this reservoir a tributary so regarded? The Justices think that it is not; and I also think that if I had to decide the matter in the first instance, I should agree with their view; for if I were to say that this is a tributary, I must necessarily go further, when the unsatisfactory effect of such a decision would be more apparent. Reference has been made to my language in *Hall* v. *Reid* (1); but though my words were wide, as applying to the particular circumstances of that case—being that the Wye, a tributary to the Derwent, did contribute to the Trent, into which the Derwent runs—they are not applicable, being too broad to be applied to the facts of this case, which is not governed at all by the former one. All water which contributes to a river is not necessarily at all times and places a tributary of that river within the meaning of this Act, otherwise the word would include private ponds and lakes of most ancient construction. I do not think that the Legislature intended to include these; the Act was dealing with migratory fish: only under the greatest difficulties could the fish get into such a reservoir as this, and they would not be passing up and down through it as in an ordinary stream. Again, it must be remembered that this water is impounded for commercial purposes to be used, and it may all be emptied out of the reservoir to supply the houses in the town; it does not seem to me, while so impounded, to be properly regarded or described as a tributary of the Tyne.

I therefore think that the Justices were right, and that the appeal must be dismissed.

STEPHEN, J.—The question here is whether the reservoir formed a "tributary" of the Tyne within the meaning of the Salmon Fishery Acts. The Justices have found that it is not, and I am of the same opinion. It is a question of the very narrowest compass, almost one of grammar.

Is a pond fed by a stream and running into a larger stream or river to be called a tributary of the larger stream? Ordinarily one would say no. Ordinarily, by tributary one means a stream running into another stream. It is not a very exact word, but it has a not very indefinite popular meaning. I put, during the argument, various consequences which would follow from the more extensive meaning of the word which Mr. Willis Bund was compelled to contend for, and he had to admit that they would result. I should be sorry to lay down a complete definition of the word, it is rather by instances that its meaning can be arrived at.

Harbottle v. *Terry.*

I gave as an instance a stream dammed up into a series of pools, and running on through them from one to the other continuously, as being in my opinion a tributary. And again, such a piece of water as Loch Neagh in Ireland and another lake near Waterville in county Kerry. But I do not think, using ordinary language, that these reservoirs would be called tributaries of the Tyne; they more resemble private ponds. For example, take the Serpentine—it would be a strong thing to call it a tributary of the Thames, and still more so to call the Round Pond one, yet some of their water finds its way into the Thames. There is, however, very little difference between them and the present case, except that the connection is more apparent in the latter. A very similar instance would be the reservoirs of the water companies at Hampton. I agree, therefore, that the appeal should be dismissed.

Appeal dismissed.

Solicitors—Flux & Leadbitter, agents for R. & W. Gibson, Hexham, for appellant; Paterson, Wigg & Co., agents for Geo. Armstrong & Sons, Newcastle-on-Tyne, for respondent.

1882.
Dec. 13, 21.

THE GUARDIANS OF THE POOR OF THE SALFORD UNION *v.* THE OVERSEERS OF THE POOR OF THE TOWNSHIP OF MANCHESTER.

Poor Law — Settlement — Illegitimate Idiot — Residence with Mother — The Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *s.* 34 —9 & 10 *Vict. c.* 66. *s.* 1.

An adult illegitimate idiot who is incapable of taking care of herself acquires a settlement by residing for three years in a town, although such residence is with her mother and her mother's husband as part of their family.

Alice G. was born at W. in 1854, *her mother being then unmarried. In* 1864 *her mother married H. In* 1875 *Alice G. and her mother and H. went to live at P., where they resided together as one family until* 1881, *when they removed to M. They continued to reside together there until Alice G. became an inmate of the M. workhouse. Alice G. was an idiot from her birth, and incapable of taking care of herself:—*

Held, *that Alice G. had acquired a settlement in P.*

The Queen *v.* The Leeds Union (48 Law J. Rep. M.C. 129; Law Rep. 4 Q.B. D. 323) *followed.*

Special Case.

On the 31st of July, 1882, the respondents obtained an order of Justices of the city of Manchester adjudicating the settlement of Alice Gerard, an idiot pauper, to be in the township of Pendleton, in the county of Lancaster, and in the appellant union.

1. The pauper, a single woman, is the illegitimate daughter of Margaret Gerard (afterwards Margaret Harding), and was born at Warrington, in the said county of Lancaster (not in the appellant union), on the 18th of January, 1854, and she is now, and always has been, an idiot.

2. The mother of the pauper, before the pauper had attained the age of sixteen years—namely, in 1864—intermarried at Warrington aforesaid with one George Harding, a glass cutter, who was born at Birmingham, and served seven years' legal apprenticeship there, and is now dead.

3. In the year 1875 the pauper and her mother and the said George Harding came to reside in the said township of Pendleton, where they resided together until September, 1881, when they removed to Manchester, where they resided together until the pauper became an inmate of the Manchester workhouse.

4. Previously to, and since 1875, the pauper has always resided continuously with her mother and the said George Harding as part of their family, and has never separated herself therefrom.

5. The pauper is now, and always has been, incapable of taking care of herself through imbecility of mind.

The respondents contend, and the appellants deny, that the pauper, upon the above facts, is settled in the township of Pendleton, in the appellant union, by reason of her residence therein for three years, under

the provisions of the 39 & 40 Vict. c. 61. s. 34.

The question for the opinion of the Court is whether, on the above facts, the legal settlement of the pauper is in the township of Pendleton.

If the Court should be of opinion in the affirmative, the order of Justices is to stand; if otherwise, to be quashed.

Smyly, for the respondents.—From 1875 to 1881, the pauper was residing in George Harding's house simply as a visitor, she being then of age, and he being under no obligation to maintain her. Consequently, it is submitted she acquired a settlement at Pendleton. By 39 & 40 Vict. c. 61. s. 34, "Where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years as would, in accordance with the several statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise." The pauper was a person who resided for three years in Pendleton. The question is, whether she was residing there in such manner and under such circumstances as would render her irremovable. By 9 & 10 Vict. c. 66. s. 1, "no person shall be removed, nor shall any warrant be granted for the removal of any person from any parish in which such person shall have resided for five years next before the application for the warrant: provided that the time during which such person shall be a prisoner in a prison, or shall be serving Her Majesty as a soldier, marine or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish . . . shall for all purposes be excluded in the computation of time hereinbefore mentioned." By 24 & 25 Vict. c. 55. s. 1, the period of five years there mentioned was reduced to three; and by 28 & 29 Vict. c. 79. s. 8, the period of three years was reduced to one. Therefore, residence for one year in a parish, unless under any of the excepted conditions, gives irremovability; residence for three years, unless under one of those conditions, gives a settlement. In the present case, therefore, the pauper acquired a settlement at Pendleton, unless she resided there under some of the excepted conditions. If she had been confined in a lunatic asylum there, by the terms of the Act she could not have acquired a settlement; but a lunatic not in confinement may acquire a settlement. It will be contended on the other side that the pauper, being an idiot and unable to take care of herself, could not acquire a settlement. That contention is answered by the cases of *The Queen* v. *The Leeds Union* (1) and *The Guardians of The Fulham Union* v. *The Guardians of the Thanet Union* (2). The case of *The King* v. *Much Cowarne* (3) will be relied on by the other side. But that case was decided before the 9 & 10 Vict. c. 66, and the statute would overrule the case. It is also overruled by *The Queen* v. *The Leeds Union* (1). It is also distinguishable from this case, as there the child was legitimate. *The Queen* v. *The Leeds Union* (1) having decided that an illegitimate infant can acquire a settlement, it necessarily follows that an illegitimate idiot can.

Frederick Marshall, for the appellants.—If this had been a legitimate child, it would be clear that she had not acquired a settlement at Pendleton. The case of *The King* v. *Much Cowarne* (3) has never been overruled. In that case both Lord Tenterden and Mr. Justice Parke held that an idiot is to be considered in the same position as if she were a minor. Within the age of nurture, at all events, a child, although illegitimate, cannot be separated from its mother—2 *Nolan's Poor Laws*, 369. And after the age of nurture an idiot, although illegitimate, cannot. "The reason of drawing a distinction between separation before and after the child has attained the years of maturity ceases, when imbecility of mind or body induce the necessity of its continuing in a state of per-

(1) 48 Law J. Rep. M.C. 129; Law Rep. 4 Q.B. D. 323.

(2) 50 Law J. Rep. M.C. 42, 101; Law Rep. 6 Q.B. D. 610.

(3) 2 B. & Ad. 861.

petual pupilage"—1 *Nolan's Poor Laws*, 320. In *The King* v. *The Inhabitants of St. Nicholas, Leicester* (4), Bayley, J., said: "It is entitled to remain with its mother as long as the purposes of nurture require it." If the idiot has been under the constant care of the mother, she cannot be removed, although illegitimate. By 9 & 10 Vict. c. 66. s. 3, it is enacted, "That no child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, shall be removed . . . . in any case where such father, &c., may not lawfully be removed from such parish." It is true that in this particular case the pauper must go to Warrington. An illegitimate child does not take the settlement of its mother when that settlement is derived from her husband —*The Overseers of Manchester* v. *The Guardians of St. Pancras* (5) and *The Guardians of the Fulham Union* v. *The Guardians of the Thanet Union* (2). But the fact that in this case the mother and child would be separated is an accident, and does not affect the general principle. In the case of *The Queen* (*upon the prosecution of the Guardians and Overseers of Manchester*) v. *The Churchwardens and Overseers of St. Mary Arches, Exeter* (6), which is an authority in favour of the appellants' contention, Cockburn, C.J., said: "It is true it seems absurd, at first sight, to hold that the lunatic, who was thirty years old, was still a child; but the doctrine of emancipation is well established, that an unemancipated child is to be considered as a member of the parents' family. We must therefore treat the lunatic as if she was a child, and as a member of the family."

Cur. adv. vult.

The judgment of the Court (7) was (on Dec. 21) delivered by

HAWKINS, J.—The question for our decision is, whether the pauper was legally settled in Pendleton and removable thereto. We are of opinion that she was, and that her settlement in that township was acquired by her residence therein for three years, under the provisions of 39 & 40 Vict. c. 61. s. 34.

It was not denied by the appellants that the pauper's residence in Pendleton from 1875 to 1881 was such as to confer upon her a status of irremovability from that township from the expiration of the first year of that residence until her removal with Harding and her mother to Manchester in September, 1881, under the statutes 9 & 10 Vict. c. 66. s. 1, 24 & 25 Vict. c. 55. s. 1, and 28 & 29 Vict. c. 79. s. 8; nor that such status of irremovability for upwards of three years gave her a settlement in Pendleton, under 39 & 40 Vict. c. 61. s. 34, if, under the circumstances of such residence, she was capacitated to acquire a settlement in her own right; but it was contended that she was not so capacitated, because during all the time of such residence she was an idiot unable to maintain or take care of herself; and that such residence was a mere residence as a member of the family of Harding and her mother, and conferred upon her no independent status; and that she ought to be looked upon in the same light as an unemancipated infant of tender years who could not be removed from her mother. The effect of this argument was to invite us to treat the pauper as legitimate for the purpose of incapacitating her to obtain either a settlement or a status of irremovability; but to treat her, as we are bound to do, as illegitimate for the purpose of preventing her from taking the settlement acquired by Harding by reason of his residence in Pendleton, as she would have done had she been legitimate. In support of his contention, Mr. Marshall cited passages from Nolan, vol. 1, p. 320 and vol. 2, p. 369; *The King* v. *Much Cowarne* (3) and *The Queen* v. *St. Mary Arches, Exeter* (6). We do not in the least degree dissent from anything which is to be found in either of those passages or authorities; on the contrary, we entirely assent to them; but in our opinion they have no applicability to the present case, for those authorities had reference to legitimate children, whilst we are dealing with an illegitimate pauper of full age.

We take it to be clear law that so long as a child, legitimate or illegitimate, is

(4) 2 B. & C. 889.
(5) Law Rep. 4 Q.B. D. 409.
(6) 31 Law J. Rep. M.C. 77.
(7) Hawkins, J., and Williams, J.

within the age of nurture, which covers the whole period from birth to the age of seven years, it cannot be legally by any order of removal separated from its mother. "It is," said Mr. Justice Bayley, "entitled to remain with its mother as long as the purposes of nurture require" (4); and even the consent of the mother cannot justify such a separation, for the rule is made for the benefit of the child (8). The statute 9 & 10 Vict. c. 66. s. 3, extended this period of non-separation of a child from its parents by enacting that no child under the age of sixteen, whether legitimate or illegitimate, residing in any parish with his or her father or mother shall be removed in any case in which such father or mother may not lawfully be removed. At this point there is a wide difference between the status of a legitimate and an illegitimate child. In the case of a legitimate child, the liability of its parents to maintain it is not limited to the age of sixteen, but extends to an indefinite period, if the child, whether from imbecility of mind or of body, is unable to maintain or provide for itself. So long as it remains an unemancipated member of its father's family, no matter what its age may be, it follows and takes in law its father's settlement; it gains no independent status by reason of any residence in a parish so long as such residence is merely as a member of its father's family; and its right to take each newly-acquired settlement of its father ceases only upon its becoming emancipated or acquiring a new settlement for itself. After the happening of either of those events, even though residing with its father, its residence is for all purposes of settlement and removal an independent residence (9).

The case of an illegitimate child is totally different. It is true its maintenance to the age of sixteen is provided for by statute —4 & 5 Will. 4. c. 76. s. 71 enacting that its mother shall maintain it as part of her family till it attains the age of sixteen; and if before that time arrives she marries, the liability to maintain such child as part of his family, until it reaches that age, is imposed on the husband of its mother (10). On the arrival, however, of an illegitimate child at the age of sixteen, all legal obligation towards it on the part both of the mother and her husband ceases; it is no longer legally attached to, and ceases to be a member of the family, in its legal sense, of either; and though, as an act of kindness, they may permit it to live with them and maintain it as one of the family, in the popular sense of the term, such residence amounts to no more than would the residence of a total stranger to whom food, lodging and raiment might be voluntarily given as an act of pure Christian charity; and, as regards its settlement, that is by law (until it acquires one for itself) established in the place of its birth, or in the place of its mother's settlement, if she have one which the child is capable of taking (11); but in no case does it take any settlement the mother's husband may acquire, even during the time the child is a legal member of his family.

The King v. *Much Cowarne* (3) would have been in point in favour of the appellants had the pauper in the present case been legitimate; but it is no authority, the pauper being illegitimate. The same observation may be made upon the case of *The Queen* v. *St. Mary Arches, Exeter* (6); for the doctrine of emancipation or non-emancipation is altogether inapplicable to illegitimate children, whose unfortunate position is such that, after arriving at the age of sixteen, they have no title to be ranked as members of any family, and are in law looked upon in no other light than as mere strangers. The case of *The Queen* v. *The Leeds Union* (1) seems to us to be directly in point in favour of the respondents. We are unable to distinguish it from the present. In each case the pauper was illegitimate; in each case it was in fact separated from its mother. In the Leeds case it was away from its mother

(8) *The Queen* v. *Birmingham*, 5 Q.B. Rep. 210; 13 Law J. Rep. M.C. 1.

(9) See, among other cases, *The Queen* v. *Everton*, 1 East, 526; *The Queen* v. *Bleasby*, 3 B. & Ald. 377.

(10) 4 & 5 Will. 4. c. 76. s. 57.

(11) As to the settlement of an illegitimate child, see 4 & 5 Will. 4. c. 76. s. 71; 39 & 40 Vict. c. 61. s. 35; *The Queen* v. *The Inhabitants of St. Mary, Newington*, 4 Q.B. Rep. 581; *Bodenham* v. *All Saints, Worcester*, 1 E. & B. 465, and *Manchester* v. *St. Pancras*, Law Rep. 4 Q.B. D. 409.

and was in the hands of strangers to it; in the present it was an inmate of the Manchester workhouse. In each case it was unable to choose a residence for itself, the one pauper being a mere infant, the other being an idiot. If any distinction can be pointed out, it is the fact that in the Leeds case the pauper was within the age of nurture, whilst here the pauper is upwards of twenty-one years old. In principle the cases are identical.

Our judgment, therefore, is for the respondents.

Judgment for the respondents.

Solicitors—Chester & Co., agents for Hulme, Foyster & Waddington, Salford, for appellants; Johnson, Wetherall & Co., agents for Arthur Lings, Manchester, for respondents.

1882. Dec. 8. THE BISHOP AUCKLAND SANITARY AUTHORITY (*appellants*) v. THE BISHOP AUCKLAND IRON AND STEEL COMPANY (*respondents*).

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 91. *sub-s.* 4—"*Nuisance*"—"*Injurious to Health*" — *Accumulation of Cinder Refuse.*

Section 91 *of the Public Health Act*, 1875, *provides that among other things* "*any accumulation or deposit which is a nuisance, or injurious to health, shall be deemed to be a nuisance liable to be dealt with summarily*" *under the Act.*

On complaint made to Justices by the Local Board against an iron company in respect of an alleged nuisance occasioned by an accumulation of cinder refuse which gave off smoke and gas, the Justices found as a fact that the matter complained of was a nuisance, but was not injurious to health :—

Held, *that nevertheless they ought not to have refused to convict, as the nuisance was of a kind which might be injurious to health, and it was not necessary in such case under the above provision to prove that it was in fact so.*

The Malton Board of Health *v.* The Malton Manure Company (49 Law J. Rep. M.C. 90) *followed.* The Great Western Railway Company *v.* Bishop (41 Law J. Rep. M.C. 120) *explained.*

This was a Case stated by Justices upon the hearing of a complaint by the Bishop Auckland Local Board against the respondents, who were an iron company, under the Public Health Act, 1875, in respect of a nuisance alleged to be occasioned by an accumulation of cinder refuse which gave off smoke and gases.

The Justices found that the heap was a nuisance, but that it was not injurious to health, and dismissed the complaint.

The question was whether it was necessary for the appellants to prove as part of their case that the nuisance complained of was also injurious to health.

W. A. Meek, for the appellants.—This accumulation is within sub-section 4 of section 91 of the Public Health Act, 1875, being a nuisance, and proceedings were properly taken against the respondents under sections 94 and 95. The words in the Act being disjunctive, it is not necessary to prove any injury to health—*The Malton Board of Health* v. *The Malton Manure Company* (1) is in point. The older case of *The Great Western Railway Company* v. *Bishop* (2) is no longer an authority to the contrary. That was decided under the Nuisances Removal Act, 1855, where the words were the same as in the Public Health Act, but the general scope of the Act was different. The intention here is to put down all nuisances arising from offensive trades or manufactures. At any rate the later case should be followed. The language used in it by Stephen, J., is what the appellants would rely on as their contention here.

(1) 49 Law J. Rep. M.C. 90; Law Rep. 4 Ex. D. 302.

(2) 41 Law J. Rep. M.C. 120; Law Rep. 7 Q.B. 550.

Bishop Auckland Sanitary Authority v. *Bishop Auckland Iron and Steel Co.*

R. Henn Collins, contra.—There is in substance no distinction between this case and that of *The Great Western Railway Company* v. *Bishop* (2), and that decision was not really questioned in the later case that has been referred to. That case is, however, also in respondents' favour, for it was there found as a fact that the nuisance was injurious to health, and both the learned Judges laid stress on that fact. The general purpose of the Public Health Act is the same as that of the Nuisances Removal Act, and the words to be construed are identical.

[STEPHEN, J.—I think that in *Bishop's Case* (2) the Court put an unnatural construction on the words in order to avoid an absurdity; but I dislike doing so unless I am compelled to do so in a case precisely identical.]

That injury to health is contemplated as part of the nuisance to be proceeded against is further shewn by section 114, where the certificate of the medical officer is mentioned as the ground for the local authority moving in the matter.

FIELD, J., delivered a judgment in which he said that he could not distinguish the case from *The Great Western Railway Company* v. *Bishop* (2), and could not therefore say that the Justices were wrong in following that authority. But having, while Stephen, J., was giving his opinion to the contrary effect, the opportunity of looking at *Banbury* v. *Page* (3), handed up by Mr. Collins, he afterwards said that he felt himself able to agree with Stephen, J., in reversing the decision of the Justices, but would grant leave to appeal, that the conflict of authorities might be determined.

STEPHEN, J.—I stand to the judgment which I gave in the *Malton Case* (1). I do not feel so strongly as my brother Field seems to do that the decision in *The Great Western Railway Company* v. *Bishop* (2) is in point here so that we are bound by it. In both the Acts of Parliament which have been referred to—namely, the Nuisances Removal Act, 1855, and the Public Health Act, 1875—a definition is given of nuisances. In the former Act it includes "any premises in such a state as to be a nuisance or injurious to health," and the identical words are also in section 91 of the latter Act. In the case of *The Great Western Railway Company* v. *Bishop* (2), the particular nuisance complained of did not relate to health generally nor to the permanent health or comfort of any person in the neighbourhood. It was simply a common law nuisance. The Judges there held that it was not such a kind of nuisance as the Act intended to deal with, for that the Act, being a sanitary Act, was concerned with nuisances injurious to health and not with everything that could be called a nuisance in point of law. But that decision does not shew what the Court would have done in a case where the nuisance complained of was of a kind that it might be injurious to health and did interfere with the comfort of the individuals living in the neighbourhood. Such, I think, is the real distinction between this case and that one, in which what the Court did was to abstain from bringing within the Nuisances Removal Act a nuisance quite of a different kind from those at which the Act was obviously primarily directed. In the *Malton Case* (1) it was found as a fact that the nuisance there complained of was injurious to health; but, as I pointed out, if it had not been so found, the nuisance was of a kind which might be so injurious.

I should say that the words in the section, "nuisance or injurious to health," cannot mean the same as "nuisance injurious to health," and the proper way to interpret them is to take them in their natural sense—namely, something which interferes with comfort or is injurious to health. A man might catch a deadly disease without having been exposed to a nuisance, or there might be a nuisance existing which did not injure his health or affect his comfort. There is a recent case of *Banbury* v. *Page* (3), which was handed up at the close of the argument, and which seems fully to bear out the view that I take, where, under section 47 of the Public Health Act, 1875, the offence of keeping swine so as to be a nuisance was

(3) 15 Law J. Rep. M.C. 21; Law Rep. 8 Q.B. D. 97.

held to be complete without any evidence of there being injury to health caused thereby.

Case remitted to the magistrates.

Solicitors—Harvey, Oliver & Capron, agents for J. T. Proud, Bishop Auckland, for appellants; Van Sandau, Cumming & Armitage, agents for Belk & Parrington, Middlesbrough, for respondents.

[CROWN CASE RESERVED.]

1882. Nov. 25. } THE QUEEN *v.* RATCLIFFE.*

*Rape—Girl between the ages of twelve and thirteen years — Misdemeanour — Felony—*24 *&* 25 *Vict. c.* 100. *ss.* 48 *and* 51—38 *&* 39 *Vict. c.* 94. *s.* 4.

The statute 38 *&* 39 *Vict. c.* 94. *s.* 4, *which enacts that "whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years and under the age of thirteen, whether with or without her consent, shall be guilty of misdemeanour," does not prevent a conviction for felony under the statute* 24 *&* 25 *Vict. c.* 100. *s.* 48, *for committing a rape upon a girl between those ages.*

The Queen *v.* Dicken (14 Cox, C.C. 8) *followed.*

Case reserved by Fry, J.

At the Winter Assize for the county of Chester, it was proved that Josiah Ratcliffe violated his own daughter, a girl named Ellen Ratcliffe, she being at the time above the age of twelve and under the age of thirteen years.

He was indicted for rape and for a misdemeanour. The jury found the prisoner guilty on both indictments, and separate verdicts were returned upon them.

By 38 & 39 Vict. c. 94. s. 4, it is enacted as follows:—

"Whosoever shall unlawfully and carnally know and abuse any girl being above the age of twelve years and under the age of thirteen, whether with or without her consent, shall be guilty of a misdemeanour."

This enactment was a repetition of the 51st section of the statute 24 & 25 Vict. c. 100, with two variations—first, that the ages of twelve and thirteen were respectively substituted for those of ten and twelve years; and secondly, that the words "whether with or without her consent" were introduced.

In the case of *The Queen* v. *Dicken* (1) Mellor, J., held that, notwithstanding the words of this section, the violation of a girl between the ages of twelve and thirteen, without her consent, was rape and felony.

The prisoner was undefended; but I felt so much doubt as to the validity of a conviction for felony under the circumstances, that I postponed sentence till the next Assizes, and state the question for the opinion of the Court of Appeal on Criminal Cases.

I doubted—first, whether the clause referred to does not plainly declare that the violation of a girl of the specified age without her consent is a misdemeanour; secondly, whether the selfsame offence could at the same time be a misdemeanour and a felony; and thirdly, whether any real distinction could be drawn between violently and against her will carnally knowing a girl and carnally knowing a girl without her consent.

I beg to refer to the note on this point in Mr. Justice Stephen's *Digest of the Criminal Law*, p. 173, edit. 1877.

The question reserved for the opinion of the Court was, whether sentence could be passed for felony on the prisoner.

No counsel appeared.

The Court affirmed the conviction.

Conviction affirmed.

* *Coram* Lord Coleridge, C.J.; Pollock, B.; Lopes, J.; Stephen, J., and Williams, J.

(1) 14 Cox, C.C. 8.

1883. March 9. TIPPETT v. HART.

Revenue—Beer—Inland Revenue Act, 1880 (43 & 44 *Vict. c.* 20), *ss.* 32 *and* 33—*Brewer not for Sale chargeable with Duty—Exemption of the Occupiers of Houses not exceeding* 10*l. Annual Value.*

A brewer not for sale occupied two houses, one below and the other above 10*l. annual value. He took out licences for both, but failed to make the entries required of a brewer not for sale chargeable to duty before brewing in the house below* 10*l. in value*:—Held (*dubitante* HUDDLESTON, B.), *that the case did not come within the proviso to section* 33 *of the Inland Act*, 1880, *providing as to brewers not for sale that "if the annual value of the house occupied by the brewer does not exceed* 10*l. the beer brewed by him shall not be charged with duty."*

CASE stated under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49, by Justices for the division of Stamford, Suffolk, in an information under section 32, sub-section 1, of the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), charging that Tippett, the appellant, being a brewer of beer other than a brewer of beer for sale, did, on the 27th of September, 1882, use certain malt in the brewing of beer without making any such entry in the paper duly delivered to him for the purpose as by the Act is required, whereby he incurred a fine of 10*l.* The Justices dismissed the information.

Tippett was a farmer, and the occupier of two distinct houses or holdings respectively known by the names of the "Bourne Hall Farm" and "Stalls Valley Farm," both situated in the parish of Wherstead, Suffolk, but two miles apart. The annual value of the house at Bourne Hall Farm, in which he himself lived, was 20*l.*; the annual value of the house at Stalls Valley Farm, in part of which Robert Grimwood, his son-in-law, lived as his bailiff, did not exceed 10*l.*

Tippett had, as occupier of the house belonging to Bourne Hall Farm, taken out a licence as a brewer other than a brewer for sale, and the appellant, an officer of Inland Revenue, duly delivered a brewing paper, and Tippett duly entered in such paper the quantity of malt, corn and sugar which he intended to use in respect of the brewing there, and he paid the duty on the materials so entered. A similar licence was taken out by him as occupier of Stalls Valley Farm, and a brewing paper delivered, but he had not before brewing entered the quantity of malt, corn and sugar which he intended to use in respect of the brewing there. He brewed beer at the Stalls Valley Farm only for his own domestic use or for consumption by farm labourers employed by him in the actual course of their labour, and on the 27th of September, 1882, used three bushels of malt in brewing such beer without making such entry as was alleged in the information.

Section 32 of the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), is as follows:—

"A paper in the prescribed form shall be delivered by an officer to every brewer other than a brewer for sale, if chargeable to the duty on beer under this Act, and the following provisions shall have effect in relation to the paper and the entries to be made therein:—

"1. The brewer shall before commencing to brew enter in the paper the quantity of malt, corn and sugar which he intends to use in the brewing.

"2. The brewer shall, on demand by an officer, produce the paper for his inspection, and shall not cancel, obliterate or alter any entry in the paper, or make any entry which is untrue in any particular.

"For any contravention of this section the brewer shall incur a fine of ten pounds."

A. L. Smith, for the appellant.—The question is, whether the respondent Tippett is "chargeable to the duty on beer under the Act" so as to bring him within section 32. This turns on sub-section 3 of section 33, which provides as to brewers other than brewers for sale that "if the annual value of the house occupied by the brewer does not exceed ten pounds the beer brewed by him shall not be charged with duty." The annual value of the house occupied by Tippett does exceed 10*l.*, as he occupies a house at Bourne Hall Farm, and himself lives there. He does not the less occupy that house because he

also occupies by his bailiff a house at Stalls Valley Farm. The proviso is in favour of cottagers and small holders, and is personal. It has no reference to the house where the brewing takes place. If it had, the occupier of a mansion worth 300*l.* a year might brew in his lodge and escape duty.

Grafton, for the respondent.—The words of sub-section 3 of section 33 are, "provided the annual value of *the* house occupied by the brewer does not exceed ten pounds." *The* house means the house in which he brews; otherwise it would be *a* house. The Court will construe a taxing and penal Act liberally in favour of the subject, especially when, as in this case, there is perfect *bona fides*.

POLLOCK, B.—The question in this case arises in an information for not entering quantities in a brewing paper under the Inland Revenue Act, 1880. The respondent occupies two houses, one of the annual value of 20*l.* and the other below 10*l.*, and the charge is in respect of brewing in the house below 10*l.* His contention is that he is exempt on the ground that the annual value of the house occupied by him does not exceed 10*l.* within the meaning of the proviso to the 33rd section. I cannot see the force of the argument. It was intended to get at the status of the man who brews, and it is laid down that if he occupies a small house he is not to pay so much. It is immaterial where he brews his beer. A gentleman of property might desire to brew in a house under the value of 10*l.* for the domestic use of a large mansion and of the farm labourers on a large estate. This could never have been intended. I therefore am of opinion that the Justices were wrong, and the case must go back to them with the answer to the question asked, that the order of dismissal was bad.

HUDDLESTON, B.—I confess to having considerable doubt about this case, but not sufficient to make it necessary that I should dissent. I cannot help thinking that there is great force in the argument, looking at the sections in question. The brewer is authorised to brew only in the house occupied by him (1); then if the annual value of *the* house occupied by him does not exceed 10*l.*, he is not chargeable with duty, which looks as if the house where the brewing takes place was intended. But the difficulty that, if this were so, a large proprietor might evade the duty by brewing in a small house, makes me not sufficiently strong in my doubts to differ from the judgment of the Court.

NORTH, J.—The question is, whether the respondent is a person the annual value of whose house does not exceed 10*l.*, and the facts are, that one house occupied is below and another above that value. We are asked to read in the words "in which he brews" after "house," but by sub-section 2 of section 34, the brewing may take place in a house gratuitously lent to him. If a house is gratuitously lent, the proviso to section 33 cannot mean that house, and therefore is not confined to the house in which the brewing takes place. I do not think we can introduce the words suggested.

Appeal allowed.

Solicitors—The Solicitor to the Inland Revenue, for appellant; J. Mills, Ipswich, for respondent.

(1) By section 15 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), "a licence to a brewer other than a brewer for sale shall not authorise the brewing of beer in more than one house to be mentioned therein."

1883. Feb. 14. HISCOCKS *v.* JERMONSON.

Industrial Schools Act, 1866 (29 & 30 *Vict. c.* 118), *s.* 14—*Industrial Schools Amendment Act*, 1880 (43 & 44 *Vict. c.* 15), *s.* 1.—*Child under fourteen "living in a house resided in or frequented by prostitutes for the purpose of prostitution"—Child living in such House with her Mother.*

If it can be proved that a child under fourteen years of age brought before a magistrate under the Industrial Schools Acts,

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1866 *and* 1880, *is living in a house resided in or frequented by prostitutes for the purpose of prostitution, the magistrate is bound to make an order for his or her removal to an industrial school, even although such child is living in such house with his or her mother who is not a prostitute. The consent of the mother to such removal is not necessary.*

This was a Special Case stated on *mandamus* by a police magistrate, from which it appeared that an application was made to Thomas William Saunders, Esq., one of the Metropolitan police magistrates, by William Hiscocks, an officer of the School Board of London, for an order under the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 14 (1), and the Industrial Schools Amendment Act, 1880 (43 & 44 Vict. c. 15), s. 1 (2), that one Minia Jermonson should be sent to the Alresford Industrial School, and the magistrate declined to make such order, believing that the facts as stated did not bring the case within the Acts above mentioned. On the 20th day of June, one William Hiscocks, an officer of the School Board of London, brought before the said magistrate one Minia Jermonson, a girl of the age of nine years, and upon enquiring of him how he got possession of the child, he said that he went, accompanied by a police officer, to the house No. 6 Ship Alley, where the girl was living with her mother, and in a room in which the mother and girl were alone he took possession of the girl; and although the mother at first objected to his taking her daughter away, he took possession of her and brought her before the magistrate.

Upon the application, the said William Hiscocks deposed that the said girl lived with her mother in a room at No. 6 Ship Alley, which he knew as a brothel, that the said mother was then a lodger there, and that seven other women lived in the same house; that he had seen the said seven women soliciting prostitution from sailors, and that he had seen them take back into the house different men at different times.

Stephen White (Sergeant H.) deposed that he had known the house No. 6 Ship Alley, and that it was frequented by prostitutes of the lowest character, and that there were seven women living in the house.

No evidence was given of any act of prostitution on the part of the mother of the child, nor that she was conducting herself as a prostitute.

It was contended on the part of the applicant that the child in question was within the words and meaning of the said Industrial Schools Act, 1866 (29 & 30 Vict. c. 18. s. 14 (1), and the Industrial Schools Amendment Act, 1880 (43 & 44 Vict. c. 15), s. 1 (2), as "living or residing in a house resided in or frequented by prostitutes for the purpose of prostitution."

The magistrate decided, first, that the section was meant to meet the case of a child referred to in the second description contained in the Industrial Schools Act, 1866, who, though having a home or settled place of abode or proper guardianship, nevertheless has that home, abode or guardianship with common or reputed prostitutes, or in a house frequented by prostitutes for the purpose of prostitution, and that it does not apply to a child living with and under the care and pro-

(1) Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 14:—"Any person may bring before two Justices or a magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions—namely, ...

"The Justices or magistrate before whom a child is brought as coming within one of those descriptions, if satisfied on enquiry of that fact, and that it is expedient to deal with him under this Act, may order him to be sent to a certified industrial school."

(2) Industrial Schools Amendment Act, 1880 (43 & 44 Vict. c. 15), s. 1:—"Section fourteen of the Industrial Schools Act, 1866, and section eleven of the Industrial Schools Act (Ireland), 1868, shall be respectively read and construed as if after the four several descriptions therein respectively contained there were added the following descriptions, namely,—

"That is lodging, living or residing with common or reputed prostitutes, or in a house resided in or frequented by prostitutes for the purpose of prostitution;

"That frequents the company of prostitutes."

tection of its mother who is its lawful guardian; and that if the section could have the construction contended for, all the young children of persons who either keep or live in brothels might be taken from them by any one, and against the will of their parents, and be sent to industrial schools. The said magistrate was further of opinion that the section does not contemplate the taking of a child from the custody of its mother for the purpose of sending it to an industrial school without her consent, or without giving her an opportunity of shewing cause to the contrary.

Jeune, for the appellant.—The very ground on which the magistrate refused to act, namely, that "if the section were construed as it was intended it should be, all the young children of persons who either keep or live in bawdy-houses might be taken from them by any one," is what the Legislature intended. There is no exception or restriction on the section that makes the mother's consent necessary. By the Industrial Schools Amendment Act, 1880 (43 & 44 Vict. c. 15), s. 1 (2), the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 14 (1), is to be read as though the words "in a house resided in or frequented by prostitutes for the purpose of prostitution" were added.

No one appeared for the respondent.

MANISTY, J.—I think this case must be sent back to the magistrate, with an intimation that he was wrong in refusing to make the order. We must give effect to the plain and ordinary meaning of the Act, which intended to protect young children in certain circumstances set out in the Industrial Acts, 1866 and 1880, and I think that if those circumstances are shewn to exist the magistrate is bound to order the child to be sent to an industrial school. The Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 14 (1). is as follows [His Lordship then read the section], and is extended by the Industrial Schools Act Amendment Act (43 & 44 Vict. 15), s. 1 (2), which gives "any person the power to bring before a magistrate a child, apparently under the age of fourteen years, who is living or residing in a house resided in or frequented by prostitutes for the purpose of prostitution." In this case it was proved that the child was under the age of fourteen years, namely, nine years, and that she was living in a house frequented by and resided in by prostitutes. The magistrate thought that because the child in question was residing in such a house with her mother, he had no jurisdiction to make such an order; but I find no such exception as "unless the mother of the child be living in the same house" in the statute, and I cannot import them into it; nor would I import such a limitation, unless compelled, as I think it would defeat the object of this most salutary legislation for the protection of young children so to restrict these clauses.

MATHEW, J.—I am of the same opinion. It is clear that the order should have been made, and to hold otherwise and admit such an exception as is here contended for would be to put a restriction on it in favour of persons whose conduct is more deserving of punishment than of assistance.

Appeal allowed, and case sent back to the magistrate.

Solicitors—Gedge, Kirby, Millett & Morse, for appellant.

1883. Feb. 14.

GAGE *v.* ELSEY.

Adulteration of Food—Notice that Spirits sold are diluted—"Gin" more than thirty-five per cent. under proof—Printed Notice—Sale of Food and Drugs Act, 1875 (38 & 39 *Vict. c.* 63), *ss.* 6, 8—*Sale of Food and Drugs Act Amendment Act*, 1879 (42 & 43 *Vict. c.* 30), *s.* 6.

The vendor of spirits diluted to below the amount under proof allowed by the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 *Vict. c.* 30), *s.* 6, *is not*

Gage v. *Elsey.*

precluded by that Act from any defence open to him under the Food and Drugs Act*, 1875 (38 & 39 *Vict.* c. 63), *s.* 6, *and may shew that the purchaser had notice by a printed notice drawn to his attention that the spirits sold to him were mixed or diluted.

This was a Case stated by the Justices of the peace in and for the county of Essex under the statute 20 & 21 Vict. c. 43, from which it appeared that on the 4th day of September, 1882, information was laid before one of Her Majesty's Justices of the peace for the said county by Thomas Elsey, superintendent of police and inspector under the Sale of Food and Drugs Act, 1875, against William Gage, of Braintree, innkeeper, the appellant, for that on the 11th of August, 1882, at Braintree, in the said county, the said William Gage "did unlawfully sell to the said Thomas Elsey, to the prejudice of the purchaser, a certain article of food, to wit, three pints of gin, which was not of the nature, substance and quality of the article demanded by such purchaser."

On the said 13th day of September, the said Thomas Elsey and William Gage appeared before the magistrates, and it was proved—

That the said Thomas Elsey was a person duly charged with the execution of the Sale of Food and Drugs Act, 1875.

That on the 11th day of August, 1882, the said Thomas Elsey, the respondent, went to an inn kept by the said William Gage, and asked for some gin. Gage, the appellant, said, "What sort do you want?" Respondent said, "The same as you sell to the public." Appellant said, "I have different sorts." Respondent pointed to a cask and said, "What is that?" Appellant said, "Gin." Respondent said, "I will have three pints of that." Appellant said, "That is what we sell to the public, and there is our notice." The appellant thereupon pointed to a notice hanging up in the room, which was to the following effect: "Notice. All spirits sold in this establishment are of the same superior quality as heretofore, but to meet the requirements of the Food and Drugs Adulteration Act they are now sold as diluted spirits. No alcoholic strength guaranteed." Appellant then supplied three pints of gin, and respondent paid 5*s.* for it, and said, "I have bought this for the purpose of having it analysed by the public analyst." The gin was put into three bottles and sealed. One bottle was left with the appellant, one afterwards delivered to Mr. Thomas Alexander Pooley, the analyst appointed for the county of Essex by the Justices of the peace in quarter sessions assembled, and the third was retained by the respondent.

The report of Mr. Pooley, the county analyst, was read as follows: "The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63). Certificate to Superintendent Elsey, Braintree. I, the undersigned, public analyst for the county of Essex, do hereby certify that I received on the 12th day of August, 1882, from yourself a sample of gin marked X for analysis (which then measured about one pint), and have analysed the same, and declare the result of my analysis to be as follows: I am of opinion that the same contains 59½ per cent. of proof spirit, and is therefore 40½ degrees under proof—that is, it has been diluted with water so as to reduce its strength to five and a half (5½) degrees under the minimum strength allowed by the amending Act of 1879. As witness my hand, this 24th day of August, 1882, T. A. Pooley, B.S.F.C.S., at 5 Bond Street, Walbrook, London, E.C."

It was urged for the appellant that inasmuch as at the time the respondent purchased the gin a notice to the effect that it was sold as diluted spirit was hanging up in the room, and the attention of the purchaser was specially directed to it, the sale was not to the prejudice of the purchaser, and the appellant was entitled to have the information dismissed.

The Justices held that the notice hanging up in the room, and the defendant's statement with regard to it, did not justify the sale, and convicted the appellant, and adjudged him for his said offence

to forfeit the sum of 2*l.*, and 12*s.* 6*d.* for costs.

C. E. Jones, in support of the appeal.—The fact that the goods sold were sold as diluted spirits was brought to the notice of the purchaser, and he is not prejudiced by the sale; therefore there was no offence —*Sandys* v. *Small* (1).

Grubbe, for the respondent.—The Act of 1879 (42 & 43 Vict. c. 30), s. 6 (2), practically prohibits the mixing of water with spirits beyond a certain amount, and in the case of gin 35 per cent. If the dilution be less than 35 per cent., that statute gives a good defence; if more then there is no defence. If it is called "gin" it must not be more than 35 per cent. under proof. The question of notice does not affect the point.

MANISTY, J.—This is an appeal against the decision of the magistrates of Bocking, in Essex, who convicted the appellant of an offence against the Adulteration Acts. The analyst found that the article sold as gin was 40½ per cent. under proof, and consequently 5½ per cent. below the strength allowed by the Act of 1879. Probably, therefore, the magistrates thought there was no defence. They do not find as to whether there was fraud or not, which confirms this view. Section 6 of the Act of 1875 (3) provides that "no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by the purchaser," under a penalty of not exceeding 20*l.*; but there is a proviso in section 8 (3) that "no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the delivering such article or drug he shall supply to the person receiving the same a notice by a label distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed." Since that Act it has been held in the case of *Sandys* v. *Small* (1) that unless the sale be to the prejudice

(1) 47 Law J. Rep. M.C. 115; Law Rep. 3 Q.B. D. 449.

(2) 42 & 43 Vict. c. 30. s. 6: "In determining whether an offence has been committed under section 6 of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than 25 degrees under proof for brandy, whisky or rum, or 35 degrees under proof for gin."

(3) 38 & 39 Vict. c. 63. s. 6: "No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality of the article demanded by such purchaser under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say:—

"1. Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food or drug, or conceal the inferior quality thereof;

"2. Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent.

"3. Where the food or drug is compounded as in this Act mentioned.

"4. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation."

Section 8: "Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed."

of the purchaser there is no offence, and that where a notice is exhibited that the article sold is mixed or diluted the vendor is exempt from the penalties of the statute. I think the magistrates in this case must have supposed that this branch of the law was affected by the Sale of Food and Drugs Act Amendment Act (42 & 43 Vict. c. 30) (2), by section 6 of which it is provided that "in determining whether an offence has been committed under section 6 of the said Act (the Act of 1875) by selling to the prejudice of the purchaser spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than . . . . thirty-five degrees under proof for gin." Now this statute gives a perfect defence where the dilution does not bring the spirit down to less than 35 per cent. under proof. But I do not think that where the dilution brings the spirit below the amount under proof allowed by this statute, that the vendor is precluded from any defence he may have apart from that statute. Now the defence set up here is that the respondent had express notice of the fact that the spirits sold were diluted. I think, therefore, that if unable to avail himself of the defence allowed him by section 6 of the Act of 1879 (2) the appellant is nevertheless entitled to avail himself of that which the case of *Sandys* v. *Small* (1) decided to be a good defence. I do not think the magistrates addressed their minds to the question of fraud; but there is, in my opinion, no evidence whatever of fraud in this case. I therefore think the case should not be sent back for them to consider that point, and on the other I think the appellant had a good defence.

MATHEW, J.—I am of the same opinion. The magistrates seem to have acted on the idea that nothing could now legally be sold as "gin" in any circumstances that was 35 per cent. or less under proof; but that is not the intention of the Act of 1879, which does not say there may not be other defences, where that given by section 6 of the Act of 1879 is not available. In this case the purchaser cannot say he has been prejudiced, for when told that the spirit was diluted he did not choose to enquire as to the extent of the dilution. The magistrates have not found that there was any fraud. I think, therefore, the conviction was wrong and should be quashed.

Conviction quashed, with costs.

Solicitors—Randall & Angier, agents for Jones & Son, Colchester, for appellants; Gibson, Ongar, for respondents.

1882. Nov. 28. } LANGRISH (*appellant*) *v.* ARCHER (*respondent*).

Gaming—Vagrant Act Amendment Act, 1873 (36 *& 37 Vict. c.* 38), *s.* 3—*Open Place to which the Public have Access—Railway.*

Under the Vagrant Act Amendment Act, 1873, *the respondent was charged with gaming in an "open place to which the public were permitted to have access." The gaming complained of occurred in a railway carriage in transit upon a railway:*—Held, *that the place where the gaming occurred was within the Act.*

CASE stated under 20 & 21 Vict. c. 43.

The respondent was charged by the appellant with offending against the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3 (1), by gaming in an "open

(1) 36 & 37 Vict. c. 38, which by section 2 is to be construed as one with the Act 5 Geo. 4. c. 83, enacts by section 3:—"Every person playing or betting, by way of wagering or gaming, in any street, road, highway or other open and public place, or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token or other article used as an instrument or means of such wagering or gaming at any game or pretended game of chance, shall be deemed a rogue and vagabond within the . . . . meaning of 5 Geo. 4. c. 83, and as such may be convicted and

place to which the public were permitted to have access." The respondent and two other persons entered a first-class railway carriage, forming part of a train which was about to be started on a journey, and during the journey produced playing-cards, and played therewith at a certain game or pretended game of chance, and won money from other passengers in the carriage who joined in the play. The magistrate stating the case refused to convict the respondent, being of opinion that the place where the gaming occurred was not such a place as was referred to in the Act (1).

Danckwerts, for the appellant.—The gaming occurred in a place coming within the words "any open place to which the public have or are permitted to have access" (1). In *Ex parte Freestone* (2), decided on the words "open and public place" in 5 Geo. 4. c. 83. s. 4, the Court, in holding that a conviction alleging that the defendant played "in a certain open and public place, to wit, in a third-class carriage used on the London, Brighton and South Coast Railway," could not be supported, expressly adverted to the fact that the conviction did not say the carriage was then being used on the railway, remarking that it might have been shunted away in a yard. In *The Queen* v. *Holmes* (3), an omnibus was held to be a public place in respect of the common law offence of indecent exposure of the person.

He referred to *The Queen* v. *Thallman* (4).

Woodgate, for the respondent.—The railway carriage was not a place within the Act (1). It was not a "place to which the public have or are permitted to have access." Nobody could have access to it without paying his fare.

Danckwerts was not heard in reply.

LORD COLERIDGE, C.J.—I am of opinion that the magistrate was wrong in not convicting the respondent. We have to construe an Act framed perhaps without thinking of gaming occurring in a railway carriage, but the case may, nevertheless, well be within the Act, and I think we must hold that the case is within the Act. In *Ex parte Freestone* (2) all the members of the Court adverted to the fact that the conviction did not describe the railway carriage as being in use on the railway when the gaming occurred; and that case affords authority for our holding the present case to be within the present Act. Mr. Woodgate has contended that a place cannot be an "open place to which the public have or are permitted to have access" if payment is required as a condition of access. The statute, however, does not say that the public must have access unconditionally, or contain anything to exclude such a condition. I am of opinion that the decision must be reversed.

STEPHEN, J.—I am of the same opinion. *Ex parte Freestone* (2), though it does not I think decide the point before us, contains a strong suggestion in favour of the view we adopt. In support of that view it is to be observed that any six members of the public paying their fare, and complying with certain conditions as to sobriety, &c., have access to a first-class railway carriage.

Decision reversed.

Solicitors—The Solicitor to the Treasury, for appellant; R. Biale, for respondent.

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punished under . . . . that Act, or . . . . by a penalty" not exceeding 40*s.* for the first, and for the second or any subsequent offence not exceeding 5*l.*

(2) 1 Hurl. & N. 93; 25 Law J. Rep. M.C. 121.

(3) 1 Dearsley C.C. 207; 22 Law J. Rep. M.C. 122.

(4) L. & C. 326; 33 Law J. Rep. M.C. 58.

[CROWN CASE RESERVED.]

1883. March 3. } THE QUEEN *v.* BROWN.*

Attempt to Murder—Attempt to Discharge Firearms with Intent to Murder— 24 *&* 25 *Vict. c.* 100. *ss.* 14 *and* 15.

By section 14 *of* 24 *&* 25 *Vict. c.* 100, *it is enacted* (*inter alia*) *that "Whosoever shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, with intent to commit murder, shall be guilty of felony"; and by section* 15, *that "Whosoever shall by any means other than those specified in any of the preceding sections of this Act attempt to commit murder, shall be guilty of felony."*

The prisoner drew from his pocket a loaded pistol with intent to commit murder, but before he had time to do anything further it was snatched out of his hand, and he was at once arrested. It was ruled at the trial (*on the authority of* The Queen *v.* St. George, 9 Car. & P. 483) *that this did not amount to an attempt to murder within section* 14:—

Held, *that the prisoner could not be convicted under section* 15, *because that section did not apply to attempts ejusdem generis with those within section* 14.

The Queen *v.* St. George (9 Car. & P. 483) *and* The Queen *v.* Lewis (ibid. 523) *commented upon.*

Case reserved by Stephen, J.

At the Central Criminal Court, Samuel Brown was convicted before me upon the first count of an indictment then preferred against him. The count (omitting formal parts) was in these words:—

Samuel Brown, on the 23rd of November, 1882, "feloniously did attempt to discharge certain loaded arms (to wit, a certain pistol loaded in the barrels with gunpowder and divers leaden bullets) at and against one William Sutton, with intent in so doing feloniously, wilfully and of malice aforethought of him the said Samuel Brown to kill and murder the said William Sutton."

The facts were as follows:—Brown had a quarrel with Sutton. On the day in question he went to Sutton's house and desired to speak with him in private. Sutton told Brown to go into the back shop for that purpose, but having some suspicion made Brown go first. Brown as he went into the shop was observed to draw from his pocket a loaded revolver. Sutton's nephew Collins immediately snatched it from his hand, and he (Brown) was arrested by Sutton and Collins. On his way to the police station he said that he had not forgotten the way in which Sutton had previously treated him.

In order to explain my direction to the jury it is necessary to observe that, though it concludes "against the form of the statute," the count on which Brown was convicted does not follow the words of either of two sections of the Offences against the Person Act, each of which bears upon the subject. The material parts of these sections are as follows:—24 & 25 Vict. c. 100. s. 14, punishes several different ways of attempting to commit murder, one of which is, "Whosoever shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person with intent to commit murder." Section 15 punishes every one who, "by any means other than those specified in any of the preceding sections of this Act attempts to commit murder."

In *The Queen* v. *St. George* (1) it was held that the words, "by drawing a trigger, or in any other manner," meant in any other manner like drawing a trigger, as, *e.g.*, by striking a percussion cap with a hammer, and that an attempt to discharge a pistol by attempting to pull a trigger was not an offence within the Act then in force, which was in the same words as section 14. I held accordingly that there was no evidence to go to the jury of any offence under section 14.

I thought there was evidence to go to the jury of an offence against section 15, but I doubted whether the prisoner could be convicted of such an offence upon the count as drawn.

In these circumstances, I directed the jury as follows: I told them that an attempt to commit a crime might, at least for the purposes of the case, be de-

* *Coram* Lord Coleridge, C.J.; Pollock, B.; Huddleston, B.; Manisty, J., and Stephen, J.

(1) 9 Car. & P. 483.

fined as an act done with intent to commit a crime so closely connected with the actual commission of the crime as to form one of a series of acts which, if not interrupted, would constitute collectively the actual commission of the crime; and in reference to the particular case, I told them that if they thought Brown intended to murder Sutton, and drew the pistol from his pocket for that purpose, and was prevented from murdering Sutton, or from firing the revolver at him for that purpose, only by its being taken from his hand, they ought to convict him on the count above mentioned, which I held for the purposes of the trial to be a count, charging an attempt to murder by means other than those specified in sections 11, 12, 13 and 14 of 24 & 25 Vict. c. 100. The jury convicted the prisoner, and I reserved judgment, and committed him to prison until this case should have been decided by the Court for Crown Cases Reserved.

The questions for the Court are :—

1. Whether, assuming the sufficiency of the indictment, my direction to the jury was right?

2. Whether the indictment sufficiently charged an offence under section 15?

If either of these questions is answered in the negative the conviction must be quashed. If both are answered in the affirmative it must be confirmed.

No counsel appeared for the prisoner.

Poland, for the Crown.—The count of the indictment upon which the prisoner was convicted was a good one under section 15 of 24 & 25 Vict. c. 100. That section was introduced for the first time, and is a general enactment intended to cover all attempts to murder not specified in the previous sections of the Act.

Lord Coleridge, C.J.—I am of opinion that this conviction cannot be sustained, the indictment having been clearly drawn in the words of section 14, which has been held by my learned brother, on the authority of *The Queen* v. *St. George* (1), not to apply to this case. It seems to me that the true construction of these sections is, that they shew a variety of means by which a variety of acts might be done with intent to commit murder, and these are described, one of them being an attempt to discharge firearms. All these things are within sections which deal with specific offences. Then section 15 says, that whoever attempts to murder "by any other means" shall also be within the Act, clearly intending cases not pointed at specifically in the earlier sections. It was thought impossible, considering the infinite variety of human affairs, to specify every mode of attempting to murder, and therefore this more general section was added. But then it seems to me that these "other means" must not be *ejusdem generis* with those specified in the 14th section, and the present case, I think, is one *ejusdem generis* with one mentioned in section 14. It has, however, been held, on the authority of *The Queen* v. *St. George* (1), not to be within the 14th section. I do not think that section 15 is meant to extend the 14th, for the 14th deals with certain means of committing murder, and the 15th with others, and therefore with such as are not *ejusdem generis* with those in section 14. I therefore am clearly of opinion that this is a case within section 14; but it has been held not to be within that section, and the question is not submitted to us whether it was rightly so held. I desire, however, to add that if upon a fit occasion the cases of *The Queen* v. *St. George* (1) and *The Queen* v. *Lewis* (2) come before us for consideration, whatever might be the authority of the Judges who ruled them (and it is very high), I could not give such decisions the assent of my own mind; and though a Judge, when sitting alone, would deem himself bound by them, we might in this Court reconsider and possibly overrule them.

Pollock, B.; Huddleston, B., and Manisty, J., concurred.

Stephen, J.—I am of the same opinion. I reserved the case because there seemed to be some obscurity as to the effect of section 15, and because I did not adopt a test which makes the matter perfectly clear. It is made felony to attempt to commit murder in certain ways, which are by shooting at any one with intent to

(2) 9 Car. & P. 523.

murder, or by drawing a trigger attempting to discharge a loaded weapon with such intent. And then it is also made felony to attempt to commit murder by any other means than those previously specified—that is, other than by shooting or other means similar to drawing the trigger of a loaded firearm. Now, if the prisoner attempted to kill, it certainly was by means of shooting, and therefore he did not come within section 15 which applies to other means; and he did not come within section 14, because he did not shoot or attempt to shoot by the means stated (according to the cases cited), and consequently the prisoner escapes between the two sections. As to the cases cited, I wish merely to add that I express neither assent to nor dissent from the opinion of the other members of this Court.

Conviction quashed.

Solicitors—The Solicitor to the Treasury, for the prosecution.

1883. March 15. DOWNING (*appellant*) *v.* SCHNEIDER AND OTHERS (*respondents*).

Licensing—Beer Off-licence—Appeal—The Beer Dealers' Retail Licences (Amendment) Act, 1882 (45 & 46 *Vict. c.* 34), *s.* 1—*The Beer Dealers' Retail Licences Act*, 1880 (43 *Vict. c.* 6), *s.* 1.

The Beer Dealers' Retail Licences (Amendment) Act, 1882 (45 & 46 *Vict. c.* 34), *s.* 1, *has not taken away the right of appeal to the Court of Quarter Sessions from a refusal by the licensing justices to renew a licence to sell beer not to be consumed on the premises.*

This was a motion to make absolute a rule *nisi* obtained by the respondents, calling on the appellant to shew cause why an order of the Court of Quarter Sessions for the county of Lancashire, holden at Lancaster, allowing an appeal from a refusal by the licensing justices (the respondents) to renew the appellant's licence for the sale of beer to be consumed off the premises should not be set aside.

In the case stated by the chairman of the Court of Quarter Sessions for the county of Lancaster, the questions at law which arose are thus set out:—

The appellant is a grocer and beerseller at Barrow-in-Furness, in the county of Lancaster, and the respondents are the licensing justices for the licensing division of Barrow-in-Furness, in the said county.

The appellant has for several years been the holder of a justices' certificate and an excise licence to sell beer not to be consumed on his premises.

Prior to the general annual licensing meeting, held in September, 1882, the appellant paid to the magistrates' clerk the usual fee for the renewal of his certificate.

The appellant was not required to attend, and did not attend the said Court in person, and no notice was served on him prior to the said meeting that his application would be opposed or refused.

At the said meeting the chairman publicly announced that applications for certificates to sell beer not to be consumed on the premises would be taken at the adjourned annual licensing meeting on the 29th of September, 1882, but the appellant never had any intimation of such announcement.

The respondents held an adjourned annual licensing meeting on the 29th of September, 1882, but did not require the appellant to attend the said adjourned meeting, nor did they give him notice that his application would be opposed or refused; but certain persons desiring to oppose the application did serve on the appellant eight days before the said adjourned meeting a notice requiring him to attend the said meeting, and stating that the application would be opposed, on the grounds that no requirement for such a licence exists in the neighbourhood.

The appellant attended the said adjourned meeting with his solicitor.

The respondents refused to hear the said persons who desired to oppose the appellant's application. The appellant tendered himself as a witness, and he and his solicitor addressed the respondents in support of his application.

The respondents (who are personally

well acquainted with the district), without hearing any evidence, and refusing to hear the evidence either of the appellant himself or any of his witnesses, refused the certificate, in the exercise of their discretion, on its being admitted that the defendant was a grocer.

The appellant appealed to the Quarter Sessions on the following, among other grounds, as stated in his notice of appeal:—

That notice in writing of an intention to oppose or object to the renewal or grant of the said licence or certificate was not duly served upon the appellant not less than seven days before the commencement of the general annual licensing meeting held for the said division on the 4th day of September, 1882, as by law is required.

That at the said general annual licensing meeting held as aforesaid, objection was not made to the renewal or grant of the said licence or certificate, and that the licensing Justices for the said division did not require the appellant's attendance as the holder of the said licence or certificate at the said adjournment of the said general annual licensing meeting, as by law is required.

That the respondents refused to renew or grant the said licence or certificate, nor were such grounds of objection communicated or sent to him in any form whatever, as by law required.

That the respondents refused to receive evidence upon oath, which was tendered to them in support of the appellant's application for the renewal or grant of the said licence or certificate.

That if the respondents had the power to refuse to renew or grant the said licence or certificate such power could only be exercised by them in respect of certain grounds personal to the appellant as such applicant, and no such grounds were stated or alleged.

That the renewing or granting of the said licence would have been a convenience to the public and an accommodation to the neighbourhood, and that there was no sufficient cause or reason arising out of the applicant's character or conduct, or any other just and sufficient reason, why such licence or certificate should not have been renewed or granted, and that such licence or certificate ought to have been renewed or granted, and ought not to have been refused, and that the refusal of the respondents to renew or grant the said licence or certificate as aforesaid was illegal, erroneous and unjust.

At the Quarter Sessions the respondents contended:—

1. That there was no appeal from their decision.

2. That they had power to refuse the certificate, notwithstanding the formalities of 35 & 36 Vict. c. 94. s. 42, and 37 & 38 Vict. c. 49. s. 26, had not been observed.

3. That the notices given by the persons before-mentioned, and the attendance afterwards of the appellant in person in Court, were a sufficient compliance with the formalities directed by the said sections; but upon this point it was contended by the appellant, that by reason of not receiving notice from the respondents requiring his attendance he did not go prepared with the evidence of witnesses and such other evidence as he would otherwise have done.

4. That if the formalities had not been sufficiently observed the appellant waived the non-observance of them by addressing the Court in support of his application.

5. That the Quarter Sessions ought not to allow the appeal without hearing the case on the merits.

The Court of Quarter Sessions decided the first four points in the appellant's favour, after hearing the evidence tendered by the appellant; and having heard two witnesses for the respondents as to the requirements of the neighbourhood, and refused to hear further evidence of the respondents to the like effect, allowed the appeal.

If the Court is of opinion that there is no appeal to the Court of Quarter Sessions, then the decision of that Court is to be reversed with costs.

If there is an appeal, and the respondents are wrong on any one of the 2nd, 3rd, 4th or 5th contentions stated in the 11th paragraph, then the decision of the

Court of Quarter Sessions is to stand, otherwise to be reversed with costs.

A. L. Smith (with him *Hannen*) shewed cause.—The Act of 1882 (1), while giving a full discretion to the Justices as to refusing off licences, contains no words that take away the right of appeal from their exercise of such discretion. The meaning of section 1 (1) is, that for the future their right to refuse shall not be limited to the four grounds mentioned in 32 & 33 Vict. c. 27. s. 8. sub-ss. 1, 2, 3 and 4 (2). It must be a judicial discretion—

Jarmain v. *Chatterton* (3); and a refusal for frivolous reasons would be the subject of appeal. In *The Queen* v. *Kay* (4) the point that there was no appeal was not raised, but it was assumed to exist by all parties. The formalities required by the Licensing Acts, 1872 and 1874, were not complied with, and the Justices had no power to refuse. It is contended that the Court of Quarter Sessions have found as a fact that those requirements have not been complied with; also, that there has been no waiver of compliance with those formalities. This Court cannot review the findings of the Court of Quarter Sessions on facts.

Poland and *Henry Shee*, in support of the rule.—The words of the Act of 1882 give an absolute discretion, and take away all right of appeal. If there is an appeal, the Quarter Sessions should have heard it on its merits; but they refused to hear the evidence in support of the refusal of the Justices to renew the licence.

The words in the Act of 1882 are larger than any used in the former Acts. The Act of 1880 (5) gave the Justices a discretion that was almost absolute and final, and the only extension possible must be to make that discretion absolute and final. By the Act of 1880 the restrictions on the discretion of the Justices imposed by the

(1) 45 & 46 Vict. c. 34. s. 1: "Notwithstanding anything in section 8 of the Wine and Beer House Act, 1869, or in any other Act now in force, the licensing Justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any licence for sale of beer by retail, to be consumed off the premises, on any grounds appearing to them sufficient, or to grant the same to such persons as they, in the execution of their statutory powers, and in the exercise of their discretion, deem fit and proper."

(2) 32 & 33 Vict. c. 27. s. 4: "From and after the 15th day of July, 1869, no licence or renewal of a licence for the sale by retail of beer, cider or wine, or any of such articles, under the provisions of any of the said recited Acts, shall (save as is in this Act otherwise provided) be granted, except upon the production and in pursuance of the authority of a certificate granted under this Act.

"Any licence granted or renewed in contravention of this enactment shall be void."

Section 8: "All the provisions of the said Act of the ninth year of the reign of King George the Fourth as to the terms upon which, and the manner in which, and the persons by whom, grants of licences are to be made by the Justices at the said general annual licensing meeting, and as to appeal from any act of any Justice, shall, so far as may be, have effect with regard to grants of certificates under this Act, subject to this qualification: that no application for a certificate under this Act in respect of a licence to sell by retail beer, cider or wine not to be consumed on the premises, shall be refused, except upon one or more of the following grounds: namely (1) That the applicant has failed to produce satisfactory evidence of good character. (2) That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character, or frequented by thieves, prostitutes or persons of bad character. (3) That the applicant having previously held a licence for the sale of wine, spirits, beer or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence, or from selling any of the said articles. (4) That the applicant, or the house in respect of which he applies, is not duly qualified as by law is required. Where an application for any such last-mentioned certificate is refused, on the ground that the house in respect of which he applies is not duly qualified, as by law is required, the Justices shall specify in writing to the applicant the grounds of their decision."

(3) 51 Law J. Rep. Chanc. 471; Law Rep. 20 Ch. D. 493.

(4) Law Rep. 10 Q.B. D. 213.

(5) 43 Vict. c. 6. s. 1: "Section 8 of the Wine and Beer House Act, 1869, is hereby repealed, as far as the qualification therein contained relates to grants of certificates for such additional licences as aforesaid; and the licensing Justices shall be at liberty either to refuse such certificates as aforesaid, on any grounds appearing to them in the execution of their discretion sufficient, or to grant the same to such persons as they, in the execution of their statutory powers and in the exercise of their discretion, deem fit and proper."

Act of 1869 are repealed, which gave the Justices a discretion subject to statutory powers. The Act of 1882 gives a free and unqualified] discretion, and thereby takes away all right of appeal.

POLLOCK, B.—The two points necessary to the decision of the case are—first, whether the Court of Quarter Sessions had jurisdiction to entertain the appeal from the licensing Justices; and secondly, if they have jurisdiction to hear it, whether they have, in fact, properly heard the appeal on its merits. The first question depends on the construction of several statutes. By 9 Geo. 4. c. 61 (6), provision is made as to granting or refusing licences, and the course to be adopted in appealing from the decision of the Justices to the Quarter Sessions. The Wine and Beer House Act, 1869 (32 & 33 Vict. c. 27), s. 4 (2), provides that licences for the sale of beer, cider and wine shall not be granted without a certificate of the Justices assembled at a general licensing meeting; and section 8 (2), that the provisions of 9 Geo. 4. c. 61, as to appeal, are to apply to licences granted under the Act of 1869. That section goes on to say that no application for what is called an off-licence shall be refused, except on the four grounds stated in the sub-sections of that section. A portion of these restrictions on the discretion of the Justices was removed by the Beer Dealers' Retail Licences Act, 1880 (43 Vict. c. 6), s. 1 (5); and by the Amending Act of 1882 (1) a free and unqualified discretion is given to the Justices. It is contended that by section 1 (1) of that Act the right of appeal is also taken away, and the words of that section would, at first sight, seem to justify the observation; but I think they were used because when the Bill was drafted, it was known that the intention was to do away with the restrictions that existed before the Act on the discretion of the Justices to refuse an off-licence. I do not think the right of appeal that always existed was intended to be taken away, or dealt with in any way. Had such been the intention I think that clear and explicit words would have been used. As to the second point, I think that the Court of Quarter Sessions did hear the

(6) 9 Geo. 4. c. 61. s. 27: "That any person who shall think himself aggrieved by any act of any Justice done in or concerning the execution of this Act may appeal against such act to the next General or Quarter Sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards: Provided that such person shall give to such Justice notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a recognisance with two sufficient sureties, before a Justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognisance being entered into, the Justice before whom the same shall be entered into shall liberate such person, if in custody for any offence in reference to which the act intended to be appealed against shall have been done; and the Court, at such session, shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said Court shall seem meet; and in case the act appealed against shall be the refusal to grant or to transfer any licence, and the judgment under which such act was done be reversed, it shall be lawful for the said Court to grant or to transfer such licence in the same manner as if such licence had been granted at the general annual licensing meeting, or have been transferred at a special session, and the judgment of the said Court shall be final and conclusive, to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said Court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid; and shall, if necessary, issue process for enforcing such order: Provided that no Justice shall act in the hearing or determination of any appeal to the General or Quarter Sessions as aforesaid from any act done by him in or concerning the execution of this Act: Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved, to appeal against any such act as aforesaid, if he shall think fit, to the Quarter Sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained."

appeal on its merits, as they were bound to do, and that their decision thereon should be upheld. The rule will therefore be discharged, with costs.

NORTH, J., concurred.

Rule discharged, with costs.

Solicitors—Tyas & Huntington, agents for Thompson, Barrow-in-Furness, for appellant; Parkers, agents for S. E. Major, Barrow-in-Furness, for respondents.

1883. April 7. } THE QUEEN *v.* YOUNG (*Justice*) AND WHITE.

Jurisdiction of Justices—Bona fide Claim of Right—Offence of putting Obstructions in a Street.

A local Act gave jurisdiction to Justices over the offence of "throwing or laying down stones, iron, &c., or other materials in a street." A person charged with the offence maintained that the spot on which iron had been laid down was his private property, free from any right of way, and the Justices declined to adjudicate:—Held, *that their jurisdiction was not ousted, as the statute gave them power to determine what was a street.*

Rule to shew cause why Justices of the county of Durham should not proceed to determine a summons, issued on the 17th of April, 1882, against John White, charging him with unlawfully laying down in a street called Whitby Street, within the limits of the West Hartlepool Improvement District, certain iron (the same not being building materials so enclosed as to prevent mischief to passengers), contrary to section 254 of the West Hartlepool Improvement Act, 1870.

By that section it is provided that, "Every person who in a street . . . . commits any of the following offences shall be liable to a penalty not exceeding forty shillings, or in the discretion of the Justices before whom he is convicted to imprisonment for any term not exceeding fourteen days (that is to say) . . . . every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron or other materials, except building materials so enclosed as to prevent mischief to passengers."

At the hearing of the summons it was admitted that the defendant did lay down iron on a spot claimed by the commissioners as a public footpath, but the defendant denied that the spot in question was a public footpath, and asserted that it was his private property, and also contended that the alleged offence was not committed in a street. Evidence was given on behalf of the commissioners that the defendant had paid to the commissioners, in part voluntarily and in part under the award of arbitrators, the costs of flagging the spot in question. No objection was taken by the defendant or his solicitor to the jurisdiction of the Justices, but, after hearing the evidence, the Justices dismissed the case, stating that under the advice of their clerk they decided that a question of title was involved and their jurisdiction was ousted.

E. Ridley, for the respondent White.—The decision of the Justices was right. White claimed this land as his own private property without any right of way over it. The question was a question of boundaries, which is a matter of title outside the jurisdiction of Justices. It may be put also as a question of dedication: has this spot been dedicated to the public as a street? *Williams* v. *Adams* (1) is distinguishable. The defendant in that case did not claim the spot in question as his land free from any rights, but contended that the right of way was a private right and not a highway.

H. Sutton, for the Justices.

W. A. Meek, for the commissioners.

DENMAN, J.—In this case a proceeding took place before Justices to convict the respondent White of obstructing a street. If guilty, he was liable to be convicted under a local Act. At the hearing no objection was taken by the defendant to the jurisdiction, but, after hearing evidence, the Justices dismissed the case as raising a

(1) 2 B. & S. 312; 31 Law J. Rep. M.C. 109.

question of title. Whether White owned the land on which the obstruction was placed was a matter which was to a considerable extent investigated. It may be that a strong case was made out that White had used the spot as his own land. The question now is, not whether that was so, but whether the Justices were entitled to decline to adjudge the matter, on the ground that it was a question of title upon which there can be no summary adjudication. The statute, however, called on the Justices to decide whether the place was a street. That may depend on acts done on this spot, or whether this particular place was parcel or no parcel within the terms of a deed. But was it a case in which title came into question so as to oust the jurisdiction? In my opinion the case of *Williams* v. *Adams* (1) decides the matter. In that case the charge was of obstructing a highway, and the defendant set up that there was no highway at the place in question, but a private way. The Court, however, held that, because the statute required the Justices to say whether there was a highway, they could not decline jurisdiction. The present case is identical in principle. The only difference is that in the one case there is a highway, and a street in the other. The Justices may decide whether there was a street at the place in question, although in so doing obliged to consider whether the land was White's. Title is not really in dispute, because the land may be White's although it is also a street.

FIELD, J.—I am of the same opinion. As a general rule, anything done under a *bona fide* claim of right is not criminal, but the Legislature protects the public against various things which may or may not be the subject of an indictment. The present proceeding was under a statute of that class. The summons charges that the place is a street, and that the defendant has placed an obstruction upon it. The question is, whether the spot is part of a street. The statute says that is to be decided under Jervis's Act. The Justices say they will not decide it because a *bona fide* claim of title is involved. That is not the question to be settled when the issue is simply whether this spot is part of a street, whatever might be the case if there was any claim made by a third person. It may be that the Justices will have to go into the question of title incidentally, but that is required by the duty imposed on them by the statute. I think this case is within the case cited of *Williams* v. *Adams* (1).

HAWKINS, J.—I am of the same opinion, although I was much struck with the argument addressed to us. The section says that any person guilty of placing obstructions in a street shall be liable to conviction. The Legislature has said that the Justices shall decide this question. It is said that they cannot, because a question to the title to land is involved. But they will have only to decide, is this a street? not, what is the title of White? Their decision will not in the least degree determine the question of title. If the street should afterwards cease to be a street, White would not be precluded from pressing his rights. I think that the case is precluded by *Williams* v. *Adams* (1).

Rule absolute (2).

Solicitors—Crowdy, Son & Tarry, agents for W. W. & T. P. Brunton, West Hartlepool, for Commissioners; Shum, Crossman & Co., agents for R. Bell & Son, West Hartlepool, for White; Williamson, Hill & Co., agents for T. Belk, West Hartlepool, for the Justices.

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(2) On the same day the case of *The Queen* v. *Smith* (*Justice*) *and Pritchard* was heard on a rule to shew cause why the Justices of Middlesex should not proceed to determine a summons for playing cricket on Hampstead Heath, on a spot forbidden by the by-laws of the Metropolitan Board, made under section 21 of 34 & 35 Vict. c. lxxvii., which allows by-laws to be made for "the regulation of sports and games played on the Heath." It appeared that the person charged claimed a right in the inhabitants of the parish of St. John, Hampstead, from time immemorial to play cricket on the spot in question, and the Justices declined to proceed. The Court, however, held that the case was within the principle of *The Queen* v. *Young* just decided, and made the rule absolute for the Justices to hear the case, with an intimation that the question whether the right was taken away by the statute was proper to be raised on a Special Case.

[IN THE HOUSE OF LORDS.]

1882. } MEWS AND ANOTHER *v.*
Dec. 6, 7, 13. } THE QUEEN.

Maintenance of Prisoners becoming Insane—3 & 4 *Vict. c.* 54—27 & 28 *Vict. c.* 29—*Prisons Act*, 1877 (40 & 41 *Vict. c.* 21), *ss.* 4 *and* 57.

A criminal, who becomes insane during the currency of a sentence of imprisonment and is removed to a lunatic asylum, is a "prisoner," and his maintenance in the asylum is "maintenance of a prisoner," within the meaning of the Prisons Act, 1877.

Consequently where the expenses of the maintenance of such a prisoner (being a pauper without settlement) were, under 3 & 4 *Vict. c.* 54 *and* 27 & 28 *Vict. c.* 29, *payable by the treasurer of the county in which she was confined*,—

Held, *upon the authority of* Mullins *v.* The Treasurer of Surrey (51 Law J. Rep. Q.B. 145; Law Rep. 7 App. Cas. 1), *that such expenses are, under the Prisons Act*, 1877, *to be defrayed out of money provided by Parliament.*

This was an appeal from a decision of the Court of Appeal, which affirmed one of the Queen's Bench Division. The case is reported in the Courts below 48 Law J. Rep. M.C. 188; 50 ibid. 4; Law Rep. 6 Q.B. D. 47.

The facts are stated in the judgment of Lord Blackburn.

The Solicitor-General (*Sir F. Herschell, Q.C.*) and *E. Baggallay*, for the appellants.

The Attorney-General (*Sir H. James, Q.C.*) and *Poland* (*A. L. Smith* with them), for the respondent.

Cur. adv. vult.

LORD BLACKBURN.—A rule was obtained for a *mandamus* to the appellants, two Justices of the county of Surrey, commanding them to proceed to hear and determine, pursuant to the statutes in that behalf, the matter of an application for an order on the treasurer of the county of Surrey for the maintenance of Mary Bray, a lunatic confined in the Surrey Lunatic Asylum.

Mary Bray was convicted of felony in 1879, and was sentenced to imprisonment in the House of Correction at Wandsworth in the county of Surrey. Whilst undergoing her sentence she became insane, and was, by order of the Secretary of State, made under the provisions of 27 & 28 Vict. c. 29, amending 3 & 4 Vict. c. 54, removed from the prison to the County Lunatic Asylum.

Mary Bray had no settlement in England, and no property applicable to her maintenance. The provision in the 2nd section of 3 & 4 Vict. c. 54, is that in such a case two Justices shall make an order "upon the treasurer of the county, borough or place where such person shall have been imprisoned," to pay "all reasonable charges for enquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two Justices shall by writing under their hands from time to time direct for his or her maintenance in such asylum or receptacle in which he or she shall be confined."

The appellants did not dispute that they were bound to make the order, unless the Prisons Act, 1877, made a difference. They maintained that by that Act those expenses were to be defrayed out of moneys to be provided by Parliament. And if they were right in this contention it necessarily followed that they were no longer to make an order on the treasurer of the county to pay those expenses, that portion of the Act of 3 & 4 Vict. being abrogated by subsequent inconsistent legislation, though the Act was not repealed.

The answer to the question thus raised depends on the construction of a very ill-penned Act (40 & 41 Vict. c. 21), and chiefly upon that of two sections, the 4th and 57th.

The Queen's Bench Division made the rule absolute, and the Court of Appeal affirmed their decision on the 8th of November, 1880, giving a very short judgment. Shortly afterwards, on the 8th of December, 1880, the case of *Mullins* v. *The Treasurer of Surrey* (1) came before

(1) 49 Law J. Rep. Q.B. 257; Law Rep. 5 Q.B. D. 170; 50 Law J. Rep. Q.B. 181; Law

the Court of Appeal, and in that case an elaborate judgment was pronounced as to the construction of the Prisons Act, 1877, with reference to expenses of a different kind, which, it was held, were no longer to be borne by the treasurer of the county, and that was affirmed in this House. The Court of Appeal had no power to overrule the decision in *Mews* v. *The Queen*, and as two of the members of the Court were the same, I think they cannot have forgotten their former decision, and must have thought that the two decisions could well stand together, but they do not explain how the cases were different. In this House, *Mews* v. *The Queen* was not cited or considered at all.

Now when the question comes to be decided, I think (not certainly without great doubt and difficulty, but with as much certainty as can ever be felt in construing such draughtsmanship as that in 40 & 41 Vict. c. 21) that the meaning of the enactments is what the appellants contend for, and consequently that the rule should have been discharged, and therefore that this appeal must be allowed.

I think that the decision in *Mullins* v. *The Treasurer of Surrey* (1) decides that, notwithstanding the very awkward way in which the word "therein" is inserted in section 4, the enactment is not confined to the maintenance of prisoners whilst actually in the prison; and, further, that when it is established that the expenses are such as fall within the description of maintenance of a prisoner as defined in section 57, they are brought within the phrase "as would if this Act had not been passed have been payable by a prison authority," if they were such as would have been payable by the treasurer of the place to which the prison belonged, and for which the prison authority acted. And consequently, if the expenses now in question are within the definition of "maintenance of a prisoner," they were formerly payable by the prison authority.

The question, therefore, is, as it seems to me, reduced to this: whether the lunatic still detained under her sentence, and not entitled to her discharge though she becomes sane, but relieved from suffering punishment while she is insane, is, within the meaning of section 57, a "prisoner" in "custody" and in a "place of confinement." I do not doubt that in the ordinary sense of the words all these things are true of her case. This is fortified by the language of 27 & 28 Vict. s. 21, where such a lunatic is spoken of as being in custody; but I put no more stress on this than as shewing that such is the natural language to use in such a case.

I therefore move that this appeal be allowed, and that the order appealed against, affirming the order of the Queen's Bench Division, that a writ of *mandamus* should issue and the order of the Queen's Bench Division be reversed, and that the rule obtained for the issue of that writ, be discharged, and that the respondent do pay the costs of this appeal and the costs in the Courts below.

LORD WATSON.—I need not recapitulate the facts of this case, seeing that they are not in dispute, and have already been stated by one of your Lordships. They give rise to a question of considerable nicety touching the construction of sections 4 and 57 of the Prisons Act, 1877.

Before the passing of that Act the cost of enquiring into the insanity of a person undergoing sentence in a county prison, and of conveying her thence to the County Lunatic Asylum, and of maintaining her there during the currency of her sentence in terms of the Acts 3 & 4 Vict. c. 54 and 27 & 28 Vict. c. 29, were, in all cases where the prisoner had no available means and no known settlement, payable by the treasurer of the county. The statutory liability thus imposed upon the county treasurer, which ultimately rested upon the Justices of the peace for the county in Quarter Sessions, has, the appellants contend, been transferred to the Public Exchequer by the 4th and 57th sections of the recent Prisons Act. In order to make good their contention, the appellants must satisfy your Lordships not only that the costs in question are expenses incurred in the maintenance of a prisoner, within the meaning of these two clauses, but also that, before the Prisons Act became law, they were payable by the prison authority.

(1) Rep. 6 Q.B. D. 156; 51 Law J. Rep. Q.B. 145; Law Rep. 7 App. Cas. 1.

Mews v. *The Queen, H.L.*

The judgment of this House in *Mullins* v. *The Treasurer of the County of Surrey* (1), though by no means decisive of the present case, aids so far the argument of the appellants. According to my understanding, it determined these two points—first, that the word "committal" in section 57 signifies the act of the magistrate who issues the warrant of committal, and not the act of the officer who executes it, by delivering the person therein named into the custody of the gaoler; and secondly, that the expression "prison authority," occurring in the same section, does not mean a "prison authority" acting in execution of the Prisons Act of 1865, but a prison authority as defined in the interpretation clause of that Act, or, in other words, the Justices in Quarter Sessions assembled. It humbly appears to me that each of the points so decided by this House has a material bearing upon the general construction of these clauses. From the first of them it necessarily follows, in my opinion, that section 57 is definitive of, and will therefore overrule the language used in section 4; and, consequently, that the Treasury may have to bear the expense of maintaining a person who is a "prisoner," according to a reasonable construction of section 57, but who is not a "prisoner therein" (that is, in the prison), within the meaning of section 4. And I think it is the necessary consequence of the second that the Treasury must bear all expenses for which the Justices in Quarter Sessions were previously liable, provided that such expenses are incurred in maintaining, within the meaning of section 57, a person who is a "prisoner" within the meaning of that section.

In that view the controversy between the parties is narrowed, by the judgment in the case of Mullins, to the question, was Mary Bray, at the time when her insanity was made the subject of enquiry within the prison at Wandsworth, or whilst she was being removed to the County Lunatic Asylum, or during her detention there, a "prisoner" within the meaning of section 57?

I see no reason to doubt that Mary Bray, being actually in confinement within the walls of the prison at the time when her mental condition was enquired into, was a prisoner for whose maintenance the Treasury, and not the old prison authority, was liable; and I am inclined to think that such an enquiry is as much a part of the maintenance of the prisoner as calling in a physician to prescribe for her bodily ailments. I am also disposed to hold that, apart from all other considerations, the Treasury would be liable for the cost of carrying her to the Lunatic Asylum, because she remained a prisoner in the custody of the new prison authority until she was placed by the prison officials in charge of the manager of the asylum. But the substantial controversy between the parties relates to the position of Mary Bray after she became an inmate of the asylum. It is argued for the respondent that she thereupon ceased to be a prisoner in any sense whatever, and became a mere pauper inmate; whilst the appellants maintain that during the whole period of her sentence she continued to be, notwithstanding her treatment in the asylum, an insane prisoner, but still a prisoner within the meaning of the Act of 1877.

If regard were had solely to the provisions of the Prisons Act, 1877, I confess I should have difficulty in deciding which of these arguments ought to prevail. On the one hand, Mary Bray was not a prisoner in this sense, that she was detained in a place which was not a prison under a legal warrant directing that she should be taken out of prison and treated as a patient in the asylum. On the other hand, she remained a prisoner in this sense, that she was under a sentence of imprisoment still current, and that her residence in the asylum counted as satisfaction of the sentence just as if she had actually been in prison. That might not suffice to bring her as a prisoner within the scope of section 4 if that clause stood alone. But, as I have already had occasion to observe, section 4 is qualified by section 57, which was enacted for the very purpose of explaining what the Legislature meant by the words "maintenance," "prisons" and "prisoners," as used in the other clauses of the Act. I can find nothing in section 57 which throws a direct light upon the condition of a prisoner who has been removed, for the sake of treatment, to a lunatic asylum, but it does describe prisoners to

be maintained by the Treasury, in terms of the Act, as persons liable to "removal from one place of confinement to another"; and these expressions are, in my opinion, of the greatest importance when read in connection with the Acts 3 & 4 Vict. c. 54 and 27 & 28 Vict. c. 29, both of which are statutes professedly dealing with the case of insane prisoners, that is, of persons under sentence who become insane during their incarceration.

The first of these Acts, which not only makes provision for the removal to an asylum of prisoners who become insane, but imposes upon the county treasurer the cost of enquiry as to the mental state of prisoners in the position of Mary Bray, as well as of their removal to the asylum and maintenance therein, expressly declares (section 2) that the insane person when removed under a proper warrant "shall remain under confinement in such county asylum." The Act of 27 & 28 Vict. leaves untouched the liabilities for expenses of enquiry, removal and maintenance created by the previous statute, but alters the procedure necessary with a view to the removal of insane prisoners. The 2nd section, after providing a new method of procedure, enacts and declares that, "every person so removed under this Act, or already removed and in custody under any former Act relating to insane prisoners not under civil process, shall remain in confinement in such asylum." These enactments, to my mind, make it clear to demonstration that the Legislature in making provision for the curative treatment of insane prisoners did not contemplate that they should cease to be prisoners when removed to an asylum, but, on the contrary, did contemplate and intend that they should still be regarded as prisoners in custody, and that in a proper place of confinement.

Turning again to the Prisons Act of 1877, I feel bound to assume that the framers of that statute had in view, not only the possibility that prisoners might become insane under the new *régime*, as they had done under the old, but also the fact that statutory provisions had already been made for such persons in terms plainly implying that they were still to remain prisoners, notwithstanding their removal from the prison to the asylum. And it appears to me upon that assumption that an insane person under sentence of imprisonment, so long as she remains in custody in that which the law recognises as a proper place of confinement, is a prisoner in the sense in which that word is used in section 57 of the Prisons Act. I therefore agree with your Lordships in thinking that the judgment appealed against ought to be reversed.

I have only to add that I have had the less hesitation in differing from the very learned Judges who constituted the Court of Appeal, because I am satisfied that the arguments addressed to that Court in support of the appellant's case were not the same as those which have been so ably pressed by counsel at the bar of this House. Lord Justice Brett says that the appellant's argument when seen through was to the effect that the 2nd section of 3 & 4 Vict. c. 54, "was part of a code which has been repealed by the Act of 1877"; and I do not infer from the opinions of the two noble and learned Lords who aided in the decision of the case that they had in view the points submitted for your Lordships' consideration. Had no other argument than that been submitted on behalf of the appellants I should have been prepared to reject it. The Act of 1877 does not either expressly or by implication repeal the code established by the Insane Prisoners Acts; it merely varies that code by substituting in a certain case the liability of the Treasury for that of the old prison authority.

Lord Bramwell.—If I thought that the consideration on which I have founded my opinion in this case had been present to the minds of those whose judgment is appealed from, I should entertain the greatest doubt as to the soundness of that opinion. As it is I am, with great hope that I am right, compelled to say that I cannot agree with that judgment.

I advise your Lordships to allow this appeal.

One would think that, when the local prisons were taken from the prison authorities, they would be relieved of their expense. No doubt it might have been otherwise provided; but one would certainly suppose that, if the bulk of those expenses was undertaken by the State, the whole

would be; and I am at a loss to see why the expense of a criminal pauper lunatic, and no other, should continue to be borne by the prison authorities. It seems to me that the Legislature has enacted what, as I say, I should expect, because it seems to me that the words in section 57 "or otherwise" are not to be read in connection with "place of confinement," but generally with the whole sentence, thus, expenses "of food, &c., or otherwise."

I think so as a mere matter of construction, but I think so also because otherwise many expenses, which doubtless are to be borne by funds to be provided by Parliament, are not provided for—the doctor and medicines, burial, the chaplain, materials for prisoners to work on, tools, &c. If so, there seems no difficulty in saying that the expenses now in question are within the enactment, because it is clear by the interpretation clause, and has been decided by this House, that "prisoner" does not exclusively mean a person who at the time spoken of is in prison, but it means a prisoner as interpreted—namely, a person who has been committed, &c. I should come to the same conclusion if the words "or otherwise" were limited to a "place of confinement," for, as I have said, this lunatic is a "prisoner," as interpreted. Then, as to the first item—namely, the expense of the enquiry as to the prisoner's sanity—I think the argument of the Solicitor-General irresistible—namely, that as if the prisoner is not found a lunatic, the expense of the enquiry must be borne by the Consolidated Fund, it cannot have been intended otherwise when the prisoner is so found. Then the conveyance is clearly to a place of confinement, "or otherwise," if those words are so limited, and the food is undoubtedly within section 57.

What is the objection to this? It is said that it would be piecemeal legislation. Now, to my mind, that is precisely what it is not; on the contrary, the construction of the Crown makes piecemeal legislation. On the construction I submit, the Legislature has dealt with all expenses to which the prison authority as such is liable. It has not dealt with all cases of lunatics, nor with all county expenses, because the subject-matter of the legislation was not lunatics generally, nor county expenses, but prisons.

But then some objection is taken, which I honestly confess I do not understand, to the effect that there will be no machinery for getting these expenses from the estate of the lunatic or his parish, and that a petition of right against the Crown will be necessary to get the expenses which may be incurred. I cannot see that the machinery which existed before will not continue. If not, so much the worse for the Consolidated Fund. It is not a reason for misconstruing the Act.

As to the petition of right objection, it is not practical. The Secretary of State will do his duty or will have to pay ready money. Moreover, your Lordships have already disregarded this objection.

As to the judgments delivered in the Courts below, I think it right to make some respectful comments. It is said that this is not strictly an expense paid by the Justices as a prison authority, because it is an expense not incurred in the prison or by persons who are being treated in prisons. But, with submission, if I am right in my application of the interpretation clause as to a prisoner, the statute is not limited to expenses incurred in a prison. It is said that the Act of 1877 is not inconsistent with the prior Act, and that it is still in force; but, with submission, this is to beg the question. If it provides for a new mode of paying this expense, it abrogates the former on the well-known principle. To say that the statute deals with the whole question of prisons and prisoners, leaving the criminal lunatics aside, is really to say that it does not deal with the whole question of prisoners, as it omits to deal with lunatic prisoners. With great respect I think it is unreasonable to read the statute of 1877 as applicable only to the case of prisoners who remain sane. Its language is comprehensive enough to include all prisoners, and, if I am right, the reason of the thing is that it should do so. In the Queen's Bench Division the decision proceeded mainly on the ground that the lunatic was not a prisoner. On this I have already expressed my opinion. I advise your Lordships to allow this appeal.

Mews v. *The Queen*, *H.L.*

LORD FITZGERALD.—I concur in the opinion that the decision of the Court of Appeal should be reversed, and that the rule absolute for a *mandamus* should be discharged. I have come to that conclusion with great diffidence, having regard to the very high authority of the tribunal from whose decision this appeal immediately comes.

It is not my intention to deal with the expenses of the enquiry as to the insanity of Mary Bray, or the cost of her conveyance from the county prison to the lunatic asylum. I confine myself to the real question between the parties, as to the cost of her maintenance in the asylum during the currency of the two sentences of imprisonment passed upon her.

There can be no doubt that as she had no settlement and no property, the cost of her maintenance would have been payable out of the county rates, under the provisions contained in section 2 of 3 & 4 Vict. c. 54, if it had not been for the Prisons Act of 1877.

The question is, whether the effect of the later statute has been to vary the former to the extent of making the cost of such maintenance ultimately payable out of money provided by Parliament in place of the County Fund.

The expressed policy and object of the Prisons Act of 1877 was to take from the existing prison authorities and the Justices at sessions all powers and jurisdiction, whether at common law or by statute or charter vested in them, as to prisons and prisoners, and to transfer such powers and jurisdiction, together with the prisons and their management, and the control and safe custody of the prisoners, to Her Majesty's principal Secretary of State, aided by the commissioners and officers to be appointed in manner provided by the Act; on the other hand the county is relieved from the obligation to maintain a prison and to provide prison accommodation, and the maintenance of prisons and prisoners is placed on the public funds in exoneration of the county rates.

But though such were the general objects of the Legislature, what we have to consider and determine is whether the expenses of maintaining insane prisoners in lunatic asylums under such a state of facts as the present case discloses is provided for by section 4 of the Act as amplified and defined by the 57th section.

If the case stood on section 4 alone, that section would be subject to all the observations of the Judges in the Queen's Bench Division and in the Court of Appeal; but it seems that attention was not sufficiently directed to section 57.

One principal question then arises on section 4 as interpreted by section 57, namely, whether Mary Bray, when detained in the lunatic asylum, and before the expiration of her sentence, continued to be a prisoner within the meaning of section 4.

Upon the fullest consideration I have come to the conclusion that she was such a prisoner, notwithstanding the difficulty created by the word "therein" in section 4.

Before her removal to the asylum she was a prisoner in the county prison undergoing sentence, and the statutes under which she was removed declare that the person so removed "shall remain under confinement in such county asylum" until it shall be certified that such person has become sane, "and thereupon if such person shall still remain subject to be continued in custody" (3 & 4 Vict. c. 54. s. 1, and 27 & 28 Vict. c. 29. s. 2) "such person shall be removed back to the prison or other place of confinement from whence he or she shall have been taken, or if the period of imprisonment of such person shall have expired, he or she shall be discharged."

A prisoner is but a captive detained in some place of confinement for some one of the objects mentioned in the statute, and that was the position of Mary Bray whilst in the lunatic asylum during the currency of her sentence, and she was not the less a prisoner, though not subject there to any punitive treatment, save detention in custody. Being so a prisoner her maintenance in that place of confinement would have been payable by the prison authority but for the passing of the Prisons Act, 1877, and I am of opinion that by the operation of that Act such maintenance is now payable out of moneys provided by Parliament. There seems to have been in the decision of the

Court below too strict an adherence to the letter of section 4, without regarding the object to be attained and the subject-matter as explained by section 57.

I desire to say that I have not formed my opinion on this question of liability to the maintenance of this insane prisoner on *Mullins's Case* (1), or on any rule or principle supposed to be deduced from it, and I have to add that the present decision of your Lordships' House seems to me to leave untouched another question which may arise, and possibly has arisen in Mary Bray's case—namely, the liability to her maintenance in the lunatic asylum after the period of imprisonment to which she was sentenced had expired, and when it may be contended that she ceased to be a prisoner and was relegated to the class of pauper lunatics.

Order of the Court of Appeal and Order of the Queen's Bench Division reversed with a direction; the respondent to pay to the appellants the costs of the appeal to this House, and the costs in the Court below.

Solicitors—F. F. Smallpeice, for appellants; Hare & Fell, agents for the Solicitor to the Treasury, for the Crown.

1883. April 16. } BRIGGS (*appellant*) *v.* SWANWICK (*respondent*).

Fish—Preservation of Freshwater Fish—36 & 37 Vict. c. 71. s. 15—Placing a Device to catch Fish descending Stream—Ancient Weir constructed with Trap.

Section 15 of the Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), enacts that, "no person shall between the 1st of January and the 24th of June place in any inland water any device whatsoever to catch or obstruct any fish descending the stream." A mill weir, constructed in 1838, had attached to it as part of its permanent structure a grating, which when the weir shuttles were raised allowed the water to flow through, but stopped the passage of the fish and forced them into a well at the side whence they could not get out.

The lessee of the mill and weir being grantee of a power to trap eels, on the 2nd of June, 1882, raised the shuttles, and so caused several eels and other fish to pass into the well.

On an information against him for placing a device to catch fish descending the stream, he was convicted:—

Held, *on case stated on appeal, that it was immaterial whether the trap was an old and permanent or new and temporary structure, and that as by raising the shuttles he had set the trap, he was properly convicted of placing a device to catch fish within the meaning of the section.*

This was a Case stated by two magistrates for the county of Stafford under 20 & 21 Vict. c. 43, who had convicted the appellant, on the hearing of an information against him under section 15 of 36 & 37 Vict. c. 71, for that he on the 2nd of June, 1882, did unlawfully place in certain inland water, called the river Tame, a certain device, to wit an eel-trap, to catch fish descending the stream.

It was proved that the appellant was lessee of Alder Mills for a term of twenty-one years from 1872 from Sir Robert Peel, there being two weirs on the water which worked the mill, at one of which was fixed the eel-trap in question, built in the year 1838. The lease contained the grant of a power to trap eels, and was a demise to the appellant of the eel-trap, which he had no right to remove.

The trap was constructed in the following manner: At the lower side of the weir was fixed an iron grating sloping upwards, with bars half an inch apart, so that when the shuttles of the weir were raised the water rushing under them would pass through the grating but sweep any fish into a trough, which carried them down into a well or trap whence they could not escape.

On the 2nd of June three of the shuttles were up, the water was rushing through the grating, and there were eels in the well. Twelve months before, the appellant had been directed by the agent of the landlord to keep all the weir gates open, but on the day in question no water was pass-

ing over the main weir, which was at some distance from the weir containing the trap. The appellant alone worked the trap, and claimed the right to do so as he pleased.

The contentions of the appellant were—first, that he did not place the device, it having been erected long before the passing of the Act; and, secondly, that the Act was not intended to apply to a permanent structure in existence at the passing of the Act, but to devices of a temporary and movable nature placed after the Act in inland waters.

Dugdale, Q.C., for the appellant.—It was proved that this is not a salmon river, and therefore this conviction, if it can be supported at all, must be brought under the words in the latter part of section 15. The words "shall place" must, it is submitted, mean the erection of some trap or device since the passing of the Act. It is, however, found in the Case that this is a permanent structure. The Act was directed against the putting up of temporary eel-traps during the close season, but not to interfere with existing weirs. This trap was already placed; the appellant did nothing in the way of placing it.

[FIELD, J.—He did something; he raised the shuttle.]

Willis Bund, for the respondent, was not heard.

FIELD, J.—I think the Justices have taken a sensible view of this case. The clear object of the Act was to prevent the placing on inland waters of any device to obstruct the passage of any fish descending the stream during the close time. There is some force in the argument of Mr. Dugdale, pointing out that the primary application of the provision looks more like the protection of salmon and such like migratory fish, but the words are so very clear that the case cannot be disposed of by any such consideration. No doubt the words "any inland water" and "any fish" were put in on purpose, and what we have to see is what is the offence of placing any device to catch or obstruct fish.

The facts here are that, at a time when it was perfectly lawful, Sir Robert Peel had this weir built, with a very good device for catching fish attached to it: water can flow through it, but every thing bigger than half an inch is stopped by the iron fender, and fish once carried over it cannot return. A more complete trap was never heard of. Whether the trap was permanent or temporary is immaterial in my opinion: the only question then is whether this man placed it within the meaning of the Act? The words are comprehensive enough—"placed any device." I think that the appellant did place the device, because in its normal condition, if I may use the expression, the thing is not a trap, but so soon as the shuttle is raised, the trap is set. He raised the shuttle and so brought the device into force.

MATHEW, J.—I am of the same opinion. This was plainly a device for catching fish. Placing a device is not popular language perhaps, but it is equivalent to and might well be expressed as setting a trap. There was no trap set until the gate or shuttle was raised, but when the appellant raised it he set the trap. He therefore, in my opinion, placed the device within the meaning of the Act, and the Justices were right in convicting him.

Conviction affirmed.

Solicitors—F. J. & G. J. Braikenridge, agents for Nevill & Atkins, Tamworth, for appellant; A. R. & H. Steele, agents for Eddowes, Derby, for respondent.

1883. March 12. } THE AMESBURY UNION *v.* THE WILTS JUSTICES.

Highways—Highways and Locomotives Act, 1878 (41 & 42 *Vict. c.* 77), *s.* 13—*Contribution by County for Main Roads—"Maintenance"—Removal of Snow.*

The expense of removing snow necessarily incurred to render main roads fit for traffic is an "expense incurred in the maintenance of such roads" within section 13 *of the Highways and Locomotives Act*, 1878, *and the county authority is liable to contribute half such expense.*

Special Case stated by consent, under Order XXXIV. rule 1, in an action brought

against the defendants, as the county authority for the county of Wilts, to recover half the sum of 150*l.* 8*s.* 9*d.*, part of a sum expended by the plaintiffs, as the highway authority for the highway district of Amesbury in that county, and duly audited by the Local Government Board district auditor.

In or about the month of January, 1881, the parts of the main roads situate within the jurisdiction of the plaintiffs were, in common with most of the highways in the county of Wilts, rendered impassable by a severe fall of snow. The plaintiffs immediately took measures to remove the snow and reopen the roads for traffic. The expenses incurred on the removal of the snow amounted to 150*l.* 8*s.* 9*d.*, which was admitted to have been necessarily incurred in such a removal of snow as was required to render the roads fit for traffic.

By section 13 of the Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), it is provided as follows:—

"For the purpose of this Act and subject to its provisions, any road which has, within the period between the 31st day of December, 1870, and the date of the passing of this Act, ceased to be a turnpike road, and any road which being at the time of the passing of this Act a turnpike road may afterwards cease to be such, shall be deemed to be a main road, and one-half of the expenses incurred from and after the 29th day of September, 1878, by the highway authority in the maintenance of such road shall, as to any part thereof which is within the limits of a highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate, out of the county rate."

Charles, Q.C. (*G. A. R. Fitzgerald* with him), for the plaintiffs.—The expenses incurred in removing snow are expenses incurred in the maintenance of the road within section 13 of the Highways and Locomotives Act, 1878. "Maintenance" does not refer merely to the structure of the road. The removal of a bank which had slipped, or a large rock, would be maintenance of a road, if it were necessary to keep the road as a road.

The Solicitor-General (*Sir F. Herschell, Q.C.*) (*Ravenhill* with him).—The section includes only the removal of a permanent obstruction, not a temporary obstruction, which in time removes itself. The right of the highway authority to repair is co-extensive with the liability of the parish to be indicted. The parish could not be indicted for a mere fall of snow. Snow is specially provided for in the Highway Acts; for example, section 26 of the Highway Act, 1835 (5 & 6 Will. 4. c. 50). The case of *The Queen* v. *Greenhow* (1) was referred to.

Charles in reply.

CAVE, J.—I am of opinion that the plaintiffs are entitled to succeed in this action. The case of *The Queen* v. *Greenhow* (1) decides that where a road is made impassable through a landslip, it is, until restored, out of repair, so that the parish is liable to restore it. Absence of restoring makes the road out of repair, and restoring is a repair. In that case the obstruction was permanent, and in this case it is temporary; but I am not satisfied with the distinction attempted to be drawn from these facts. In either case the road is impassable. The public has a right to use the road, and the authorities are bound to place it in repair—not on a light occasion, but when necessary. In this case it is admitted that the removal of the snow was necessary, and the case falls within *The Queen* v. *Greenhow* (1).

DAY, J.—I am of the same opinion.

Solicitors—Taylor, Hoare, Taylor & Box, agents for Wilson & Sons, Salisbury, for plaintiffs; Merriman, Pike & Merriman, agents for R. W. Merriman, Marlborough, for defendants.

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(1) 45 Law J. Rep. M.C. 141; Law Rep. 1 Q.B. D. 703.

[IN THE COURT OF APPEAL.]

1883. March 15. MARTIN *v.* THE ASSESSMENT COMMITTEE OF THE WEST DERBY UNION.*

*Poor—Rate—Rateability of House occupied by Superintendent of Police—House Quarter of a Mile distant from Police Station—*43 *Eliz. c.* 2. *s.* 1.

The appellant, a superintendent of police, occupied with his wife and family a house which was a quarter of a mile distant from the police station, and which was hired by the county authorities. The rent was paid out of the police rate, and was then deducted from the salary of the appellant, who, so long as the authorities rented the house, was compelled to live there. The house was liable to be used for such purposes connected with the police as the chief constable might direct, but no part of the house was specially set apart for that purpose. The house had been furnished by the appellant, who was liable to be removed from it at any time, and from one police division to another:—Held, *that the occupation of the appellant was a beneficial occupation in respect of which he was liable to be rated to the poor rate, and that the house was not Crown property, or property which was to be treated as Crown property, within the established exemption from rateability.*

Gambier *v.* The Overseers of Lydford (23 Law J. Rep. M.C. 69) *followed and approved.*

Appeal from a judgment of the Queen's Bench Division upon a Special Case stated under 12 & 13 Vict. c. 45. s. 11.

The appellant, who was the superintendent of police for the West Derby Division, in the county of Lancaster, had been assessed to the poor rate, in respect of a house and premises in which he resided.

The county constabulary force of Lancashire is established under 2 & 3 Vict. c. 93. The county is divided into police districts or divisions, of which the West Derby Division is one.

Station-houses, strong-rooms, and other buildings and accommodation requisite for the use of the force, were built or provided under 3 & 4 Vict. c. 88.

The police force, including all police stations, is annually inspected by one of Her Majesty's inspectors, appointed under 19 & 20 Vict. c. 69, and, if his report is satisfactory, a grant is made by the Lords of the Treasury, amounting to one-half of the expense of the pay and clothing of the force in aid of the police rates. Her Majesty's inspectors have in some cases examined into and reported as to the fitness of houses taken as residences for police officers in the same way as the house has been taken for the appellant as hereinafter mentioned.

In 1863 the police divisions of Lancashire were remodelled, and a superintendent was transferred from Bootle police station, where there were quarters in which a superintendent resided, to Old Swan police station, where there were not then, nor are there now, quarters in which a superintendent can reside.

The Justices in petty sessions have since 1863, from time to time, authorised the chief constable of the county to hire a house for the superintendent in charge of the division.

On the 24th of March, 1880, the county authorities took the house upon a verbal agreement for a yearly tenancy, at an annual rent of 50*l.*, which was paid out of the police rates of the West Derby Division; and the amount was then deducted from the salary of the police officer for whom the quarters were provided as a residence.

The house was liable to be used for such purposes connected with the police force as the chief constable might direct. The appellant occasionally did police business in the house, but no room was specially set apart for any purpose other than for the use of the appellant and his family. Blinds, gas and other fittings in the house were provided by the county, which also found gas and coals, but the appellant furnished the house.

The police station was distant a quarter of a mile from the house. It was necessary that the appellant should reside within a convenient distance from the police station for the due performance of his official duties. So long as the county

* *Coram* Lord Coleridge, C.J.; Brett, L.J., and Bowen, L.J.

authorities rented a house for the residence of the appellant, he was compelled to live in that house, and was liable to be removed at any time from the house and premises, and from one police division to another.

The question for the opinion of the Court was, Whether the appellant was liable to be rated in respect of the house and premises.

The Queen's Bench Division (Field, J., and Cave, J.), upon the authority of *Gambier* v. *The Overseers of Lydford* (1), affirmed the rate.

The superintendent appealed.

Gorst, Q.C., and *H. Hulton*, for the appellant.—The premises are not rateable. The appellant was a servant; he was required to live upon the premises, and could be removed at will; moreover, there was no excess of accommodation. The case is governed by *Bent* v. *Roberts* (2), where the tenement was created by Government to be used, and in fact was used, for public purposes. So here the premises, although distant a quarter of a mile from the police station, form part of the police station. The definition of an occupier under the Income Tax Acts is wider than under the Poor Law Statutes; for a man may be an occupier for the purposes of the former Acts who would not be an occupier under the latter—16 & 17 Vict. c. 34; 5 & 6 Vict. c. 35. s. 63, No. 9, rule 2. In *The Queen* v. *St. Martin's, Leicester* (3), the premises, although not in the castle, but detached, were held to be exempt. No doubt the mere fact of the premises being Crown property would not exempt them; but it would be otherwise if they were also used for Crown or public purposes, as in the present case. The only difference between the case of *The Queen* v. *St. Martin's, Leicester* (3), and this case is that there the premises were built, whereas here they have been hired under 3 & 4 Vict. c. 88. Buildings used and occupied for police purposes may be said to be used for public purposes in the sense of Government purposes, and so come within the one exception from rateability—namely, as premises occupied for the purposes of the Crown. The question of rateability depends upon the question whether or not the premises were used for Crown or Government purposes. If they are inspected annually and a report made thereon to the Government, the inference to be drawn is that they are used for Government purposes. If so, they come within the exemption. The occupation of the appellant here was not a beneficial occupation, but only that of a servant. The judgment of Campbell, C.J., in *Gambier* v. *The Overseers of Lydford* (1), shews where the line is to be drawn. In order to make the premises rateable under the statute of Elizabeth there must be a tenancy; but there is no tenancy here, as the appellant's occupation is merely that of a servant: he has not got the exclusive use and control of the premises, and, moreover, he is removable at will.

Coomber v. *The Justices of Berks* (4), *The Queen* v. *St. Paul's, Bedford* (5), *The Queen* v. *Shepherd* (6), *The Mersey Docks and Harbour Board* v. *Cameron* (7), *The Justices of Lancashire* v. *Stretford* (8), *The Justices of Lancashire* v. *Cheetham* (9), *Fox* v. *Dalby* (10), *The Queen* v. *Spurrell* (11) and *The London and North Western Railway Company* v. *Buckmaster* (12), were also referred to.

Webster, Q.C., and *Bigham*, for the respondents, were not called upon.

LORD COLERIDGE, C.J.—I am of opinion that this judgment must be affirmed. In order to establish the rateability of any premises there must be first of all an occupation—a rateable occupation. It has

(1) 3 E. & B. 346; 23 Law J. Rep. M.C. 69.
(2) 47 Law J. Rep. Exch. 112; Law Rep. 3 Ex. D. 66.
(3) 36 Law J. Rep. M.C. 99; Law Rep. 2 Q.B. 493,
(4) 52 Law J. Rep. Q.B. 81; Law Rep. 10 Q.B. D. 267.
(5) 21 Law J. Rep. M.C. 228.
(6) 1 Q.B. Rep. 170; 10 Law J. Rep. M.C. 44.
(7) 11 H.L. Cas. 443; 35 Law J. Rep. M.C. 1.
(8) E., B. & E. 225; 27 Law J. Rep. M.C. 209.
(9) 37 Law J. Rep. M.C. 12; Law Rep. 3 Q.B. 14.
(10) 44 Law J. Rep. C.P. 42; Law Rep. 10 C.P. 285, 291.
(11) 35 Law J. Rep. M.C. 74; Law Rep. 1 Q.B. 72.
(12) 44 Law J. Rep. M.C. 180; Law Rep. 10 Q.B. 444.

been held that where the occupation is not an independent occupation, but only a physical occupation, that will not do for rateability. But that exemption cannot be maintained here, because the occupation of the appellant is not that of a mere servant. Such cases as the case of *The London and North Western Railway Company* v. *Buckmaster* (12) are distinguishable; for there may be an occupation which can be put an end to at any moment by a superior power, and an occupation which, during its continuance, is that of a superior person, but it may be none the less an independent occupation, and therefore one which is *prima facie* rateable. In order to make an occupation rateable, it must also be a beneficial occupation. It is not necessary to descant upon the difference between a "beneficial" and a "profitable" occupation. That has been a matter of much judicial discussion; and a beneficial occupation has been held to be an occupation which a man derives some benefit from, and is of a kind which would make the occupier rateable. There the second head of the exemption does not apply. Another ground of exemption is where the occupation, although in a certain sense a beneficial occupation, is nevertheless an occupation either of the Crown or for purposes of the Crown, and there the exemption from rateability has been held to exist upon the plain and intelligible ground put by Lord Cranworth and the other Judges in *The Mersey Docks Case* (7), where it was held that the Crown not being named in the statute of Elizabeth was not bound by it, and that rateability did not attach in the case of property which is in the occupation of the Crown, or which is occupied for purposes of the Crown, even though the occupation is in a certain sense a beneficial occupation. There are many decisions upon this subject, but it would take time and thought to express exactly the determining line which would make them all maintainable and consistent in point of law. Where, however, a plain and intelligible line has been drawn by competent authority, and has been assented to in a variety of cases, it is important to keep within it. It appears to me that the line has been so drawn in the case of *Gambier* v. *The Overseers of Lydford* (1), in which it was decided that where public buildings, such as prisons, or buildings of that description, are all occupied together, and the general occupation of which is not in any individual person, but either in some public body representing the Crown, or in some Secretary of State or other public person who holds the whole building as a Crown building or for the purposes of the Crown, there the persons who occupy will be held to be exempted from being rated. It is, however, to be remembered that the liability to pay poor's rates is not upon property, but upon persons who are rated in respect of their occupation. Then it has been decided that where there are persons who are occupied about the business of some public building, and are connected with it as officers, yet, nevertheless, if they live in houses which are outside of and separated from it, and if they have a separate and beneficial occupation, and one which is not actually the occupation of the Crown or for purposes of the Crown, there the occupation is a rateable one. The case of *Gambier* v. *The Overseers of Lydford* (1), which has been accepted for a number of years, gives a plain and intelligible rule, and ought to be upheld by this Court. The appeal must therefore be dismissed.

BRETT, L.J.—I am of opinion that unless this case can be brought within the exceptions with regard to Crown property, or property which is to be considered as Crown property, the superintendent is such an occupier as is liable to be rated. It was said that his occupation was that of a mere servant, and certain paragraphs in the Special Case were relied upon in support of that statement; but they were, in my opinion, pressed too far. The appellant was in the public employment of his country, and as part of his remuneration he was to have quarters. But he was given peculiar and particular quarters. He was given the use of the whole of the house for the purpose of living there with his wife and family, and he was to furnish it. It was said that the Special Case shewed that he had not the exclusive use of this house, because so long as the authorities rented the house he was compelled to live

there, and was liable to be removed at any time; but the statements amount only to this, that as part of his remuneration he was to have the exclusive use of the house for a residence. It is true that the house, if wanted, could be used for other police purposes; but he was not to be interfered with in his residence, and he might be removed from the house and premises into another. But, as long as the house is his, the occupation is his own exclusive occupation, and he is, unless he comes within the exemption, such an occupier as is liable to be rated in respect of it. Does the property come within any of the exemptions? It is obvious that it is not Crown property; it must therefore be brought within one of the recognised heads of property which is to be treated as Crown property. It has been admitted in many cases, and more particularly in *The Mersey Docks Case* (7), that this exemption is one which is hardly to be reconciled upon principle; but it is to be supported upon authority, which is to be observed now in order to maintain the continuity of rating law.

The various species of property which are exempt have been enumerated. They are public offices, such as offices of Secretaries of State, the Horse Guards, the Post Office and other similar offices. There is a class besides that, as, for instance, police courts, county courts, and buildings used and occupied by Judges at the assizes. But all the Judges' lodgings in England which are county buildings are not exempt from being rated. In many towns the Judges' lodgings are in houses which at any other part of the year are occupied by the persons to whom they belong, and those houses never have been exempted from being rated. It is county buildings occupied by the Judges at the assizes which are exempt. Police stations also have been recognised as exempt; but, inasmuch as all these exemptions depend upon authority, it seems to me that the Court ought not to extend them. The case of *Gambier* v. *The Overseers of Lydford* (1) points out the limit. If the tenement which is in question can be brought within one of the recognised buildings, then will arise the question whether, although it is within one of the recognised buildings, it is used for other purposes so as to be brought within the doctrine that it must be a public building of a particular class, and occupied for public purposes only. Unless it can be brought within that doctrine it is not exempt. The case of *The King* v. *Hurdis* (13) shews that which has been stated throughout all the cases—namely, that the mere fact of a building being occupied by a servant of the Crown does not raise an exemption. The building must be a Crown building. If it is not the property of the Crown, then it must come within one of those recognised classes of buildings which, although not Crown buildings, have been treated as if they were Crown buildings. The case of *Gambier* v. *The Overseers of Lydford* (1) shews that although a gaol or police station is one of the recognised classes of buildings, yet a house which is no part of one of the recognised buildings is not exempt, although it is occupied by a person who is a Crown servant for the purpose of doing his duty. That seems to me to be a plain and workable distinction, one which can be acted upon, and which will keep the law of rating clear. My judgment here proceeds upon this ground—that the present case is not brought within the exemption, as being the case of the occupation of a building which is Crown property, or which is to be treated as Crown property. The case of *Gambier* v. *The Overseers of Lydford* (1) governs the present one, and that decision ought to be supported.

BOWEN, L.J.—I am of the same opinion. The appellant, whether a servant of the Crown or not, does not occupy the premises here as a servant of the Crown. Then comes the question, what is his occupation? and there are two opposite, and what may be called conflicting, principles to be borne in mind. The first is, that where there is a beneficial occupation the premises fall within the statute of Elizabeth, and are rateable. The other principle is, that as the Crown is not mentioned in the statute, lands and premises which are occupied by the Crown, or by a servant of the Crown for purposes of the Crown, are not liable to be rated—*The Mersey Docks*

(13) 3 Term Rep 197.

Case (7). It seems to me that as there there are two conflicting principles, the case of *Gambier* v. *The Overseers of Lydford* (1), which has been acted upon since 1854, ought not to be lightly touched. The Court there did not lay down any fresh legal definition, but merely supplied a canon upon which to act where the case is on the line which divides the two principles. The language of Lord Campbell in that case shews that official residences outside the walls of a prison if occupied beneficially by the officers are rateable. It is of the utmost importance that the Court should not unsettle the view as to the law which was there laid down. I must therefore decide the present case upon the broad and sole ground that it is governed by the case of *Gambier* v. *The Overseers of Lydford* (1). The observation I have to make with regard to the case of *The Queen* v. *St. Martin's, Leicester* (3), is very short—if that case is inconsistent with the case of *Gambier* v. *The Overseers of Lydford* (1), then it was wrongly decided; but if it is not inconsistent, then it does not affect the present case. This appeal therefore fails.

Appeal dismissed.

Solicitors—Ridsdale & Son, agents for Wilson & Hulton, Preston, for appellant; Goldring & Mitchell, agents for Cleaver, Holden & Co., Liverpool, for respondents.

1883. April 24. } FERENS AND ANOTHER (*appellants*) *v.* O'BRIEN (*respondent*).

Larceny—Water in Pipes.

The respondent was charged with stealing water from conduit pipes of the appellants:—Held, *that water in pipes could be the subject of larceny.*

Case stated under 20 & 21 Vict. c. 43, by Justices at petty sessions holden at Lanchester in the county of Durham.

An information was preferred by the appellants against the respondent (Ann O'Brien), charging that she, on the 23rd of November, 1882, feloniously did steal, take and carry away two buckets of water, the property of the appellants, of the value of 1*d.*

Upon the hearing of the information the following facts appeared. The appellants were the owners of Cornsay Colliery in the said county, and some years ago they laid on water to the colliery, which water was supplied by the Weardale and Shildon Water Company, Limited.

The colliery being out of the district in which the water company were authorised to supply water by their Act of Parliament, the water company refused to put the pipes down; but at a distance of a mile from the colliery on their own ground they put up a meter, which registered all the water which passed through it, and all of which was charged to the debit of the appellants. The appellants brought the water from the meter to the colliery by means of underground pipes which they laid down. They then put branch pipes into and among the rows of houses, to which taps were attached. The workmen of the appellants were allowed to take the water from the taps on paying a certain fixed sum for the same to the appellants. The respondent was seen on the 23rd of November, 1882, to draw water from a tap in Gillow Street in the colliery without having agreed to pay for the same. The manager of the colliery told her (as he had told her previously) that she was taking water the property of the appellants, and that she had no right to take it, but that she could get it by paying the appellants for it. She used very abusive language and took away two buckets of water, of the value of 1*d.*

The solicitor for the appellants urged that the respondent was guilty of larceny at common law, but did not point out any statute under which water was the subject of larceny.

The respondent being charged with an indictable offence which could be dealt with summarily under the Summary Jurisdiction Act, 1879, s. 11, and the value of the article alleged to be stolen being under 40*s.*, the Justices asked the respondent if she desired to be tried by a jury, or consented to the case being dealt with summarily, upon which she consented to the

Forens v. *O'Brien.*

case being dealt with summarily, and pleaded "Not guilty."

The Justices being of opinion that water was not the subject of larceny at common law declined to convict the respondent, and dismissed the information.

The question submitted for the opinion of the Court was, "Is water the subject of larceny at common law?"

Ridley, for the appellants.—The question submitted is wider than the case requires. It is not necessary to ask the Court to say generally that water is the subject of larceny at common law, but only to say that water in pipes is the subject of larceny at common law. [He was stopped.]

Granger, for the respondent.—If water could be the subject of larceny at common law, the Legislature would not have enacted the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 59, which provides a pecuniary penalty for the unauthorised taking of water from the reservoirs or conduits of a water company, or the similar clause of the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 20.

[FIELD, J.—Parliament not infrequently enacts that which is superfluous. What principle is there by reason of which water in pipes cannot be the subject of larceny at common law?]

Ridley was not called upon to reply.

FIELD, J.—The case must be remitted to the Justices, with the opinion of the Court that water in pipes may be the subject of larceny at common law.

MATHEW, J., concurred.

Case remitted accordingly.

Solicitors—Shum, Crossman & Co, agents for W. H. Oliver, Durham, for appellants; C. J. Inglis, agent for A. W. Granger, Durham, for respondent.

[IN THE COURT OF APPEAL.]

1883. April 24. 26, 27. } THE MADELEY UNION *v.* THE BRIDGNORTH UNION.*

Poor—Settlement—Abolition of Derivative Settlement—39 & 40 *Vict. c.* 61. *s.* 35.

Under section 35 *of the Divided Parishes and Poor Law Amendment Act*, 1876, *abolishing in general derivative settlements, an order of removal of a wife, and three children under the age of sixteen, is not justified by proof that the father of the wife's husband was born in the union to which the removal was made, and that neither the husband nor his father acquired a settlement in his own right.*

Judgment of the Queen's Bench Division affirmed.

Appeal from the Queen's Bench Division. The case is reported *ante*, p. 17.

The case was stated by the Recorder of Bridgnorth, in an appeal to the quarter sessions of the borough, against an order of Justices for the removal of Ellen Hughes and her three children, aged five years, three years and one year respectively, from the Bridgnorth Union to the Madeley Union.

Ellen Hughes and her three children were the lawful wife and children of William Hughes, and had become chargeable to the Bridgnorth Union. William Hughes was the lawful son of John Hughes, and acquired no settlement in his own right. John Hughes was born in the parish of Madeley, in the Madeley Union, about 1822, and acquired no settlement in his own right. The appellants, the Madeley Union, called no evidence at the conclusion of the case for the Bridgnorth Union, but submitted that as matter of law it was not sufficient for the Bridgnorth Union to prove the place of birth of John Hughes, but that, unless they could shew affirmatively a settlement of John Hughes at Madeley other than a birth settlement, his son William Hughes must be held to be settled in the place of his birth.

The Recorder, subject to the opinion of

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

the Queen's Bench Division upon the present case, quashed the order on the ground that it was not enough to make out a *prima facie* birth settlement for John Hughes, and that as the Bridgnorth Union had not established a settlement in the parish of Madeley other than a *prima facie* birth settlement, William Hughes must be held to be settled in the parish of his birth, by virtue of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 35 (1).

The Queen's Bench Division (Field, J., and Cave, J.) affirmed the decision of the Recorder.

The Bridgnorth Union appealed.

Jelf, Q.C., and *Spearman*, for the appellants.—The real question raised by the case is, whether William Hughes had a settlement in Madeley; and the Court is not entitled to consider any other point, so that the Divisional Court was not entitled to consider the question of the settlement of his children or any of the other facts of the case.

[BRETT, M.R.—Perhaps that might be so if the Recorder had only asked a question; but if he has also stated a number of facts which shew that the question is either immaterial or founded upon a mistaken view of the law, what ought the Court to do then?]

[COTTON, L.J.—Is not *The Overseers of Walsall* v. *The London and North Western Railway Company* (2) opposed to this contention?]

If the Court is to raise a question which has not been yet argued or decided it will, in fact, be entertaining a question *mero motu*. The Court is confined to the question reserved. The contention before the Recorder was as to the meaning of the grounds of appeal; he was the sole judge of that, and he held that on those grounds the only question was where William Hughes was born.

[BOWEN, L.J.—It would seem that if that be so, the Court is asked to decide a question of fact upon a view of the law which the appellants here are about to contend is an erroneous view. BRETT, M.R.—We have to construe the statute.]

The question arises upon 39 & 40 Vict. c. 61. s. 35, which alters the old law as to settlement. That section may be divided into three parts. The first part abolishes derivative settlements, preserving two exceptions, so that a wife, and child under sixteen, can still have a derivative settlement. The second part provides for illegitimate children, and the third part only deals with procedure. So that if it is possible to shew the settlement of a child without enquiring into the derivation of the settlement of the parent, it takes that settlement. It applies, therefore, to cases in which it is proved by an order of a competent Court what the settlement of the parent is; and the child takes that settlement, because, in such a case, there is no enquiry into the derivation of the settlement, of the parent. The third part of the section does not operate to separate a mother and her children; but that consequence will follow if the judgment of the Queen's Bench Division is sustained, for the mother will go under the first part of the section to her husband's settlement, while the children will, under the third part of the section, be deemed to be settled in the parish of their birth. The third part of the section is confined to cases where the enquiry is into the settlement of some one who is an orphan or who is emancipated; but it does not apply to a child under the age of sixteen. The words at the beginning of the third part

(1) 39 & 40 Vict. c. 61. s. 35: "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another.

"An illegitmate child shall retain the settlement of its mother until such child acquires another settlement.

"If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

(2) 48 Law J. Rep. M.C. 166; Law Rep. 4 App. Cas. 467.

of the section, "any child in this section mentioned," must refer to a child who is capable of acquiring a settlement, and not to an infant.

[BRETT, M.R.—The suggestion then is, that a parent and child under the age of sixteen are really a unit.]

That is so; 9 & 10 Vict. s. 13, enacts that a parent and child are not to be separated. "We take it to be clear law," says Hawkins, J., in *The Guardians of Salford Union* v. *The Overseers of Manchester* (3), "that so long as a child, legitimate or illegitimate, is within the age of nurture, which covers the whole period from birth to the age of seven years, it cannot legally, by any order of removal, be separated from its mother;" and this, too, not even by her consent—*The Queen* v. *The Inhabitants of Birmingham* (4). *The Guardians of Hollingbourne* v. *The Guardians of West Ham* (5) was admitted by the Court below to be an authority in favour of the appellants; but the Court did not follow it because they considered that it was opposed to the judgment in *The Overseers of Manchester* v. *The Guardians of St. Pancras* (6), and in *The Queen* v. *The Guardians of Portsea* (7). Both those cases are decisions upon the settlement of illegitimate children, and the only question was as to the settlement of the children. *The Queen* v. *The Guardians of Hereford* (8), *Great Yarmouth* v. *The City of London* (9), *Westbury-on-Severn* v. *Barrow-in-Furness* (10) and *The Woodstock Union* v. *St. Pancras* (11), were also cited.

Bosanquet, Q.C., and *R. L. Kenyon*, for the respondents.

[BRETT, M.R.—We are all of opinion that we must deal with the case according to the true construction of the statute, and that the question is, whether the evidence of the derivative settlement of William Hughes was admissible; for we consider that the case raises the point.]

The question may first be considered apart from all cases by reading the statute, with due regard to the law as it existed at the time when this statute was passed; and it will be seen that the general intention was to abolish all derivative settlements, for the general words of section 35 absolutely abolish derivative settlements for all persons now existing. Then there comes an exception, which the appellants contend excepts all settlements derived from marriage or parentage; but the true view is, that all derivative settlements are abolished, and that the exception is limited to cases where there is actually a person before a Court who may be held to have acquired, in fact, a derivative settlement. The section prevents the Court from going back and enquiring into the derivative settlement of the person from whom the individual then before the Court claims a settlement. The first part of section 35 abolishes, in the case, for instance, of a man and wife, any possibility of a derivative settlement from the husband. The exception then provides that the wife must follow her husband's settlement, but it does not open up the whole law as to derivative settlements. The exception also applies to children under the age of sixteen.

[BRETT, M.R.—The argument is that by this first part of section 35 there can be no enquiry into the settlement of those from whom the persons concerning whom the question is raised derive their settlement.]

That is so. Then passing over the clause as to illegitimate children who get no derivative settlement at all, the third clause of section 35 makes provision for cases in which otherwise difficulties would arise; and it says that if the settlement of the parent cannot be shewn, then, as all derivative settlements are abolished, the person who has not acquired a new settlement shall be deemed to be settled in the place of his or her birth.

[COTTON, L.J.—I understand the argument to be that the first part of section 35 provides for children under sixteen and for the settlement of a wife; that deriva-

(3) *Ante*, p. 34; Law Rep. 10 Q.B. D. 172.
(4) 5 Q.B. Rep. 210; 13 Law J. Rep. M.C. 1.
(5) 50 Law J. Rep. M.C. 74; Law Rep. 6 Q.B. D. 580.
(6) Law Rep. 4 Q.B. D. 409.
(7) 50 Law J. Rep. M.C. 144; Law Rep. 7 Q.B. D. 384.
(8) 43 Justice of the Peace, 335.
(9) 47 Law J. Rep. M.C. 61; Law Rep. 3 Q.B. D. 232.
(10) 47 Law J. Rep. M.C. 79; Law Rep. 3 Ex. D. 88.
(11) 48 Law J. Rep. M.C. 1; Law Rep. 4 Q.B. D. 1.

tive settlements are, save in those cases, abolished; that if the settlement of a father cannot be discovered without going into a derivative settlement, then the place of birth is the place of settlement. BOWEN, L.J.—The opposite view is, that the settlement of the mother can be shewn, so that there is no necessity to enquire into any derivative settlement.]

If the settlement of the husband can only be ascertained by enquiring into his derivative settlement, then in such a case there can be no removal. The contention of the appellants makes William Hughes, who is a paterfamilias in fact, a child under the age of sixteen, so as to bring him within the exception. *Great Yarmouth* v. *The City of London* (9), *Westbury-on-Severn* v. *Barrow-in-Furness* (10) and *The Guardians of Hollingbourne* v. *The Guardians of West Ham* (5) were also referred to.

Jelf, Q.C., replied.

BRETT, M.R.—As I feel hopeless of getting a clearer view of the Act of Parliament than I have at present, I do not think it necessary to reserve my judgment. An order which had been made by Justices for the removal of Helen Hughes and her three children, aged five years, three years and one year respectively, from the Bridgnorth Union to the Madeley Union was brought before the Recorder of Bridgnorth at the Quarter Sessions, and was objected to upon the ground that it was founded upon evidence, which had been taken and admitted, of the settlement of John Hughes, the grandfather of the three children and the father of the husband of Ellen Hughes. The Recorder quashed the order of removal subject to a stated Case. It seems to me that the difficulty which had arisen in the mind of the Recorder was that which was argued here and in the Queen's Bench Division—namely, whether in making such an order it was right to receive and act upon the evidence of the settlement of John Hughes, the grandfather of the three children and the father of the husband of Ellen Hughes. That seems to me to be the question which we are asked in the Special Case, and which is the only question which we have to decide in this case. There is no doubt that the question so stated raises the further question also as to the proper construction to be put upon section 35 of 39 & 40 Vict. c. 61. In coming to a conclusion as to what is the true construction of that section, the Court would have been glad to have understood every part of it; for the Court would then have been able to see whether there is any hidden difficulty in the point which it is called upon to decide.

I think that we have all made strenuous efforts to see whether we could understand the section as a whole; but even after the able arguments on both sides I could not gather (and I speak now only for myself) that the counsel on either side affected to understand the section. I will say that I cannot and do not pretend to understand it. I must, however, see whether I understand the section so far as is necessary to do so for the purpose of determining the point in question. I have come to the conclusion that I understand the section to this extent, that in no case in which an order of removal is to be made after the passing of this statute is it possible to say that it is right to enquire into the settlement of the grandfather of the child or of the father of the woman's husband. If it is impossible that that can be a matter of enquiry in any case, then it was not a proper matter of enquiry in this case. If that be true, the answer to the question which we have been asked is, that the Recorder was right in quashing the order of removal, and that the Queen's Bench Division was right in upholding his decision. I think that it was admitted by Mr. Jelf at last, notwithstanding all the subtleties of his argument, that he could not maintain his point unless this Court is prepared to hold that the word "child" in section 35 comprises every person who has been a child. I have no doubt in saying that that is not the meaning of the word "child" in that section. The section begins thus: "No person shall be deemed to have derived a settlement from any other person." The commencement of the section is abrupt; there is no introduction to say whether that refers to the law of removal or what it has reference to. It seems to me that the words "no person" refer to the person whose removal is in

question—that is, the pauper. If that stood alone, and if there was no exception, the section would read thus: "wherever you have to enter upon the question of the removal of a pauper, no such pauper shall be deemed to have derived a settlement from any other person;" but then it goes on to say, "whether by parentage, estate or otherwise." Then we come to the case of a wife—"except in the case of a wife from her husband." A wife would come within the term "no person shall be deemed to derive a settlement from any other person, whether by parentage, estate or otherwise." The words "whether by parentage, estate or otherwise" are very wide, and would include marriage. The exception, however, seems to me to shew that in the case of a wife whose removal is in question a settlement may be derived from her husband. There the section stops. Then it goes on, "and in the case of a child under sixteen." That is the only thing excepted. A child who is over the age of sixteen is not excepted there. The section must be read as if it proceeded "in the case of a question as to the removal of a child under the age of sixteen." That is to be excepted; and that child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age. There again, therefore, you are confined to the settlement of the father or of the widowed mother, just as in the case of a wife you are confined to the settlement of the husband.

If the matter had stopped there it seems to me that in a case of any one who is over the age of sixteen, that creature (I was going to say person, but this shews the difficulty of construing the section) who is over the age of sixteen, but is not within either of the exceptions, would have been a person within the meaning of the expression "no person" in the beginning of the section. Wherever the removal of a child or creature over the age of sixteen is in question you would have been confined by the section to saying that that person shall not be deemed to have derived a settlement from any other person. But the clause which has been clumsily introduced into the section, and perhaps during the passing of the enactment, deals with this creature who is over the age of sixteen, and who is not within the exception already, as follows, "and shall retain the settlement so taken until it shall acquire another." The section, it seems to me, there deals with the case of a creature who, after the age of sixteen, and from that time until it has acquired another settlement, probably is within the exception by reason of the words "shall retain the settlement so taken." Now, "the settlement so taken" is the settlement derived from the father, husband or widowed mother. But it does not go further, and does not entitle you, any more than the other exceptions did, to enquire beyond the father, the husband or the widowed mother. It does not entitle any enquiry to be made into the settlement of the grandfather of the children or of the husband's father. Now, what is the meaning of the third part of section 35? I confess that I am unable to see a case to which it does apply. But I can see that it does not enable one to enquire into the settlement of the grandfather. On the contrary, whatever case that part of the section does apply to, it shuts you out again on the father, or even short of the father, where it cannot be shewn what the settlement is without enquiring into the derivative settlement of such parent. That part of the section therefore forbids one to enquire into the derivative settlement of such parent. If I must state my present view of that part of the section, I am inclined to think that it applies to the case of a child over sixteen, where it cannot be shewn what settlement it retains because the settlement of its father cannot be proved; and that where the circumstances are such that under the old law you would have been obliged to go to the father's derivative settlement, this section shuts you off from the derivative settlement in those cases, and says that the person as to whom the question of removal arises is to be deemed to be settled in the parish in which he or she was born. Therefore in no case, under either the first and third parts of this section, and certainly not under the second part of it, can enquiry be made beyond the father or husband of the person who is to be removed; and it cannot ever be made into the derivative settlement of the father of

the husband, or of the grandfather of the children.

The question which has been asked us in this case is, whether enquiry can be made into the derivative settlement of the father of the woman's husband and of the grandfather of the children. In my opinion, and for the reasons I have given, that evidence was not properly admitted by the Justices; and the Recorder was therefore right in quashing this order of removal. What effect the present decision may have upon other questions—such as the removal of a mother with her children or child under nurture—it is not for me to say at present; nor is it necessary to solve the many questions which have been raised in the course of the argument for the purpose of putting an interpretation upon this section. It is not necessary to solve the question as to what will become of this woman or of her children if, by shutting out any enquiry as to the settlement of the grandfather, the settlement of the father cannot be proved. That question has not been raised at present, and is not, therefore, the subject-matter of this decision. Whether, assuming the evidence to be that the husband is alive, but there is an incapacity to prove what is his settlement, or whether the mother and children are to remain where they are, or whether they are to be removed elsewhere, or whether the mother can be separated from her children or not, are all questions which it is not necessary now to decide. I have given my view as to the construction of the Act of Parliament with regard to the point before us. If that view is inconsistent with any of the decided cases, of course I say, as I am bound to say, that I do not agree with that decision.

COTTON, L.J.—I am of the same opinion. The question which we have to consider in determining whether this order of removal ought to be quashed or not, is whether the facts, which have been admitted and proved, establish a settlement of William Hughes in the parish of Madeley. The only evidence of a settlement was the fact that John Hughes, the father of William Hughes, had been born in that parish, so that the settlement was made out by proving a derivative settlement in the case of William Hughes. But if the true construction of the Act of Parliament be, as I think it is, that the derivative settlement could not be entered into, then the order of removal was wrong. The first clause of section 35 is a general clause. The Justices here held that William Hughes derived a settlement from his father, and made enquiry into his derivative settlement; but that is prohibited by the first clause of the section, unless something can be shewn in the other clauses of the section which enables that derivative settlement to be enquired into. The section says "except in the case of a wife from her husband"; it does not say that when the question of a wife's settlement is considered, then the previous enactment is to be altogether disregarded; but, as I understand it, where the removal of a wife is under consideration, she shall derive a settlement from her husband. The section goes no further; it does not in any way enable her husband's derivative settlement to be enquired into. Then the section proceeds, "and in the case of a child under the age of sixteen, which child shall take the settlement of its father or widowed mother, as the case may be." That would not seem in any way to remove the restriction as to enquiring into the derivative settlement, except as regards the child whose case is under consideration, and I will presently consider whether it is to be restricted to the consideration of a case where the child is under the age of sixteen.

But the argument of Mr. Jelf amounts to this, that the derivative settlement of William Hughes can be enquired into, because he was once a child, and that one may consider what settlement he had when he was a child. It would be a straining of the English language to hold that William Hughes could at this time be said to be a child within the meaning of this section. The section undoubtedly extends to children who are over the age of sixteen, but would it possibly be right to say that a man of fifty or sixty years of age, both of whose parents were dead, but who was the head of a family, instead of a member of a family under a father or mother, could be considered to be a child within the meaning of this Act of Par-

liament? It has been pointed out, and I do not see any answer to it, that if that argument be right, the derivative settlement of a member of a family who had been a child could, unless he were an orphan child, be enquired into. That would be in fact to repeal the enactment in terms which says that no person shall be deemed to have derived a settlement by parentage, and would, so far as I can see, render that enactment entirely inoperative, and would introduce all the difficulties which arose from the question of a derivative settlement being enquired into, because I do not see where you are to stop. It is true, I think, although it is not necessary to decide it, that a child may derive its settlement from its father, even though it is not under the age of sixteen. That, I think, appears from the fact that the first as well as the third clause of the section deals with children who are not under the age of sixteen. Whether the third clause of the section also extends to children under the age of sixteen it is not necessary now to decide; but undoubtedly it will apply to children who are above that age, and it is there contemplated that they shall derive a settlement from the father. It is also clearly shewn that it was the intention of the Legislature that the parents' settlement should not be enquired into. I do not see that the third clause of the section of itself provides for a derivative settlement from the father being entered into: it considers that that has already been provided for; and therefore, in my opinion, that helps the construction which I have put upon the previous part of the section. If it cannot be shewn what settlement such child or female derived from the parent, the third clause assumes that it can be entered into without enquiring into the derivative settlement of such parent. That clause of the section does not say that such derivative settlement shall not be enquired into, because the power of enquiring into the derivative settlement of such parent has already been taken away by the first clause of the section. The third clause, assuming that that power has been taken away, says what is to be done as regards fixing the settlement of the child, namely, that it is to be the place of birth. That, in my opinion, is the true construction of this section as regards the right to enquire into the derivative settlement of William Hughes. The Act of Parliament has taken away that right, and this order was therefore properly quashed.

I cannot but see that the opinion which we have formed upon this section is inconsistent with certain cases which have been cited. In some of them the point does not seem to have been much discussed; but in none of them does it seem to have been fully discussed upon the lines upon which this case has been argued. I can only say, notwithstanding the respect I entertain for the learned Judges who decided those cases, that I am bound to express a different opinion to that which they have expressed.

BOWEN, L.J.—I am of the same opinion. I agree with what has been said by the Master of the Rolls and Lord Justice Cotton as to the construction of the section. I will add only one word as to the way in which this case has been brought before us. I think there may be perhaps something more in the argument of Mr. Jelf as to the form in which this case comes before us than seems to be thought by the other members of the Court. I am not sure that the Recorder had got the point of law before him in this case exactly as we have had it discussed. I am not sure that he has framed his question in that view of the law; but I am confident that in whatever way he framed his question, and in whatever way he decided the case, it would be absolutely necessary for him to discuss and to decide for good or evil the question of the construction of the statute which we have had discussed. I think it would be idle for us to be led aside from giving judgment upon the real effect and construction of the statute by a suggestion that the Recorder may not have put the question in the right way, which certainly arises upon this case. I should have refused if I was asked by the Recorder or by anybody else to give an answer to a question of this kind, what would be the law if the law was not what it is—or to be told that I must assume the construction of

the statute to be what I conceive it is not, and to answer the question upon that basis. Being against Mr. Jelf upon the construction of the statute, if we were to be embarrassed by his difficulty about the form of the case, we should be really either attempting to answer an impossible question of that sort, or else going through the form of sending back the case to be restated by the Recorder, in order that it might come back again with exactly the same point—because, as far as the Recorder is concerned, he would state the case, if it was sent back to him, in exactly the same way as we think it ought to be stated. I have no hesitation in saying that the Court ought, as we have done, to break through all those technicalities, if they exist, and come to the real matter, and decide upon the construction of the section and the validity of the order of the Court of Quarter Sessions. The first clause of section 35 destroys, in my opinion, the possibility of receiving the evidence of the settlement of the grandfather of the children, or of founding any order upon it. The argument of Mr. Jelf was destroyed by the first clause upon the plain meaning of the words; it would also be destroyed by the third clause; but it is not necessary to decide what is the meaning of that clause, if it would not, as in my opinion it could not, help his argument.

Appeal dismissed.

Solicitors—Sole, Turner & Knight, agents for Cooper & Haslewood, Bridgnorth, for appellants; C. R. & H. Cuff, agents for G. Burd, Ironbridge, for respondents.

1883. May 25. } THE QUEEN *v.* THE RECORDER OF SHEFFIELD.

Public Health Act, 1875—*Apportionment of Works in a Street—Jurisdiction of Justices—Bad Notice to Pave, &c.—Appeal to Local Government Board.*

In a proceeding by an urban authority, under section 150 *of the Public Health Act*, 1875, *to recover in a summary manner from the owners in default the expenses incurred in executing works in a street, it is not a condition precedent to the jurisdiction of the Justices that there should be a valid apportionment; and they are not without jurisdiction because the works were done and the apportionment made on a notice to the owner to pave, &c., as part of a street, land which at the time of such notice was enclosed private land.*

Semble (*per* CAVE, J.), *that, in case of an apportionment on such a notice, the only remedy of the owner is to appeal to the Local Government Board under section* 168.

Rule to shew cause why a writ of *certiorari* should not issue to remove an order made on the 9th of June, 1882, by the stipendiary magistrate for the borough of Sheffield, and confirmed by an order of the Quarter Sessions for the borough, adjudging that Bernard Wake should pay to the mayor, aldermen and burgesses of the borough, acting as the urban sanitary authority, the sum of 74*l.* 1*s.* 3*d.*, and costs.

The order was made under the 150th section of the Public Health Act, 1875 (38 & 39 Vict. c. 55), under which section the corporation, on the 9th of November, 1879, duly gave notice to Wake and others, as occupiers of premises abutting on "Platt Street," in the borough, to sewer, pave, metal, &c., that street.

The notice was not complied with, and the corporation executed the works. The proportion payable by Wake was disputed, and was settled by arbitration in manner provided by the Act, Wake being assessed to the amount of 74*l.* 1*s.* 3*d.*

It appeared from the affidavit of Wake that, at the time of giving the notice of the 9th of November, 1879, and during the whole of its currency, a portion of the land which he was required to pave, &c., as a part of "Platt Street," consisted of two pieces of land containing respectively 57 yards and 169 yards, being at that time the private property of Messrs. Smith & Redfearn, and in their possession. The plot consisting of 169 yards was enclosed and divided from the part of the street then open by a wall. The rest of the land which he was required to pave, &c., as a part of "Platt Street" consisted, in its whole length on the northern side, of land which was the private property of

the Manchester, Sheffield and Lincolnshire Railway Company, and was said to be wholly undedicated to the public. The sum of 74*l.* 1*s.* 3*d.* was a proportion of the whole cost of the works required to be done by the notice, and afterwards done by the corporation in "Platt Street," without distinguishing the three pieces of land referred to.

The stipendiary magistrate, in making the order, decided that "Platt Street" was a street, and was not a highway repairable by the inhabitants at large; and, on appeal to the Quarter Sessions, the Recorder decided that the objection as to Smith & Redfearn's land, and the land of the Manchester, Sheffield and Lincolnshire Railway Company, could not be entertained by the magistrate upon an application to order payment of the sum apportioned, but that Wake ought to have appealed to the Local Government Board under section 268 (1).

The Recorder declined to state a Special Case for the opinion of the Court, but a rule *nisi* for a *certiorari* was obtained.

The Solicitor-General (*Sir F. Herschell*) (with him *J. E. Barker* and *C. S. Hunter*) shewed cause for the corporation.—These orders cannot be set aside on *certiorari*. They are good on the face of them, and it has been decided that Justices are not entitled to enquire how much has been expended on the street—*Cook* v. *The Ipswich Local Board* (2). The Recorder was right in deciding that the only remedy was an appeal to the Local Government Board—*The Queen* v. *The Local Government Board* (3).

He was stopped by the Court.

Charles, Q.C., and *C. Gould*, supported the rule.—The apportionment made by the arbitrator was a nullity, because there was no notice capable of laying a foundation for it. Mr. Wake could not comply with the notice given without committing a trespass on the land of Smith & Redfearn and of the railway company, and pulling down the wall. The notice being bad in part was bad altogether, and the jurisdiction of the stipendiary did not arise until there had been a valid apportionment.—They cited *Bunbury* v. *Fuller* (4), decided on the jurisdiction of Tithe Commissioners. In *Hesketh* v. *The Local Board of Atherton* (5) it was held that the magistrate had jurisdiction to consider whether the street was a highway repairable by the inhabitants at large. *Cook* v. *The Ipswich Local Board* (2) is in favour of our contention, and *The Queen* v. *The Local Government Board* (3) is distinguishable.

[CAVE, J., referred to *The Queen* v. *Bolton* (6), where it was laid down that "the question of jurisdiction does not depend on the truth or falsehood of the charge, but on its nature: it is determinable on the commencement, not the conclusion, of the enquiry."]

The validity of the apportionment was determinable on the commencement of this enquiry.

[WILLIAMS, J., referred to the recent case of *The Queen* v. *Young* (7), in which

(1) By section 268 it is provided that "Where any person deems himself aggrieved by the decision of the local authority, in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said board may seem equitable, and the order so made shall be binding and conclusive on all parties. Any proceedings that may have been commenced for the recovery of such expenses by the local authority, shall, on the delivery to them of such copy as aforesaid, be stayed, and the Local Government Board may, if it thinks fit, by its order direct the local authority to pay to the person so proceeded against such sum as the said board may consider to be a just compensation for the loss, damage or grievance thereby sustained by him. By section 269 an appeal is given to Quarter Sessions against "any rate made under the provisions of the Act, or any order, conviction, judgment or determination of, or any matter or thing done by, any Court of summary jurisdiction."

(2) 40 Law J. Rep. M.C. 169; Law Rep. 6 Q.B. 451.

(3) *Ante*, p. 4; Law Rep. 9 Q.B. D. 600.

(4) 22 Law J. Rep. Exch. 29.

(5) 43 Law J. Rep. M.C. 37; Law Rep. 9 Q.B. 4.

(6) 1 Q.B. Rep. 72; 14 Law J. Rep. M.C. 33.

(7) *Ante*, p. 55.

it was held that the Justices had jurisdiction to say what was a street, as incident to jurisdiction over an offence in a street. Have they not jurisdiction to say what is due?]

They have only jurisdiction to enforce payment when the conditions precedent are in existence.

WILLIAMS, J.—The order which it is desired to bring up by *certiorari* in this case was made by the stipendiary magistrate and confirmed by the Recorder. The Corporation of Sheffield are the local authority for the borough under the 150th section of the Public Health Act, and they executed works in a certain street, and claimed payment for so doing from the owners in default in such proportion as was settled, upon dispute, by an arbitrator. The argument is, that there were certain conditions precedent to the order being made, and if the Justices act in the absence of facts satisfying the conditions precedent, they cannot thus give jurisdiction to themselves. I fail to see that they are conditions precedent. It is contended that, first, the works were not required to be done in a street; and, secondly, that they were not required to be done in a street not repairable by the inhabitants at large; so that the notice to repair was bad: and if the notice was bad, the Justices are deprived of the power of adjudging. In my opinion that view of the section is not correct. The stipendiary has done what is within the ambit of his jurisdiction. I do not think any of the cases cited conflict with this view.

CAVE, J.—I am of the same opinion. I am not satisfied that the stipendiary magistrate and the Recorder had no jurisdiction. The word "jurisdiction" is equivocal. Either it may mean a state of facts into which the Justices ought not to enquire, or in which they ought not to make the order. It refers either to a condition precedent to entertaining an order at all, or to making an order. Under this section the expenses are to be recovered by summary proceedings. The objection is raised that the notice to pave referred to private property. That may be a reason why the order should not be made, but is not an objection to the jurisdiction of the magistrate. It is immaterial in this respect whether he came to a right or wrong conclusion. Out of respect for the Recorder who confirmed this order, I must add that, in my opinion, the conclusion at which he arrived was correct. The course for Mr. Wake to take was to appeal to the Local Government Board. The language of section 268 is sufficiently large to cover this case, and *The Queen* v. *The Local Government Board* (3), I think, so decides. The case of *Hesketh* v. *The Local Board of Atherton* (5) is the only case which made me hesitate, and it was not brought to the attention of the Recorder, and I should certainly have arrived at the same result on the same materials.

SMITH, J.—I am of the same opinion. It is not the question whether the decision was right or not, but whether the magistrate had jurisdiction to entertain the application. Notice was served on Mr. Wake; an arbitration was called for, and an award made; and where an award has been made, the money can be recovered on summary proceedings. It is said that there was no valid apportionment, because a piece of land was improperly included in the notice. Who is to decide that question? I think it is within the principle of *The Queen* v. *Bolton* (6) that the magistrate should decide it. I do not think this was a case within *Bunbury* v. *Fuller* (4). The point decided is collateral to the merits. As regards *Hesketh* v. *The Local Board of Atherton* (5), I do not think Mr. Justice Blackburn said anything to preclude the question raised here.

Rule discharged.

Solicitors—Geare & Son, agents for A. E. Maxfield, Sheffield, for the prosecutor; Smith & Wilmer, agents for John Yeomans, Sheffield, for the corporation

1883. May 8. June 6. } SMITH (*appellant*) *v.* THE MAYOR, ALDERMEN AND BURGESSES OF BIRMINGHAM (*respondents*).

Waterworks Company—Water Rate, how calculated—"Annual Rent"—"Annual Value"—Waterworks Clauses Act, 1847 (10 *Vict. c.* 17), *s.* 68—*Empty Houses.*

By the Birmingham Waterworks Act, 1855, *the company were authorised to charge for water for domestic use, "where the annual rent of the house shall not exceed* 5*l., the yearly rate of* 6*s., . . . where such annual rent shall exceed* 50*l., at a rate not exceeding* 6*l. per cent. on the amount of such annual rent."*

The Waterworks Clauses Act, 1847, *s.* 68, *incorporated in the Birmingham Act, provides that "the water rates shall be payable according to the annual value of the tenement supplied." The respondents had, by the Birmingham Corporation Water Act*, 1875, *vested in them all the powers of the waterworks company.*

The appellant, owner of small houses let at weekly rents, he paying repairs and insurance, and all rates and taxes, and compounding for the poor and borough rates under the Acts permitting such an arrangement, was charged water rate on the following basis:—the weekly rents were multiplied by fifty-two, then the actual amount paid for poor and borough rates was deducted, and the water rate calculated on the difference:—

Held, *that, subject to there being an allowance made for the average of empty houses in the form of a sum to be deducted from the rents before calculating the water rate, the respondents had adopted the right course in ascertaining the "annual value" or "annual rent" of appellant's houses.*

This was a Case stated by the stipendiary magistrate for Birmingham, for the purpose of obtaining the opinion of the Court upon a dispute as to the proper mode of assessing the appellant to the water rates in respect of some house property of which he was owner.

The judgment fully sets out the facts with reference to the property and the making of the assessment, and the Acts of Parliament under which the respondents (being entitled to make a charge for water supply) justified the principle upon which this particular assessment had been made. The question mainly was as to the meaning of the words "annual rent" and "annual value" in the Acts.

Hugo Young, for the appellant.—"Annual rent" in the Birmingham Act of 1855 is by agreement in this case to be taken as being the same as "annual value" in the Waterworks Clauses Act, as held in *The Sheffield Waterworks Company* v. *Bennett* (1); and it is contended that although the corporation bought the water company under an Act in 1875, yet their doing so having been authorised by the Birmingham Improvement Act of 1851, s. 109, the purchase must be taken to be subject to the controlling powers in section 124 of that Act. That clause provided that annual value should be ascertained in the manner specified in the Towns Improvement Act, and in that Act, 10 & 11 Vict. c. 34. s. 175, it is equivalent to rateable value. Then the Public Health Act of 1875, ss. 51 to 56, prescribes the powers of charging for water to be exercised by an urban sanitary authority, which the respondents are; and there too the basis is net annual value, meaning rateable value. Secondly, apart from the special Acts and circumstances of this case, it is contended that in the Waterworks Clauses Act "annual value" is rateable value. The point was not decided to the contrary in *Dobbs* v. *The Grand Junction Waterworks Company* (2). There are at most *obiter dicta* adverse to the appellant's view; so it is necessary to see what before 1847 was the meaning of the words "annual value," as it is fair to assume that in that Act they were used in their then known meaning. In *The King* v. *Tomlinson* (3) net rent was held to be what went clear into the landlord's pocket; and in *Baker* v. *Marsh* (4) the meaning of annual value was decided to be rateable value, where those words appear in section 28 of the Municipal Corporations Act, 1835. In the Water-

(1) 41 Law J. Rep. Exch. 233; Law Rep. 7 Exch. 409.
(2) 52 Law J. Rep Q.B. 90; Law Rep. 10 Q.B. D. 357.
(3) 9 B. & C. 163.
(4) 4 E. & B. 144; 24 Law J. Rep. Q.B. 1.

works Clauses Act itself, section 72, the term is used; and the same words in the same Act must surely be construed as having the same meaning. Looking at other Acts, the Birmingham Improvement Act, 1851, in section 135, the 32 & 33 Vict. c. 69, in section 3, the Public Health Act, 1875, in section 211, the Union Assessment Act, 1862 (25 & 26 Vict. c. 103), in section 14, all shew that annual value is an expression used to denote rateable or net annual value. There should therefore be a deduction here for repairs, insurance, &c., which has not been made. In the present case, however, the respondents are wrong in any view, for they have not even deducted the rates. The appellant compounds, and they have only taken off the composition amount, whereas they should have taken off the full rate. The difference between the full rate and the amount of the composition is not rent; it is in the nature of an allowance for collection. This is clear from *The Queen* v. *Bilston* (5). There must also be an allowance for "voids" or empty houses, and on this point the magistrate was in appellant's favour.

Alfred Young (*R. E. Webster, Q.C.*, with him), for the respondents.—There is nothing in the contention that the respondents are limited by the Improvement Act, for the simple reason that they did not act under the powers therein conferred. They rest upon their own Act of 1875. Nor does the Public Health Act, 1875, passed after their Act, affect the matter; while the Municipal Corporations Act, in which the principles of the Parochial Assessment Act are involved, of course deals with annual value as equivalent to rateable value. The case of *The Sheffield Waterworks Company* v. *Bennett* (1) no doubt decides that rent per annum is equivalent to annual value; and Cleasby, B., says that rent means what the landlord gets as rent under the usual conditions. This assessment is in strict accordance with that decision; the respondents have deducted the amount of rates actually paid by the appellant, the rest of the sum therefore paid by the tenants to him as rent continues in his possession as rent.

(5) 35 Law J. Rep. M.C. 97; Law Rep. 1 Q.B. 16.

It is expressly provided in the Union Assessment Act of 1862 that it shall not interfere with compositions as allowed under the previous statutes. In interpreting the words "annual value" in the Waterworks Clauses Act, 1847, which is the real question in this case, it is submitted that the judgment of the Court of Appeal in *Dobbs* v. *The Grand Junction Waterworks Company* (2) is conclusive. All the members of the Court express their opinion that "annual value" means gross estimated rental, and not rateable value.

Hugo Young, in reply.

Cur. adv. vult.

The judgment of the Court (Denman, J., and Hawkins, J.) was (on June 6) delivered by

DENMAN, J.—This was a Case stated by the stipendiary magistrate for Birmingham in order that the Court might decide the proper mode of assessing the amounts payable by the appellant for water rates. The Corporation of Birmingham, the respondents, had vested in them by 38 & 39 Vict. c. clxxxiii. (the Birmingham Corporation Water Act, 1875), all the powers and authorities of the Birmingham Waterworks Company.

The power and authority of the Birmingham Waterworks Company as to the supply and charging for water is to be found in section 83 of 18 Vict. c. xxxiv. (the Birmingham Waterworks Acts, 1855).

By that section it is provided as follows:—

"The company shall, at the request of the owner or occupier of any house or part of a house in any street in which any pipe of the company is or shall be laid, or on the application of any person who, under the provisions of this Act, is entitled to demand a supply of water for domestic purposes, furnish to such owner or occupier or other person a sufficient supply of water for domestic use at rates not exceeding the yearly rates hereinafter specified—that is to say,—

"Where the annual rent of the house or part of the house or premises supplied shall not exceed 5*l.*, the yearly rate of 6*s.*"

Then follows a scale increasing with the

increase in the "annual rent," and ending as follows:—

"Where such annual rent shall exceed fifty pounds, at a rate not exceeding 6*l.* per cent. on the amount of such annual rent."

The property in respect of which our opinion is desired consists of small houses let at weekly sums, on the terms that the appellant, who is the owner, pays all rates, taxes and assessments of all kinds charged upon or in respect of the premises, including the charge for water, and pays for all repairs and insurances and other matters relating to the premises. He is rated to the poor rate instead of the occupiers under 32 & 33 Vict. c. 41. s. 4, and is allowed the deduction of thirty per cent. therein provided for; also to the borough and street rates, under the Birmingham Improvement Act, 1851, being allowed the deductions therein provided for (section 135). The appellant has been voluntarily rated instead of the occupiers to the water rates.

The question for our determination is, what is the true meaning of the expression "the annual rent" in section 83 of the Act of 1855?

The corporation charged the appellant on the following basis. They multiplied the weekly rents by fifty-two, and deducted from the amount so arrived at the actual sums paid by the appellant for poor and borough and street and water rates, and then charged the water rates in question upon the difference. The appellant claimed further deductions for insurance, repairs and voids. As to the last we understand the Case to mean that the stipendiary magistrate was willing to accede to that contention, but that, being in favour of the respondents on all other points, our opinion is desired as to the whole matter.

The appellant further contends that the Public Health Act, 1875 (which was passed nine days after the Birmingham Corporation Waterworks Act, 1875), has superseded any provisions as to the mode of charging the water rates which are inconsistent with its provisions, and made the "net annual value" the amount upon which the water rate is to be assessed. He also contended that he was entitled by way of deduction, not only to the amounts actually paid by him under 32 & 33 Vict. c. 41. s. 4, and the Birmingham Improvement Act, 1851, s. 135, but the full rates which would be payable if the occupier paid the rates.

If this case was unaffected by the authority of decided cases, it might seem to admit of a short decision in favour of the respondents. Turning as it does upon the meaning of the words "annual rent," it is possible to arrive at the conclusion at which the stipendiary magistrate has arrived by an easy process. Having ascertained the actual amounts of weekly rents, he has multiplied these by the number of weeks in the year, intimating, however, that he is prepared to allow a proper deduction for voids, and for the actual amounts paid by the appellant for rates. The balance so arrived at he holds, or is prepared to hold, to be the proper sum representing the "annual rent" within the meaning of the 83rd section, upon which it is admitted that the question mainly turns. In the case of *The Sheffield Waterworks Company* v. *Bennett* (1), an action was brought by the plaintiffs for water rates for water supplied to houses of which the defendant was owner. The words of the clause regulating the amount to be paid for water required to be supplied were these, "at the following rate per annum—that is to say, where the rent of such dwelling-house or part of a dwelling-house shall not amount to 7*l.* per annum, at a rate not exceeding 6*l.* per cent. per annum on such rent," and so on.

The dispute in that case was, in substance, whether the plaintiffs were entitled to charge a sum for water calculated at so much per cent. on the rents actually received, as the plaintiffs contended, or whether the true meaning of the word "rent" in the clause was "annual value"—that is to say, the annual value of the property, ascertained by deducting from the proper rent those outgoings which the landlord pays—namely, poor rates, water rates and district rates.

The words there in question, "where the rent shall not amount to £ per annum," seem to us to be undistinguishable for any purposes from the words of section 83 of the Act here in question,

" where the annual rent shall not exceed £ ." And the words in that case " at a rate not exceeding £ per cent. per annum on such rent," are practically the same as the words of section 83, " at a rate not exceeding £ per cent. on the value of such annual rent."

So far then as concerns the allowance to the landlord of the amount of the rates paid by him, and so far as concerns the calculation of the annual value not being tied down to the actual rents received, we think that the case of *The Sheffield Waterworks Company* v. *Bennett* (1) is in the appellant's favour, and shews that the proper rental, not the actual rental, is the test, and that that proper rental is the amount which the landlord would put into his pocket after deducting the rates paid by him. But the appellant contends that in deducting the rates paid by him he is entitled to a deduction of the full amount to which such rates would be payable if paid by the tenants and not by himself—that is, to thirty per cent. more than the actual amount paid by him in respect of such rates.

We cannot accede to this contention; the composition into which the appellant enters where he is voluntarily rated, and the per centage allowed by the statutes to the landlord where he pays the rates under the provision of the statutes, are calculated roughly with the view of compensating the landlord for the trouble he incurs and the losses he may sustain by payment of charges *prima facie* payable by the occupiers of his property; and we do not think that the Legislature intended, nor has it anywhere provided, that in estimating charges which he has to pay, he can deduct, in respect of such outgoings from the annual value upon which he is to be rated, more than the sums which he in fact pays. We think that the stipendiary magistrate was right in disallowing this deduction.

The case of *The Queen* v. *Bilston* (5), which was cited to the contrary, turned wholly on the words of the Parochial Assessment Act, which authorised a deduction of the usual tenants' rates, and held that when the landlord compounded he was still entitled to deduct the usual amount paid by the tenants where the tenants pay rates, in order to arrive at the net annual value of the premises within the meaning of 6 & 7 Will. 4. c. 96. s. 1. But inasmuch as, for the reasons to be given presently, we do not think that that Act applies, we are left to decide the meaning of " annual rent " in section 83 without any assistance from *The Queen* v. *Bilston* (5).

The appellant also contended that he was entitled to an allowance for " voids," that is, as we understand the word, that inasmuch as the property is let at weekly rents, the proper " annual rent " was not the weekly rent multiplied by fifty-two, but what, after making a fair calculation of the loss to the landlord by the want of tenants incident to property of the kind let to weekly tenants, would be in practice the total value received in the year for the property in question. Here we think his contention is right, and we understand that the stipendiary magistrate is prepared to hold accordingly, and to vary his decision in that respect.

But, beyond these contentions, the appellant has raised a question of greater importance, and which does not seem to have been expressly decided by the case of *The Sheffield Waterworks Company* v. *Bennett* (1) or any other case. His contention is that, in addition to the deductions for rates and voids, he is also entitled to a further deduction for the annual average cost of repairs, insurance and other expenses necessary to maintain the premises in a state to command the present weekly payments of the tenants—in other words, to have the water rate assessed upon the rateable value of the premises, after making all the allowances required by the 6 & 7 Will. 4. c. 96. s. 1, in the case of poor rates.

Reverting to the words of the section with which we have to deal, they are, where " the annual rent of the house or part of a house supplied shall not exceed . . . . the yearly rate of . . . ." and " where such annual rent shall exceed 50*l.*, at a rate not exceeding 6*l.* per cent. on the amount of such annual rent."

The arguments of the appellant may be stated shortly as follows:—The question, being reduced to whether the words " annual rent " in section 83 of the Act of

1875 meant net annual value or "gross estimated rental," is to be decided by reference to all the statutes relating to the water rates to be charged either by the corporation or by the company whose rights the corporation has purchased; and, though some of these Acts are not now in force, they may be looked at for the purpose of putting a construction upon the words "annual rent" in section 83. The decisions also prior to the Parochial Assessments Act may be referred to, and throw light upon the subject.

By a local and personal Act of 7 Geo. 4, the Birmingham Waterworks Company were incorporated for the purpose of supplying Birmingham with water. This Act was repealed by the Birmingham Waterworks Act, 1855 (except so far as the incorporation of the company was concerned). In the meantime, by the Birmingham Improvement Act, 1851, the council were (by section 109) empowered to provide water "for the purposes of that Act and for private use, and for that purpose to contract with the Birmingham Waterworks Company for a supply of water, and, after twelve months' notice, to purchase the whole works of the company, in which case all the powers of the company, *inter alia*, in regard to receiving or recovering of rents or rates for water, were from the date of the purchase to belong to the council." By section 124 of that Act, the council were empowered, "as long as any building should be supplied with water by the council for domestic use, to make a special rate called the 'water rate' upon the occupier. And the rate so made shall be assessed upon the annual value of the building, ascertained in manner prescribed by clauses 175 and 176 of" the Towns Improvement Clauses Act, 1847.

Turning to those clauses it is provided by clause 175 that the annual value of all property rateable under that Act is to be "ascertained according to the next preceding assessment for the relief of the poor." But clause 176 provides that if the poor rate be in the judgment of the commissioners an unfair criterion, they may cause a valuation to be made, "and in every such valuation the property rateable shall be computed at its net annual value as defined by 6 & 7 Will. 4. c. 96, or any other Act for the time being in force for regulating parochial assessment." Clause 130 of the Birmingham Improvement Act, 1851, further provided that a new valuation should be made according to section 176 of the Towns Improvement Clauses Act, 1847, "within" eighteen months from the 1st of January, 1852.

No purchase of the waterworks by the corporation having been made under the powers of the Act of 1851, it was contended by Mr. Webster that that Act could have nothing to do with the argument; but it was relied on by Mr. Hugo Young for the appellant, as shewing that the Legislature throughout, in dealing with the rates to be charged for water, when it uses the expression "annual value" contemplates "net annual value" and not "gross estimated rental."

Other Acts were referred to for the same purpose, especially 38 & 39 Vict. c. 55 (the Public Health Act, 1875), which, by section 56, provides that "where a local authority supply water to any premises, they may charge a water rate assessed on the net annual value of the premises, ascertained in the manner prescribed by this Act with respect to general district rates, which," by section 211, is on "the full net annual value" ascertained by the valuation list, if there be one, if not, by the last poor rate. The Union Assessment Act, 25 & 26 Vict. c. 103, was also quoted as shewing that the Legislature habitually uses the words "annual value," "net annual value" and "rateable value" when dealing with questions of rating as convertible terms. The case of *The King* v. *Tomlinson* (3) was also relied on by Mr. Hugo Young for the appellant; but it certainly does not assist his argument, for Mr. Justice Bayley there says (on p. 167), "annual rent is not annual profit or value"; and the expression "net yearly rent" used in that case is held to be equivalent to "the rent paid by the tenant after deducting taxes and charges of collection," and not the "clear annual rent after every deduction," including therefore the part to be set aside for repairs and reproduction of the subject of the rate" (p. 166). He also relied on *Baker* v. *Marsh* (4), in which it was held

that a town councillor was not "rated to the relief of the poor upon the annual value of not less than 15*l.* where his rateable value was only 11*l.* 15*s.*" But this case appears to us to have turned wholly upon the construction of the clause relating to the qualification in question, and not to throw any light upon the meaning of annual rent in the clause now in question.

In paragraph 9 of the Case it is stated that the appellant and the corporation admit that the words "annual rent" in section 83 of the Birmingham Waterworks Act, 1855, are equivalent to the "annual value" in the Waterworks Clauses Act, 1847, s. 68; but we do not see that this admission assists us in deciding the meaning of either term, for the Waterworks Clauses Act, 1847, contains no definition or explanation of the words "annual value," but merely provides that the water rates "shall be payable according to the annual value of the tenement supplied with water; and if any dispute arise as to such value, the same shall be determined by two Justices."

The respondents' counsel, Mr. Alfred Young, contended that no assistance was to be derived from the other Acts referred to by the appellant's counsel, and that the question was to be decided by reference only to the words of section 83 of the Act of 1855, assisted by the construction put by the Court of Appeal upon the words "annual value" in the case of *Dobbs* v. *The Grand Junction Waterworks Company* (2). He contended that the Act of 1851, never having been acted upon by the corporation (who had purchased the waterworks and obtained their powers solely under the Acts of 1875 and 1855), had no application to the case, and consequently that clauses 175 and 176 of the Towns Improvement Clauses Act had no application, or, if they applied, that the words in section 176, "property rateable, shall be computed at its net annual value as defined by 6 & 7 Will. 4, c. 96," only required such allowances to be made as would be required in order to get at the letting value of the house—in other words, at the "gross estimated rental" upon which the rateable value is afterwards to be computed.

Great reliance was placed by the respondents' counsel on the decision of the Court of Appeal in *Dobbs* v. *The Grand Junction Waterworks Company* (2). There the question was as to the meaning of the following words, "according to the actual amount of the rent where the same can be ascertained, and where the same cannot be ascertained according to the actual amount or annual value upon which the assessment to the poor's rate is computed."

The Court held that these words did not mean the rateable value as appearing in the rate, but the gross estimated rental; but the decision turned to a great extent upon the ground that the words "upon which the assessment is computed" shewed that the amount of the assessment itself could not be intended, and upon the fact that at the time of the passing of the Act, the 6 & 7 Will. 4. c. 96 had not come into existence, and upon the absence of the word "rateable," and other similar considerations. It did, however, contain many observations applicable to the present case, and to all cases in which the question arises what is the value in respect of which a water rate is to be calculated, and which seem to us to throw light upon the true meaning to be assigned to such words as "annual rent" in connection with the calculation of the amount to be paid for water supplied. For instance, Lord Chief Justice Coleridge, in discussing the words "actual amount or annual value upon which the assessment to the poor rate is computed," says that they mean "the full amount at which the house to be rated would, before the 6 & 7 Will. 4. c. 96, have been valued by the persons who were to rate it, that amount not being subject to be afterwards reduced by those various heads of allowance with which we are all familiar, and which were to be made" (and, as he afterwards observes, "which we know historically were made before" 6 & 7 Will. 4, c. 96) "by the overseers before the actual assessment upon any individual was arrived at." Lord Justice Baggallay (at p. 352) says, "'Annual value' is not the annual value at which the house is assessed to the poor's rate, but the annual value upon which the assessment to the poor's rate is computed." Lord Justice Lindley in his judg-

ment (p. 353) lays stress upon the omission of the words "net" or "rateable," and concludes that the meaning of the words "annual value" is, whether the house is let or not let, what it would let for. Having regard to these expressions as to the true meaning of the words "annual value" and to the words "annual rent" in section 83 of the Act of 1855, and to the construction put upon the very similar words in *The Sheffield Waterworks Company* v. *Bennett* (1), we think it would be running counter to the cases cited, and laying down a rule inconsistent with them, if we were to hold that the words "annual rent" are equivalent to "rateable value" ascertained in the manner provided by 6 & 7 Will. 4. c. 96. It would have been so very easy for the Legislature to use language shewing such intention if any such had existed, that we cannot help thinking that the absence of any such language is a strong reason for holding that the words used have no such meaning.

The argument derived from other statutes containing very different words seems to us on the whole to tell against such an intention. Nor is there any reason why the one mode of arriving at the amount on which the payment for water should be assessed should be preferred to the other. The object of the Legislature apparently is that houses or parts of houses supplied with water should pay water rates calculated with reference to the class of the house or to the value to the part of a house which is supplied; but this object will not be attained by adopting the rateable value, better than the gross estimated rental, as the value upon which the amount is to be assessed. Either will suffice for the purposes of calculation, and the Legislature may equally well be supposed to have adopted either.

Looking at the words of section 83, and putting the best construction we can upon the words "annual rent," we have come to the conclusion that in the main the stipendiary magistrate has taken the right view; and that when he has calculated the allowance to be made for voids, as above explained, he will do right in allowing the rate to stand, with the necessary alteration occasioned by that allowance.

Judgment for the respondents.

Solicitors — Gamlen, Burdett & Woodhouse, agents for Cottrell & Son, Birmingham, for appellant; Sharpe, Parkers & Co., agents for E. O. Smith, the Town Clerk of Birmingham, for respondents.

1883. April 3. } WILLIAMS *v.* DAVIES.

Bastardy—Second Order to pay on Expiration of First—Jurisdiction of Justices—Bastardy Act, 1872 (35 & 36 *Vict. c.* 65).

Justices made an order in bastardy directing the putative father to pay until the mother married, and the father accordingly made payments, some of which were made within a year from the birth. Afterwards the mother married, but her husband died, and thereupon on her application Justices made a second order on the putative father to pay:—Held, *that the second order was invalid.*

Special Case stated by Justices of Cardiganshire, in the matter of an application for an order of affiliation heard on the 3rd of November, 1882.

On the 2nd of April, 1875, an order was made by Justices between the same parties and in respect of the same child, adjudging the defendant to be the putative father of the child, and directing the defendant to pay to the complainant the sum of two shillings a week "until the said child shall attain the age of thirteen years, or shall die, or the complainant shall marry."

The complainant, in May, 1879, married. The defendant paid the sums due up to and for some months after her marriage, and then discontinued. The complainant's husband died on the 21st of September, 1881, whereupon the complainant made the present fresh complaint.

The Justices made a second order for the payment of two shillings a week, reciting that the defendant was the father of the child, and that he had made pay-

ments to the complainant within twelve months.

Bosanquet, Q.C., for the defendant.
The complainant was not represented.

DENMAN, J.—The order made by the Justices in this matter is appealed against, on the ground that on a previous occasion there had been an order that the putative father should pay two shillings a week until the child was thirteen years of age or the mother married. The mother married, and her husband died, whereupon the Justices made this fresh order, adjudicating paternity and directing payment. Looking at the terms of the statute, and gathering therefrom the intention of the Legislature, I think it was not intended that where the mother has once applied and an order has been made on the father, it should be open to the mother to get a fresh order in excess of the limit in point of time of the original order. So far as there is authority on the subject the point is arguable. In *The Queen* v. *Machen* (1) it was held that, where the mother failed in her application from want of evidence, she might apply again. The correctness of this decision was doubted by Mr. Justice Lush in *The Queen* v. *Grant* (2); but *The Queen* v. *Machen* (1) was followed, and that case must now be taken as law. The case of *Pearson* v. *Heys* (3) is more in point. The order of affiliation in that case was the same as the order of affiliation in this case. It was held that an order to pay until the child was sixteen or the mother should marry was a good order. Therefore the first order in this case was good. The question now is, whether, when that order has been made, the mother after the death of her husband can apply *de novo*. I think, looking at the scope of the Act, it is clear that the Legislature did not contemplate a second order. I do not put it entirely on the maxim *Nemo debet bis vexari pro eadem causa*, because the second application is not *pro eadem causa*, and the second order applies to a different time from the first; but the maxim applies to the extent that no statute ought to be construed so as to conflict with the spirit of that rule. The 3rd, 4th and 5th sections of the Bastardy Act, 1872 (35 & 36 Vict. c. 65), shew that the Legislature did not contemplate frequent applications first for one time and then for another, and the 5th section deals expressly with the time for which the orders are to run. It is at first sight difficult to say that the order limiting payments until marriage is a good order, but we are bound to follow *Pearson* v. *Heys* (3). It is not competent, after the magistrates have once made an order, for the mother to come again. I think the decision of the magistrates was wrong, and must be reversed.

FIELD, J.—I am of the same opinion. The question in the Case is informally stated, and asks whether the Justices were correct in point of law—that is, whether the payment under the first order within twelve months gave them jurisdiction, or whether the lapse of time was fatal. In my opinion the second order was invalid. The first question under the Bastardy Act is, who is the father of the child? Then the statute says, "the Justices may, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for payment." This gives them an absolute discretion. The 4th section does not give any limit in point of time, so that an order without any mention of time would be good. There is also no limitation as to the marriage of the woman. This silence is remarkable, because by the Act of 1844 the order was to be of no validity after the marriage of the mother. When the Legislature omitted those words in the Act of 1844, they meant them to be omitted. I should have entertained some doubt on this head; but there is a decision of this Court that the limitation "until she shall marry" is equivalent to such a limitation as "until she shall go to France," and I act on that authority willingly. In regard to the second order, would it have been competent to the Justices to decide that the defendant was

(1) 14 Q.B. Rep. 74; 18 Law J. Rep. M.C. 213.
(2) 36 Law J. Rep. M.C. 89; Law Rep. 2 Q.B. 466.
(3) 50 Law J. Rep., M.C. 124; Law Rep. 7 Q.B. D. 260.

not the putative father? If they made no order for payment in the first instance, could she ask for it afterwards? I think that only one order was intended. I entertain grave doubts in regard to the *dictum* of my brother Manisty in *Pearson* v. *Heys* (3)—namely, that "the 4th section provides that the mother may take out the summons before or within twelve months from the birth of the child, or at any time thereafter if the father of such child has within twelve months next after the birth of the child paid money for its maintenance; so when, as in this case, the order is made and money paid under it within twelve months from the birth of the child, the mother, at the end of the period mentioned in the order, may, it would seem, come again for another order" (4). I entertain grave doubt whether payment under an order is a payment within the 3rd section.

HAWKINS, J.—I have considerable doubt on this question, which has only been argued on one side; but, as my learned brothers entertain no doubt, I will say no more.

Appeal allowed.

Solicitors—Griff. Jones, agent for Griff. Jones & Co., Aberystwith, for appellant.

1883. June 9. } *Ex parte* SAUNDERS.

Public Health Act, 1875 (38 & 39 *Vict.* c. 55), *ss.* 94, 95 *and* 96—*Notice to abate Nuisance—Order of Justices—Works necessary for the Purpose—Power to order Specific Works.*

A nuisance existed, occasioned by a closet situated in the middle of a house, and the local sanitary authority gave notice to the owner, under the Public Health Act, 1875, *s.* 94, *to abate the same, and for that purpose to remove the closet to an outer wall. The owner failed to remove it, though he made alterations with the view of abating the nuisance; whereupon an order of Justices, under section* 96, *was obtained, directing him to remove the closet to an outer wall, in accordance with the notice.*

On a rule for a certiorari to quash the order of Justices,—Held, *that the order was good, being within the words, "order to do any works necessary for that purpose."*

Ex parte Whitchurch (50 Law J. Rep. M.C. 41) *distinguished.*

In this case Rose on a former day had obtained a rule *nisi* for a *certiorari* to bring up and quash an order of Justices, made under section 96 of the Public Health Act, 1875, whereby Mr. Saunders, the owner of some houses within the district of the urban sanitary authority of Bridgwater, had been ordered to comply with the requisitions of a notice previously served upon him under section 94, and to remove a certain closet from the middle of his house and place it near an outer wall, where there might be efficient ventilation, and to fix the soil pipe outside the wall.

The facts were that the closet in the middle of the house being a nuisance, the sanitary authority had given notice to the applicant to abate the nuisance, and for that purpose to remove the closet to the outer wall. He made some alterations with the view of abating the nuisance, but failed to remove the closet, and the order of the Justices now complained of was applied for and made.

A. Charles, Q.C., and *Herbert Reed*, shewed cause.—The order is good. Section 96 empowers the Justices to direct the execution of any works necessary for the purpose of abating the nuisance. And in the forms given in the schedule, which, by section 317, are to be read as part of the Act, Schedule IV. Form D, it is provided that the works to be done should be specified. *Ex parte Whitchurch* (1) is distinguishable.

J. Rose, in support of the rule.—*Ex parte Whitchurch* (1), on the authority of which this rule was granted, is in point—the Justices made just such an order as the one now in question. It was never intended that the Justices should decide on

(4) This *dictum* does not occur in the Law Journal Report of the case. The "4th section" referred to should apparently be the 3rd.

(1) 50 Law J. Rep. M.C. 41.

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the details of the work to be done. They are to order what is necessary to be done, and the owner must do it at his peril. The Act intended to protect owners against the caprices of surveyors. It might be that so soon as the owner had done the very specific thing ordered, a new surveyor might order something else. Sanitary arrangements are to a great extent matters of experiment, and are certainly the subject of rival schemes. The surveyor might order what was quite inefficient; whereas if left to the owner to abate the nuisance at his peril, all mistakes in the mode adopted are his own fault. To order structural works might be to order a person to violate the covenants of his lease.

CAVE, J.—I am clearly of opinion that this rule must be discharged. It is abundantly plain that, by section 94 of the Public Health Act, the local authority may order a nuisance which has been reported to them to be abated by the person who is answerable for its existence; and then, by section 95, if such person so ordered makes default, or if the nuisance is likely to recur, then the local authority can complain to the Justices, who, under section 96, may make an order dealing with the nuisance effectively. Who is to decide what is a sufficient abatement of the nuisance or what will prevent its recurrence? Obviously, I should say, the persons who are to make the order. Then, the local authority having, in the terms of section 94, required the person to execute such works as may be necessary for the purpose of abating the nuisance, who is to decide whether the works so ordered are necessary or not? The Justices, I should suppose, before whom the question comes, under sections 95 and 96, and who have to be satisfied of the facts alleged by the complainants. Here the Justices, being satisfied on these points, have ordered certain works to be done, works which they think necessary for the purpose for which their intervention was sought.

This seems to me clear enough upon the words of the Act, and that they have power to make the order; but the ingenuity of Mr. Rose has discovered the case of *Ex parte Whitchurch* (1), which he says shews that they had not the power. I will say no more about that case than that it is distinguishable from the present. The owner there had a privy of an ordinary kind which was a nuisance, and the Justices ordered, not another privy which should be no nuisance, but a particular kind of privy. Now, whether right or wrong, that is not this case—the applicant has not been ordered to put up a particular kind of closet, but to place his closet in a proper place.

SMITH, J.—I am of the same opinion. It seems to me that no argument could have been addressed to the Court against this order but for the case of *Ex parte Whitchurch* (1). That is distinguishable, because the order was to make a particular kind of closet, and the Court thought it too precise. Here, however, the order is to move the closet from one place to another, and it falls directly within the terms of the Act—namely, to do such things as may be necessary to prevent the recurrence of the nuisance complained of.

Rule discharged.

Solicitors—W. A. Boyle, agent for S. Chapman, Bridgwater, for applicant; Reed, Lovell & Reed, agents for Reed & Cook, Bridgwater, for Justices.

1882. Nov. 24.

THE QUEEN *v.* KAY.

Licensing Acts—Discretion of Justices as to Renewal of "Off" Licences—Beerdealers' Retail Licences Act, 1882 (45 & 46 *Vict. c.* 34), *s.* 1.

The discretion given to the Justices by the Beerdealers' Retail Licences Act, 1882 (45 & 46 *Vict. c.* 34), *s.* 1, *is absolute as well when a renewal of a licence heretofore granted is applied for, as when the application is for a new licence.*

This was an application to quash an order of the Quarter Sessions of Preston made subject to a Special Case, from which it appeared that the appellant, who had held a licence for the retail sale of beer to

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be consumed off the premises since 1875, applied in September, 1882, at the general annual licensing meeting for the borough of Over Darwen, for a renewal of the licence of certain premises in his possession. The Justices refused to renew the licence, after hearing evidence, on the ground that the wants of the neighbourhood did not render it expedient to grant a certificate. The appellant appealed to the Quarter Sessions, and on the hearing of the appeal it was contended that, under section 1 of the Beerdealers' Retail Licences Amendment Act, 1882 (1), the Justices had full discretion alike in granting renewals and in giving new licences.

The Court of Quarter Sessions confirmed the decision of the Justices, and dismissed the appeal with costs. They stated a Special Case for the opinion of the Court, in which the question was, "Is the discretion given by section 1 of the Beerdealers' Retail Licences Amendment Act, 1882, limited to applications in respect of premises not theretofore similarly licensed?"

Addison, Q.C. (*William Potter* and *Yarburgh* with him), shewed cause.—The words of the Act are plain, and give a free and unqualified discretion to refuse any application for any licence. By 4 & 5 Will. 4. c. 85, it was only necessary to have an excise licence for the sale of beer. The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), provides for granting certificates for licences, and section 8 (2) enacts that such grant shall not be refused except on one of the four grounds mentioned in the Licensing Act of 1828 (9 Geo. 4. c. 61); but this section is repealed by 43 Vict. c. 6. s. 1 (3), as regards certificates for additional licences for the sale of beer by retail for consumption off the premises. By 45 & 46 Vict. c. 34. s. 1 (3), the discretion given by the Act of 1880 (43 Vict. c 6), s. 1 (1), is extended to certificates for any licence for sale of beer by retail to be consumed off the premises.

R. Henn Collins, in support of the rule. —The construction contended for would interfere with vested interests, and therefore the Court would, if possible, avoid it

(1) 45 & 46 Vict. c. 34. s. 1: "Notwithstanding anything in section 8 of the Wine and Beerhouse Act, 1869, or in any other Act now in force, the licensing Justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any licence for sale of beer by retail to be consumed off the premises on any ground appearing to them sufficient, or to grant the same to such persons as they, in the execution of their statutory powers and in the exercise of their discretion, deem fit and proper."

Section 3: "This Act may be cited as the Beerdealers' Retail Licences (Amendment) Act, 1882; and shall not extend to Scotland; and words therein have the same meaning as in the Licensing Act, 1872."

(2) 32 & 33 Vict. c. 27. s. 8: "All the provisions of the said Act of the ninth year of the reign of King George the Fourth as to the terms upon which and the manner in which and the persons by whom grants of licences are to be made by the Justices at the said general annual licensing meeting, and as to appeal from any act of any Justice, shall, so far as may be, have effect with regard to grants of certificates under this Act, subject to this qualification, that no application for a certificate under this Act in respect of a licence to sell by retail beer, cider or wine not to be consumed on the premises shall be refused, except upon one or more of the following grounds—namely:

"1. That the applicant has failed to produce satisfactory evidence of good character.

"2. That the house or shop in respect of which a licence is sought, or any adjacent house or shop owned or occupied by the person applying for a licence, is of a disorderly character or frequented by thieves, prostitutes or persons of bad character.

"3. That the applicant having previously held a licence for the sale of wine, spirits, beer or cider, the same has been forfeited for his misconduct, or that he has through misconduct been at any time previously adjudged disqualified from receiving any such licence or from selling any of the said articles.

"4. That the applicant or the house in respect of which he applies is not duly qualified as by law is required.

"Where an application for any such last-mentioned certificate is refused on the ground that the house in respect of which he applies is not duly qualified as by law is required, the Justices shall specify in writing to the applicant the grounds of their decision."

(3) 43 Vict. c. 6. s. 1: "Section 8 of the Wine and Beerhouse Act, 1869, is hereby repealed, as far as the qualification therein contained relates to grants of certificates for such additional licences as aforesaid; and the licensing Justices shall be at liberty either to refuse such certificates as aforesaid on any grounds appearing to them in the exercise of their discretion sufficient, or to grant the same to such persons as they, in the execution of their statutory powers and in the exercise of their discretion, deem fit and proper."

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—*The Queen* v. *Vine* (4). The words "licensing Justices" are by section 3 (1) declared to mean "licensing Justices" within the meaning of the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 74 (5), and that relates only to Justices having jurisdiction in respect of certificates for new licences. By that Act it is provided that a new licence granted by a borough licensing committee must be confirmed by the whole body of borough Justices, or a majority of such body, assembled for the purpose of confirming such licences; but by the interpretation clause it is declared that, "The renewal of a licence means a licence granted at a general annual licensing meeting by way of renewal." The Justices refusing the certificate, though Justices entitled to grant new certificates, were not sitting as a committee. The necessary interpretation of these statutes is, that discretion is only given as to new grants; otherwise henceforth there would be no distinction between new grants and renewals.

FIELD, J.—I think this case is clear, and that the Justices of Quarter Sessions were warranted in exercising a discretion in this case. The question is, whether the discretion given to the Justices by the Beerdealers' Retail Licences Amendment Act, 1882 (45 & 46 Vict. c. 34), s. 1 (1), is limited to applications for certificates in respect of premises not theretofore licensed. For the appellant it was contended that, he having had a licence for so long was not to be deprived of it by the Justices except in one of the four cases enumerated in section 8 of the Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27) (2). It is necessary for us, however, to read the Act of 1882 itself, and, if there be no ambiguity in its terms, we must give them their natural meaning. The Act of 1880 (43 Vict. c. 6. s. 1), which repeals section 8 of the Act of 1869, so far as it qualifies the right to grant certificates for additional licences for the sale of beer by retail for consumption off the premises, is referred to in the preamble of the Act of 1882 (45 & 46 Vict. c. 34), which recites that, "It is expedient to extend the provisions of the said Act to the granting of certificates for all licences for the sale of beer by retail for consumption off the premises." That recital shews the object of the Act to be to extend the discretion given to the Judges by the Act of 1880 in respect of additional "off" licences to all "off" licences. The Legislature then proceeds to enact that, "The licensing Justices shall be at liberty in their free and unqualified discretion, either to refuse a certificate for any licence for the sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient, or to grant the same." For the appellant it is contended that the words "licensing Justices" being by section 3 of the Act of 1882 (1) declared to have the same meaning as in the Licensing Act, 1872, which defines them to be Justices having jurisdiction in respect of the grant of new licences in a licensing district under the Intoxicating Liquor Licensing Act, 1828, as amended by the Licensing Act of 1872, the enactment in section 1 of the Act of 1882 cannot be intended by the Legislature to apply to cases of the renewal of licences, and that therefore there is no discretion in respect of certificates for renewal of licences. But this licence has in fact been refused by a committee of those Justices who have jurisdiction to grant new licences in this district, although formally, perhaps, the refusal should be confirmed by the whole bench of magistrates at Quarter Sessions. But I think that the Legislature intended to give a new discretion to the Justices in all cases whether of renewal or of new licences. It has been argued that in prior Acts the Legislature has always drawn a great distinction between applications for renewal and those for new licences. It is true that an applicant for a new licence has to give notice to the neighbours in order that they may have an opportunity of opposing the application; and therefore it is provided that notices in several public places should be exhibited for stated periods of time for the protection of the magistrates in the exercise of the discretion given to them. These formalities having been once gone through, and a licence having

(4) 44 Law J. Rep. M.C. 60; Law Rep. 10 Q.B. 195.

(5) 35 & 36 Vict. c. 94. s. 74: "'Licensing Justices' means the Justices having jurisdiction in respect of the grant of new licences in a licensing district under the last-mentioned Act (the Intoxicating Liquor Licensing Act, 1828), as amended by this Act."

been granted, there is no need for the applicant on subsequent occasions to attend unless required. But as a matter of fact, every grant is of a new licence being only for one year. Had the Legislature intended to exclude the discretion of the Justices in cases of applications for renewal of licences it would have said so, but it has not; and the very great generality of the terms of the enactment is an argument in favour of the contention that the discretion given is most full and absolute. Our answer to the question asked in the case, therefore, must be that the Justices have full discretion in all cases to grant or refuse the renewal of licences.

STEPHEN, J.—I am of the same opinion. The words of this section are quite plain and obvious, as giving the licensing Justices jurisdiction over all licences whether new or renewed, and an absolute discretion and power. And this power is given in somewhat emphatic language. It gives "free and unqualified discretion," evidently shewing that the Legislature wished to avoid any doubt. With regard to the argument that the licensing Justices to whom the discretion is given are only licensing Justices for new licences, it is plain that the Justices who refused the licence were admitted by the appellant to be those who also had the power to grant new licences. I have no doubt that the Justices had power in their discretion to refuse this application.

Rule to quash the order of the General Quarter Sessions discharged with costs.

Solicitors—Pritchard, Englefield & Co., agents for C. Costeker, Darwen, for appellant; Clarke, Woodcock & Ryland, agents for F. G. Hindle, Darwen, for respondent.

1882. Nov. 24.

VINTER (*appellant*) *v.* HIND (*respondent*).

Public Health Act, 1875 (38 *&* 39 *Vict. c.* 55), *ss.* 116 *and* 117—*Meat Unfit for Human Food—Seizure after Sale by permission of Purchaser—Penalty.*

A butcher who had purchased the carcase of a cow that had died from disease rendering it unfit for human food, sold part of it to a purchaser, who bought it for consumption by his household, and not for sale. The inspector of nuisances, with the consent of the purchaser, took it and had it condemned by a magistrate:—Held, *that the meat was not "so seized" and condemned within sections* 116 *and* 117 *of the Public Health Act*, 1875; *and that exposure for sale, seizure during such exposure, and condemnation, are each and all of them conditions precedent to the infliction of a penalty under section* 117.

This was a Case stated under 20 & 21 Vict. c. 43, from which it appeared that the respondent, a butcher, was charged, on an information under sections 116 and 117 of the Public Health Act, 1875 (1), with having unlawfully exposed for sale certain meat, his property, which was afterwards seized by the appellant the inspector of nuisances for the rural sanitary authority, the said meat then being in the possession of John Claypole and intended for the use of man, and then appearing to the appellant, as such inspector of nuisances, to be unfit for the food of man, and was afterwards duly adjudged by a Justice of the peace to be unfit for the food of man, and condemned by him accordingly, and by him ordered to be destroyed, to prevent it being used for the food of man. The information was dismissed by the Justices.

The facts, as far as they are material, were these:—

On the 13th of March, 1882, the respondent bought of one Barber the carcase of a cow that had had milk fever and had been slaughtered the day before, and exposed the meat for sale in his shop, and sold part.

On the 15th of March, 1882, some four or five stones weight of this meat were purchased by T. Claypole, who took it

away with him for consumption by his own household.

On the 18th of March, in answer to the appellant's enquiries, the respondent told him that he had sold all the meat, and none of it was found on the premises.

The appellant then went to Claypole's house, and found the meat bought from Hind "smelling very offensively, and unfit for food." With Claypole's permission the appellant took it away. The medical officer certified that it was unwholesome and unfit for the food of man, and it was eventually condemned by a Justice, and destroyed.

The Justices came to the conclusion, first, that under sections 116 and 117 of the Public Health Act, 1875 (1), the power of the inspector of nuisances arises in regard to the articles of food therein mentioned only when exposed for sale, or deposited in any place for the purpose of sale or preparation for sale; secondly, that the meat in question having been already sold by the respondent, and removed by the purchaser to his own premises for his private use and consumption, was not "exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale"; thirdly, that this meat was not in fact "seized" by the inspector at all, and certainly not so within the terms and meaning of and as required by the said section, having been voluntarily handed to the inspector by Claypole, who never intended to sell any of it; and, fourthly, that the words "did belong" relied on by the appellant are used in reference only to the fact that meat or other articles duly and lawfully seized when "exposed for sale, or deposited for the purpose of sale or preparation for sale," might, and frequently would, have been destroyed before the hearing of an information for the penalty, in which case the words "did belong" would be grammatically correct, and that such is the true reading, as well as the intention and meaning, of this part of the section referred to; and the Justices therefore gave their determination against the appellant. The question for the Court was whether the construction of the Justices of the words and operation of sections 116 and 117 of the Public Health Act, 1875, was correct or not.

Sills, for the appellant.—Section 116, if it stood alone, would not empower the Justices to convict where the meat has been seized in the hands of a butcher's customer; but section 117 gives jurisdiction to the Justices to condemn the meat, without any reference to where it is found, if it is unfit for the food of man. In *The Queen* v. *White* (2) the only question was as to hearing the owner of the meat before condemning it; and it was then pointed out that in section 117, while power was given to the magistrate to order the destruction of the meat, no reference was made to exposure for sale as in section 116.

Poulter, for the respondent.—There was no lawful seizure of the meat when "exposed for sale," but only a taking by the

(1) 38 & 39 Vict. c. 55, section 116: "Any medical officer of health or inspector of nuisances may, at all reasonable times, inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man: the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk appears to such medical officer or inspector to be diseased or unsound, or unwholesome or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a Justice."

Section 117: "If it appears to the Justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour or milk so seized is diseased or unsound, or unwholesome or unfit for the food of man, he shall condemn the same and order it to be destroyed, or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs, or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal, carcase or fish, or piece of meat, flesh or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread or flour, or for the milk so condemned; or at the discretion of the Justice, without the infliction of a fine, to imprisonment for a term of not more than three months."

(2) 49 Law J. Rep. M.C. 19; Law Rep. 5 Q.B. D. 15.

leave and licence of the purchaser. A lawful seizure is a condition precedent to an order for its destruction; and the condemnation was therefore not valid.

FIELD, J.—I think the decision of the Justices must be affirmed. No doubt this section was inartificially drawn; but before convicting a man and subjecting him to a penalty, we must find out whether it is warranted in these particular circumstances by what the Legislature has said. The facts are shortly these. The respondent bought a cow so diseased as to be likely to render it unfit for the food of man, and exposed the carcase for sale. Had it been seized then the condemnation would have been strictly regular under the Act. But there was no certificate that it was unfit for the food of man when it was bought by Claypole for consumption by his own household, and it was not till the 18th that the inspector called on Claypole. Even then the inspector was not entitled to seize it, as it was not "exposed for sale," although it was intended for the food of man. But to satisfy the statute, it must have been not only intended for such use, but also exposed for sale with such intention. There was, however, no seizure, as it was by the permission of Claypole that it came into the possession of the inspector. The Justices who condemned it had no power to go into the question of the rightfulness of the seizure. The inspector, nevertheless, sought to convict the respondent, as the person to whom it "did belong" at the time of the exposure for sale. I observe that the word "and" has been used as an argument that the penalty clause is distinct from the preceding enactment; but the words "the same" must refer to something that goes before, and by reference we find that "the same" is, *inter alia*, the meat "so seized." The penalty clause prescribes a penalty in respect of every piece of meat "so condemned." But if there has been no seizure while exposed for sale, but only a condemnation, can the penalty be enforced? *The Queen* v. *White* (2) shews that there may be a condemnation without any notice to the person to whom it belonged, and therefore meat never exposed for sale might be condemned. But in this case I do not think any penalty could be enforced. There must, in my judgment, be an exposure, and a seizure during such exposure, as well as a condemnation, as a condition precedent to the imposition of a penalty.

STEPHEN, J.—I am of the same opinion, and regret that I must come to this conclusion. It is unreasonable to suppose that in extensive Acts, such as this, every particular section can at the time of passing be scrutinised very closely. It is reasonable to suppose, however, that by this statute it was intended to impose penalties up to 20*l.* on those who exposed unsound meat for sale. Scrutinising these two sections, one sees that they describe one process. First, there is to be a seizure of meat exposed for sale, then condemnation by a Justice of meat so seized, and then the person in whose possession it was seized will be liable to a penalty. It is obvious that these three things form one consecutive process; and if one or more be wanting, the consequence does not follow. To test the interpretation of such a section as this we should consider what words would be requisite to express the meaning sought to be put on them in the argument for the appellant. If the intention had been to make mere exposure for sale of meat unfit for food an offence, section 116 and the first part of section 117 should have been thrown together, and a separate section have been made that "any person who exposes for sale any meat unfit for human food shall be liable to a penalty of 20*l.*" I should have been glad so to read it, but then we should have to omit all the words of reference and alter the text very materially. I therefore think the true interpretation is that which I have stated. In this case the meat was undoubtedly unfit for human food, and was "exposed for sale"; but it was purchased, at what the purchaser doubtless thought a price which it was worth, by Claypole, who gave it to the inspector, and it was ultimately ordered by the magistrate to be destroyed. It is obvious that that did not amount to a seizure and condemnation under sections 116 and 117. Moreover, if there had been a regular seizure and condemnation, could the owner of the meat say it was

not unsound? I think he could not be heard to say anything but to deny the exposure for sale. This appears to me to be conclusive.

Judgment for respondent. No costs.

Solicitors—Keen & Rogers, agents for J. L. Bell, Bourn, Lincoln, for appellant; Lee, Okerby & Everington, agents for J. B. Schofield, Grantham, for respondent.

[CROWN CASE RESERVED.]

1883. June 2. THE QUEEN *v.* JONES.*

Bigamy—Absence during Seven Years— 24 *&* 25 *Vict. c.* 100, *s.* 57.

The prisoner was convicted of bigamy. It was proved that the prisoner and his wife had lived together after their marriage, but it did not appear how long; that seventeen years after their marriage, his wife being still alive, he had gone through the form of marriage with another woman; but there was no evidence as to the prisoner and his wife having ever separated, or as to when, if separated, they last saw each other:— Held, *that as there was no proof that they had ever separated, the prosecution were not bound to prove that the prisoner knew that his wife was alive within seven years of the second marriage, and that the prisoner was rightly convicted.*

The following case was reserved by Stephen, J.

Thomas Jones was convicted before me at the last Stafford Assizes on a charge of bigamy.

It was proved that he was married to Winifred Dodds on the 13th of March, 1865, and that he went through the ceremony of marriage with Phœbe Jones on the 11th of September, 1882, Dodds being then alive. One witness said that the prisoner and his wife had lived together after marriage, but how long she did not know. There was no evidence at all as to their having ever separated, or as to when, if separated, they last saw each other.

In *The Queen* v. *Curgerwen* (1) it was proved that the prisoner and his wife had lived apart for many years before the second marriage, and it was held that in that state of facts the prosecution were bound to prove that the prisoner had known that his wife was alive within seven years of the second marriage. As there was no proof that Jones and his wife had ever separated, I thought that *The Queen* v. *Curgerwen* (1) did not apply, and directed the jury to convict the prisoner if they believed he had married a second time in his wife's lifetime.

He was found guilty, and I sentenced him to two months' imprisonment and hard labour, but suspended the execution of the sentence, and committed him in default of bail till this case should be determined.

The question for the Court is, whether, in these circumstances, I ought to have directed an acquittal.

No counsel appeared on either side.

LORD COLERIDGE, C.J.—We are all of opinion that this conviction must be affirmed. There is nothing to shew that the parties ever separated so as to bring the facts within the case of *The Queen* v. *Curgerwen* (1). The ordinary principle of law therefore applied: that a state of things, as marriage, proved to have existed must be presumed to have continued until shewn to have ceased to exist. That presumption could only have been displaced by evidence, and in this case no such evidence was forthcoming.

Conviction affirmed.

* *Coram* Lord Coleridge, C.J.; Pollock, B.; Manisty, J.; Lopes, J., and Stephen, J.

(1) 35 Law J. Rep. M.C. 58; Law Rep. 1 C.C.R. 1.

1883. March 16. THE QUEEN *v.* THE GUARDIANS OF THE GARSTANG POOR LAW UNION.

Poor Law—Lunatic Wife—Separation from Husband—Place of Residence—Place of Settlement.

A pauper lunatic may be removed from the place where her husband is residing, and continues to reside, to the place of his settlement, with his consent alone, when she is incapable of consenting.

This was a Special Case, stated in the matter of an appeal, wherein the Guardians of the Preston Poor Law Union were the appellants, and the Guardians of the Garstang Poor Law Union were the respondents, touching an order of removal, from the last-mentioned union to the first-mentioned union, of Margaret, the wife of James Billington.

The following (so far as is material) were the facts set out in the Case:—

From August, 1880, to the 7th of July, 1881, the said Margaret resided with her husband, James Billington, in his house at Myerscough, in the Garstang Poor Law Union, and neither husband nor wife during such time were ever at any time chargeable to or received relief from any parish or union.

The legal settlement of James Billington and of his wife in his right is admitted to have been on the 7th of July and the 4th of August, 1881, in the Preston Poor Law Union.

Margaret Billington having become a pauper lunatic, the medical officer for the Garstang Union certified, on the 11th of July, that she was a proper person to be kept in a workhouse, and that the accommodation in the Garstang Union Workhouse was sufficient for her reception, pursuant to 25 & 26 Vict. c. 111. s. 20.

On the 4th of August an order of Justices was made for the removal of Margaret Billington from the Garstang Union to the Preston Union.

James Billington consented to such removal. The pauper did not give, nor was she mentally competent to give, her consent.

James Billington, at the time of such order and thence hitherto, has continued to reside and still resides at his said house within the Garstang Union, and carries on his employment as heretofore, and maintains himself out of his own funds.

The Guardians of the Preston Union duly prosecuted an appeal to the Quarter Sessions of Lancaster holden at Preston, and the said sessions, upon the hearing of such appeal, decided in favour of the appellants, on the ground that the said wife could not be thus separated from her said husband, and that she, as a married woman, was, under the circumstances, irremovable alone without her husband.

The question for the opinion of the Court was, whether upon the facts as above stated the order of removal appealed against was good in law.

A rule *nisi* having been obtained to reverse the decision of the Quarter Sessions,

Addison, Q.C., for the Guardians of the Preston Poor Law Union, now shewed cause.—The order of Quarter Sessions quashing this order of removal was right. An order removing a wife from the place where her husband is residing is bad. It is against the policy of the law that a wife should be separated from her husband, even with her consent; here there is no consent by the wife. If the husband and wife could be separated by consent, there must, at least, be the consent of both parties; but the true principle is that consent has nothing to do with the rule, which is in the interests of public morality. The principle has been acted upon in numerous cases, and there is no case which recognises the power to separate husband and wife.

He cited *The King* v. *Iron Acton* (1), *The Queen* v. *The Inhabitants of Cuckfield* (2), *The King* v. *The Inhabitants of Carleton* (3), *The King* v. *The Inhabitants of Eltham* (4), *The King* v. *The Inhabitants of Leeds* (5), *The Queen* v. *The Inhabitants of Stogumber* (6), *The Queen* v. *The In-*

(1) Burr. S.C. 153.
(2) 1 Burr. 291.
(3) Burr. S.C. 813.
(4) 5 East, 113.
(5) 4 B. & Ald. 498.
(6) 9 Ad. & E. 622; 8 Law J. Rep. M.C. 20.

habitants of Leeds (7), *The King* v. *The Inhabitants of St. Mary, Beverley* (8), and *The Madeley Union* v. *The Guardians of Bridgenorth* (9).

A. Charles, Q.C. (with him *J. F. Leese*), for the Guardians of the Garstang Poor Law Union, in support of the rule.—The order that has been quashed by the Quarter Sessions was one for removing the wife to her husband's place of settlement. That was a right order. The considerations of policy that are relied upon by the other side do not apply to this case. The wife is a lunatic, and wherever she is sent must be separated from her husband. Moreover, it is clear that a wife may be sent to her husband's settlement with the consent of both; and the sixth paragraph of the Case shews that in this case one consented and the other could not consent.

POLLOCK, B.—This is an appeal from an order of Quarter Sessions setting aside an order of the Magistrates for one of the divisions of the county of Lancashire for the removal of Margaret Billington, a pauper, from the Garstang Union to the Preston Union. I hardly think that the whole case was gone into so fully before the Court of Quarter Sessions as it has been before us. It seems to me that it is unnecessary in the present case to discuss those early cases in *Burrows' Reports of Session Cases* which were cited by Mr. Addison, although we are indebted to him for calling our attention to them, as shewing the current of authority on the subject. I think that there are two perfectly distinct questions discussed in the cases on this subject. The first is as to how far the law, founded on public policy, prevents the separation of husband and wife; the other whether, in cases where husband and wife can be separated, the wife should be sent to her husband's settlement, or to her own maiden settlement. I need not stop to consider more particularly, either the principle, with which I agree, that it is undesirable to separate husband and wife, nor the other question, whether the wife should be sent to her husband's place of settlement, or to her own former domicile. It is sufficient to say that, in the case of *The King* v. *The Inhabitants of Eltham* (4), it was held that an order of Justices removing the wife of a Scotchman, who had no settlement of his own, with her and his consent, to *her* last legal settlement was good. In the present case it is not necessary for us to go so far as that, because here the wife was sent to her husband's settlement with his consent. I entirely agree with what was said by my brothers Field and Cave in *The Queen* v. *The Guardians of Bridgenorth* (9), as to all the cases shewing that it was considered undesirable to separate husband and wife. But we have here to deal with what are, in great measure, novel circumstances. They are, perhaps, not entirely novel; for in *The Queen* v. *The Inhabitants of Stogumber* (6) the question was raised whether the wife could be removed from the parish where the gaol in which her husband was imprisoned was situated to her husband's settlement parish, and it was held that the order of removal was bad, as being a separation of husband and wife. In that case we find that Lord Denman thus expresses his opinion as to the circumstances under which a woman can be properly sent away from her husband. "It is clear in this case that the parties were residing in the same parish, and that there might have been a *consortium* between them, which it is the policy of the law not to interrupt. No consent on the part of the husband, nor anything equivalent to it, appears on the face of the case." It was assumed in that case that there was a possibility of *consortium*. In the present case beyond all doubt there is no possibility of *consortium*. What are the facts here? In July, 1881, the husband and wife have been living together in the Garstang Poor Law Union. The wife then becomes imbecile and chargeable to the parish. By 25 & 26 Vict. c. 111. s. 20, "No person shall be detained in any workhouse, being a lunatic or alleged lunatic, beyond the period of fourteen days, unless, in the opinion, given in

(7) 5 Q.B. Rep. 916; 13 Law J. Rep. M.C. 107.
(8) 1 B. & Ad. 201.
(9) *Ante*, p. 71; Law Rep. 9 Q.B. D. 756.

The Queen v. *Guardians of Garstang Poor Law Union.*

writing, of the medical officer of the union or parish to which the workhouse belongs, such person is a proper person to be kept in a workhouse, nor unless the accommodation in the workhouse is sufficient for his reception." That was acted upon here, and the woman being found to be a person who was permanently disabled in her mind, a certificate was given that the Garstang Union Workhouse was a suitable place for her to be in; she was therefore removed to the proper department of the Garstang Union Workhouse. An order of Justices was then applied for and made that she should be removed to the Preston Union, that being her husband's settlement. If it be said that there was no consent on the part of the husband to her being moved, the answer is that he did consent; if it be said that there was no consent on the part of the wife to her own removal, the answer is that she could not consent. As to the considerations of public policy, no one disputes that a lunatic wife may be removed from her husband to a lunatic asylum, and therefore all the cases as to the separation of husband and wife being against public policy have no application here. On all these grounds I am of opinion that the order of Quarter Sessions should be reversed and the order of Justices restored. As this is a case really *primæ impressionis*, there will be no costs.

NORTH, J.—I agree. Mr. Addison has cited a good many cases; but, though we are indebted to him, I do not think that they assist us much in deciding this point. The questions that were discussed in those cases were—first, whether a married woman could be sent to her maiden settlement, which does not arise here, as she has been sent to her husband's settlement; secondly, whether public policy allowed of the *consortium* between husband and wife being put an end to. That, again, does not arise here. The stern necessity of facts has put an end to the *consortium* in the present case. The question for us is not, Shall she live apart from her husband? but, being apart from her husband, where shall she live? Supposing her husband was dead, she would be properly removed to the place of his settlement. And I am of opinion that she was properly so removed under the present circumstances.

Appeal allowed, without costs.

Solicitors—Pitman & Son, agents for J. Clarke, Preston, for Preston Union; W. R. A. Kime, agent for Buck, Dicksons & Cockshott, Garstang, Lancashire, for Garstang Union.

1883. June 19. NEWTON v. THE JUSTICES OF THE WEST RIDING, YORKSHIRE.

Licensing Acts, 1828 *and* 1874—*Forfeiture of Licence by Holder—Application of Owner of Premises—Refusal of Licence—Appeal to Quarter Sessions*—37 & 38 *Vict. c.* 49. *s.* 15—9 *Geo.* 4. *c.* 61. *ss.* 14 *and* 27.

An appeal lies to Quarter Sessions from a refusal of the licensing sessions to grant a licence to the owner in respect of premises of which the licence has become forfeited owing to the licensed person having been convicted for the first time of making an internal communication with unlicensed premises.

By the Licensing Act, 1874, *s.* 15, *it is provided that where any licensed person is convicted for the first time of certain offences, and in consequence has his licence forfeited, there may be made by the owner of the premises an application to the next licensing sessions for the grant of a licence in respect of such premises, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act*, 1828, *with respect to the grant of licences at special sessions, shall apply as if the person convicted had been rendered incapable of keeping an inn, and the person applying for such grant was his assignee.*

By the Intoxicating Liquor Licensing Act, 1828, *s.* 14, *the Justices at special sessions were empowered to grant a licence to the assignee of a person who shall be, by sickness or other infirmity, rendered incapable of keeping an inn. By s.* 27, *any person who shall think himself aggrieved by any act of any Justice, done in or concerning*

the execution of this Act, may appeal to the next Quarter Sessions :—

Held, *that section* 15 *of the Licensing Act,* 1874, *incorporated section* 27 *of the Act of* 1828, *and therefore expressly gave a right of appeal.*

In this case, a rule *nisi* for a mandamus to the Justices to hear and determine an appeal of the applicants had been granted under the following circumstances :—The applicants were the owners of the Star Inn, of which one Cross was the tenant until the 28th of November, 1882, when he was convicted of an offence against section 9 of 35 & 36 Vict. c. 94, whereby his licence became forfeited. On the 14th of December the owners obtained a temporary authority to sell until the licensing day, under 37 & 38 Vict. c. 49. s. 15. At the next licensing sessions, on the 11th of January, 1883, the owners applied, under the same section, to the Justices for a transfer of the licence from Cross to them, which was refused. The owners appealed to Quarter Sessions; but the magistrates held that they had no jurisdiction to hear the appeal.

E. N. Fenwick (with him *F. A. Darwin*), for the Justices, shewed cause.—The question turns entirely upon the construction to be placed upon section 15 of 37 & 38 Vict. c. 49. That does not expressly give a right of appeal; and no such right can be given by implication. The provisions of the Act of 9 Geo. 4. c. 61, are only incorporated in that section in so far as they relate to applications to the licensing sessions; there is nothing to shew that the right of appeal given by section 27 of that Act is also intended to be incorporated. In *The King* v. *Hanson* (1), Abbott, C.J., says, "The rule of law is, although a *certiorari* lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute."

He also cited *The Queen* v. *Stock and another* (2).

Wightman Wood, for the applicants, in support of the rule.—All the provisions of 9 Geo. 4. c. 61, as to the grant of licences at special sessions, are incorporated into section 15. They must be read as if they were part of the section, and section 27 expressly gives a right of appeal.

(1) 4 B. & Ald. 519.
(2) 8 Ad. & E. 405.

SMITH, J.—I am of opinion that the rule in this case should be made absolute. The sole point is, whether a right of appeal exists from the refusal of the special sessions to grant a licence under section 15 of 37 & 38 Vict. c. 49, which depends upon whether certain sections of 9 Geo. 4. c. 61, are incorporated into that section. This leads us to consider the true construction of the latter part of section 15. The Legislature are dealing with the case of a licensed person being convicted for the first time of making an internal communication between his licensed premises and unlicensed premises—with a case, therefore, in which the person licensed forfeits his licence, and the owner of the house suffers for the offence of his agent. In such a case "there may be made by or on behalf of the owner of the premises an application to a Court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes, and a further application to such next special sessions for the grant of a licence in respect of such premises; and for this purpose the provisions"—it is impossible to read that as meaning some of the provisions; the only grammatical way to read it is, all the provisions. All the provisions, therefore, "contained in the Intoxicating Liquor Licensing Act, 1828, with respect to the grant of a temporary authority and to the grant of licences at special sessions shall apply as if the person convicted had been rendered incapable of keeping an inn and the person applying for such grant was his assignee." It seems to me, therefore, that the intention of section 15 is to put the owner of a licensed house that has lost its licence through the licensed person making a communication with unlicensed premises in the same position as the assignee of a person rendered incapable of keeping an inn. We are therefore thrown back upon section 14 of 9 Geo. 4. c. 61, and that enacts that, "If any person duly licensed under this Act shall (before the expiration of such licence) . . . . be, by sickness or other infirmity, rendered in-

capable of keeping an inn, . . . it shall be lawful for the Justices assembled as aforesaid at a special session, holden under the authority of this Act, . . . to grant to the assigns of such person becoming incapable of keeping an inn, a licence to sell exciseable liquors by retail," &c. The owner of licensed premises being put for this purpose in the same position as the assignee under the above section, we must look to the rights given to the assignee by the Act of Geo. 4. in order to ascertain the rights of the owner in the present case; and we find that by section 27 of that Act the assignee of a person rendered incapable of keeping an inn would have had an appeal from a refusal by the Justices to grant him a licence. Therefore the owners in the present case had a right of appeal.

WILLIAMS, J.—It seems to me that a right of appeal is expressly given by section 15 of the Act of 1874.

Rule absolute, with costs.

Solicitors—Badham & Williams, agents for W. L. Williams, Wakefield, for the Justices; Bell, Broderick & Gray, agents for W. Harrop, York, for the applicants.

1883. April 27, 28. May 10.

TAYLOR (*appellant*) *v.* SMETTEN (*respondent*).

Lottery—Sale, with Added Right to a Prize—42 Geo. 3. c. 119. s. 2.

The appellant, in a tent erected for the purpose, sold, for half-a-crown each, packets containing a pound of tea and a coupon for something of uncertain value. The tea was admitted to be worth the money paid:—Held, *that the transaction constituted a lottery within the meaning of* 42 *Geo.* 3. *c.* 119. *s.* 2.

CASE stated (under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49) by Justices at petty sessions for the borough of Darlington, in the county of Durham.

An information was preferred by the respondent (a police sergeant) against the appellant, under 42 Geo. 3. c. 119. s. 2 (1), charging that the appellant, on the 8th day of July, 1882, at the borough of Darlington, unlawfully did publicly keep, in a tent there situate, a lottery to be drawn by lots and by coupons by a certain contrivance—to wit, the distributing of a quantity of parcels of tea, with coupons in certain of such parcels—being a lottery not authorised by Parliament—to wit, a lottery for clocks and other articles—contrary to the form of the statute in such case made and provided.

Upon the hearing of the information it was proved on the part of the respondent, and found as a fact, that the appellant was an auctioneer at Grimsby, and travelled about from town to town with two caravans, erected tents, and sold articles of various descriptions; that a tent had been erected by him on a vacant space of land which he rented in the borough of Darlington; and that on every Saturday night he sold one-pound packets of tea at 2*s.* 6*d.* per pound, in each of which it was stated there was a coupon entitling the purchaser

(1) 42 Geo. 3. c. 119, after reciting by its preamble that "Evil-disposed persons do frequently resort to public-houses and other places, to set up certain mischievous games or lotteries, called Little Goes, and to induce servants, children and unwary persons to play at the said games, and thereby most fraudulently obtain great sums of money from servants, children and unwary persons, to the great impoverishment and utter ruin of many families," and, for remedy thereof, enacting, by section 1, that "all such games or lotteries called Little Goes shall . . . . be deemed . . . . common and public nuisances, and against law," enacts as follows:—

Section 2: "That from and after the 1st day of July, 1802, no person or persons whatsoever shall publicly or privately keep any office or place to exercise, keep open, shew, or expose to be played, drawn, thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance or device whatsoever, any game or lottery called a Little Goe, or any other lottery whatsoever not authorised by Parliament . . . . upon pain of forfeiting for every such offence . . . . 500*l.*, to be recovered in the Court of Exchequer, at the suit of his Majesty's Attorney-General; and every person so offending shall be deemed a rogue and vagabond within the . . . . meaning of" 17 Geo. 2. c. 5, "and shall be punishable as such rogue and vagabond accordingly."

to some prize. After selling the tea it was stated that, on producing the coupon, the purchasers would obtain their prizes on applying at the tent on the following Monday morning.

It was further proved on behalf of the respondent that, on the 8th of July, a person named Fowler went to the appellant's tent, whilst one of these tea sales was going on, and there purchased a pound of tea, which contained a coupon entitling him to a nickel silver brooch. He stated that the demand for the tea was so great that 500 one-pound packets were sold in three and a half minutes, and that it was stated by appellant's men that each of these packets contained a coupon entitling the purchaser to a prize.

It was further proved on behalf of the respondent that a woman named Kettlewell had purchased at the appellant's tent, on the said 8th day of July, 1882, a pound of tea for which she paid 2*s.* 6*d.*, and which contained a coupon for glass vases, and on applying at the tent on the following Monday she obtained the prize from one of the appellant's men.

Two other witnesses were called on behalf of the respondent, one of whom stated that he had visited the appellant's tent on several occasions when the sale of tea was going on, and that before the appellant's men commenced to sell they stated that each pound of tea would contain a coupon entitling the purchaser to a prize, and that they had to return on the following day for their prizes, the other witness testifying to buying several pounds of tea, which contained coupons for a tea-caddy, a bread-board, five stones of flour and a butcher's knife respectively, that on presenting the coupons at appellant's tent she received the articles, and that the tea was good and worth the money she paid for it.

The manager and one of the servants of the appellant were called by the appellant, and proved that before the sale it was announced by one of them that each packet of tea would contain a coupon, entitling the purchaser to a present; and that in fact each packet did contain such a coupon.

It was contended on behalf of the appellant:—first, that the transaction was perfectly legal, inasmuch as the essence of a lottery was the element of chance, which, it was argued, was absent here, as each person was bound to get some prize or present; secondly, that it was in fact nothing more than a fair contract between two parties; thirdly, that it was none the less a contract although the purchaser agreed to buy something the value of which he did not know; fourthly, that after the money was paid there was no uncertainty, as it was an absolute fact that the purchaser had a gift which no chance could deprive him of or alter; and fifthly, that in a lottery it was after the money was paid that the chance—the actual lottery—came in.

On the part of the respondent it was argued that, in order that a contract should exist, it was necessary that each party should know what they were negotiating.

It was admitted by the respondent's witnesses that the tea was good and worth the money paid for it.

The Justices being of opinion—first, that, although every packet of tea contained a coupon entitling the purchaser to a prize, yet there was a chance or uncertainty as to the value of such prize; and secondly, that such chance or uncertainty constituted a lottery, and was clearly in contravention of 42 Geo. 3. c. 119, convicted the appellant, and adjudged him to pay a fine of 1*l.*

The question submitted for the opinion of this Court was whether the transaction above described constituted a lottery within the meaning of the before-mentioned Act.

If the Court should be of opinion that the conviction was legally and properly made, and that the appellant was liable, then the conviction was to stand; but if the Court should be of opinion otherwise, then the information was to be dismissed. And the Court was solicited to remit the case to the Justices, with its opinion thereon, or to make such other order as might seem fit.

D. F. Steavenson (on April 27, 28), for the appellant.—The transaction described was not a lottery within the meaning of the Act (1). *Morris* v. *Blackman* (2) is distinguishable.

(2) 3 Hurl. & C. 912.

Taylor v. *Smetten.*

He cited *Wallingford* v. *The Mutual Society* (3) and *Smith* v. *Anderson* (4).

Goodrich, for the respondent.—There was everything necessary to constitute a lottery within the meaning of the Act. *Morris* v. *Blackman* (2) is in point.

Steavenson in reply.

Cur. adv. vult.

The judgment of the Court (5) was delivered (on May 10) by

HAWKINS, J.—The only question for our decision is whether the appellant kept a lottery within the meaning of section 2 of 42 Geo. 3. c. 119. We are of opinion that he did.

In *Webster's Dictionary* a lottery is defined to be "a distribution of prizes by lot or chance," and a similar definition is given in *Johnson*. Such definitions are, in our opinion, correct, and in such sense we think the word is used in the statute. And in this view we are justified by the language of some of the earlier statutes directed against unlawful games and lotteries. Take, for instance, the statute 12 Geo. 2. c. 28. s. 1, whereby, after reciting that persons setting up unlawful lotteries had unjustly "and fraudulently gotten to themselves great sums of money from the children and servants of several gentlemen, traders and merchants, and from other unwary persons," it is enacted, among other things, that if any person or persons "shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships or other goods, by any game, method or device whatsoever, depending upon or to be determined by any lot or drawing, whether it be out of a box or a wheel, or by cards or dice, or by any machine, engine *or device of chance of any* kind whatsoever," such person or persons shall be liable on conviction to forfeit 200*l*. And by section 4 it is enacted that "every such sale or sales of houses, &c., by any game, &c., or other device whatsoever, depending upon or to be determined by chance or lot, shall be void to all intents and purposes whatsoever."

(3) 50 Law J. Rep. Q.B. 49; Law Rep. 5 App. Cas. 685.

(4) 50 Law J. Rep. Chanc. 39; Law Rep. 15 Ch. D. 247.

(5) Field, J., and Hawkins, J.

Now what is the nature of the transaction upon which we are asked to pronounce our opinion?

In a tent, erected for that purpose, the appellant every Saturday night held a sale of one-pound packets of tea, in each of which, it was publicly stated, and stated truly, there was a coupon entitling the purchaser to a prize, and each purchaser did in fact receive the prize mentioned on such coupon.

The prizes were of infinite variety, both in character and value—nickel silver brooches, tea-caddies, bread-boards, quantities of flour, butchers' knives, glass vases, &c., were all represented by these coupons; but the article or prize represented by the coupon in any particular package offered for sale was not made known until after the sale of the package was effected and the coupon was inspected by the purchaser. All the intending purchaser knew was that he was buying a pound of tea containing a coupon for whatever prize might chance to be represented by it.

For each package the sum of half-a-crown was paid.

There can be no doubt that the appellant in enclosing and announcing the enclosure of the coupon in the packet of tea did so with a view to induce persons to become purchasers and realise a profit to himself; and, although it was admitted by the respondent that the tea was good and worth all the money, it is impossible to suppose that the aggregate prices charged and obtained for the packages did not include the aggregate prices of the tea and the prizes. Nor can it be doubted that in buying a package the purchaser treated and considered it as a purchase of the tea and the coupon, whatever its value might turn out to be. In other words, he bought the tea coupled with the chance of getting something of value by way of a prize, but without the least idea what that prize might be. In making his purchase he exercised no choice. What he got he got without any option or action of his own will, but as the result of mere chance or accident. If the coupon alone, sealed up, had been offered for sale, the purchaser taking his chance whether it represented a pen or a silver pencil-case; or if a number written on a piece of paper were

sold, entitling the purchaser to some article the name of which was written against a corresponding number in an undisclosed list, could anybody doubt that these would have been lotteries? To us it seems utterly immaterial whether a specific article was or was not conjoined with the chance and as the subject-matter of the sale.

Several cases were cited during the argument—it is not necessary for us to comment upon them. The cases *Morris* v. *Blackman* (2) and *The Queen* v. *Harris* (6) are however strongly confirmatory of the view we take.

Our answer to the question submitted to us therefore is, that the transaction described constitutes a lottery within the meaning of 42 Geo. 3. c. 119. s. 2.

The form of the conviction is not before us; we are therefore not in a position to express any opinion as to whether the conviction was legally and properly made. If the appellant was convicted as a rogue and vagabond, and the Justices imposed a fine of 20*s.* in lieu of imprisonment, as they are entitled to do under 42 & 43 Vict. c. 49. s. 4, then we think the conviction was right. If, however, without convicting the appellant as a rogue and vagabond, they simply convicted him of keeping a lottery and fined him 20*s.* for so doing under 42 Geo. 3. c. 119. s. 2, we think the statute 46 Geo. 3. c. 148. s. 59, applies, and the conviction could not be upheld—see *The Queen* v. *Tuddenham* (7).

The case will be remitted back to the magistrates, with our opinion and observations.

Case remitted accordingly.

Solicitors—Merediths, Roberts & Mills, agents for E. J. Thomas, Stockton-on-Tees, for appellant; The Solicitor to the Treasury, for respondent.

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(6) 10 Cox, C.C. 352.
(7) 9 Dowl. 937; 10 Law J. Rep. M.C. 163.

1883. April 16. } *In re* MAURER.

Habeas Corpus—Extradition Crime—Committal by Magistrate—Jurisdiction—Sufficiency of Evidence—33 & 34 *Vict. c.* 52, *sections* 9 *and* 10.

Where a fugitive criminal has been committed by a police magistrate under the provisions of the Extradition Act, it is not competent for the Court, upon an application for a writ of habeas corpus, to examine the weight of the evidence, provided there was reasonable evidence of an extradition crime for the magistrate to act upon.

This was an application for a rule for a writ of *habeas corpus* directed to the governor of Clerkenwell Prison to bring up the body of one Adam Maurer then lying in that gaol, and who had been committed by a police magistrate to await his extradition to Germany in respect of an alleged offence against the bankruptcy laws of that country, being one of the crimes provided for in the Extradition Treaty between the German Empire and Great Britain.

Bowen Rowlands, Q.C., in support of the application.—There is no evidence of any extradition crime upon the face of the depositions. At all events the balance of evidence was insufficient to warrant the committal by the magistrate. He cited *Huguet's Case* (1) and *Clarke on Extradition* (2).

FIELD, J.—I am of opinion that no case has been made out for the interference of this Court, and that this application must accordingly be refused. The principle of the Extradition Act, the provisions of which apply to Germany, is that under certain conditions persons accused of specified crimes (of which this is one) within the jurisdiction of a foreign State should be surrendered to such State. The 9th and 10th sections of the Act (33 & 34 Vict. c. 52) expressly provide that, when a fugitive criminal is brought before a police magistrate, "the police magistrate shall hear the case in the same manner,

(1) 29 L.T. N.S. 41.
(2) 2nd ed. p. 156.

In re Maurer.

and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England." And the 10th section enacts that in the case of a fugitive criminal accused of an extradition crime, "if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged." Now Mr. Bowen Rowlands has urged two separate grounds why, as he says, this application ought to be granted. He has argued that the balance of the evidence laid before Sir James Ingham was not sufficient to justify him in committing the prisoner. In support of this contention we were referred to *Huguet's Case* (1), and to the observations made upon it by Mr. Clarke in his work on Extradition (2). The learned author there says, "The very important question was raised in that case whether the Court would examine the sufficiency of the evidence before the police magistrate, and the Court held that it was not called upon to do so. In that case Mr. Baron Martin said, in giving judgment:—'The question is whether this was a proceeding within the jurisdiction of Sir Thomas Henry. I do not say that if there had been no evidence before him, or he had acted contrary to law, we would not have discharged the prisoner, but it appears to me that all the proceedings have been properly taken. This is not a Court of appeal from his decision, and it is for him to decide whether or not the evidence is sufficient.' This question of the power of the Court to examine the weight as well as the competency of the evidence before the police magistrate has been much argued, and variously decided, in the United States, and will probably be discussed further in England. The case mentioned above is obviously not conclusive of the matter." I think, however, that *Huguet's Case* (1) is so obviously in accordance with principle that I have no doubt that if the point decided there had come before me for the first time I should have arrived at the same conclusion. As it seems to me, it is no part of the duty of this Court to weigh the evidence, provided reasonable evidence was tendered that the accused had committed an extradition crime. It has been argued that there was no such reasonable evidence; but, having carefully read the depositions, I have come to the conclusion that there was sufficient evidence to justify the magistrate in committing this prisoner, and that this Court, therefore, ought not to interfere.

MATHEW, J.—I am of the same opinion. It seems to me that there is no ground whatever for the present application. The nature of the duty and jurisdiction of the magistrate is very clearly pointed out by the Extradition Act. Some *prima facie* evidence must be given that the accused committed the offence with which he is charged. I agree with my brother Field that there was such evidence. As to the sufficiency of the evidence we are not called upon to decide; the magistrate has clearly acted within his jurisdiction, and, that being so, the present application cannot be granted.

Application refused.

Solicitors—Bordman & Co., for applicant.

[IN THE HOUSE OF LORDS.]

1883. May 10. June 11. THE GREAT EASTERN RAILWAY COMPANY *v.* THE BOARD OF WORKS OF THE HACKNEY DISTRICT.

Metropolitan Management Acts, 18 *&* 19 *Vict. c.* 120. *s.* 105—25 *&* 26 *Vict. c.* 102. *s.* 77—*Railway Company—Expenses of Paving New Street on Bridge over Railway—"Land Bounding or Abutting on a Street."*

The appellants, a railway company, acting under the provisions of 8 *&* 9 *Vict. c.* 20. *s.* 46, *built and maintained a bridge to carry a road over their line. There was a wall or parapet on either side of the bridge for the protection of those passing over it. The road subsequently became a new street,*

within the meaning of 18 & 19 *Vict. c.* 120. *s.* 105, ***and vested in the respondents. The respondents called upon the appellants, under*** 25 & 26 *Vict. c.* 102. *s.* 77, ***to contribute to the expenses of paving, as owners of land bounding or abutting on the street:*** —Held, ***first, that, upon the true construction of*** 18 & 19 *Vict. c.* 120. *ss.* 96 *and* 250, ***the roadway passing over the bridge was vested in the respondents, but that the fabric of the bridge remained the property of the appellants. But, secondly, that neither the railway below or adjacent to the bridge, nor the bridge, nor the parapets, were land bounding or abutting on the street, and that the appellants were not liable to contribute.***

This was an appeal from a decision of the Court of Appeal (reported 51 Law J. Rep. M.C. 57; Law Rep. 9 Q.B. D. 412), which had reversed a decision of the Queen's Bench Division upon a Case stated by a Metropolitan Police Magistrate.

The facts appearing by the Case were as follows:—

The company, under powers conferred on them by an Act of Parliament, built a bridge carrying Cazenove Road over their line of railway, which is in a deep cutting.

Notices were served on the company demanding payment of the sum of 74*l.* 2*s.* 8*d.*, as their contribution towards the expenses of paving part of Cazenove Road, as owners of the Great Eastern Railway, for a frontage of the line of railway, on the south side 44 feet 8 inches, and on the north side 48 feet.

The road carried over the line of the company crosses it, running east and west, on a bridge, which is supported on stone piers erected by the company upon the slope of the cutting on either side of the line.

No portion of the land of the company in respect of which it is sought to charge them is, or can be, used for any other purpose than for their railway.

The magistrate was of opinion, upon the authority of *The London, Brighton and South Coast Railway Company* v. *St. Giles's, Camberwell* (1), that the respondents were not owners of land bounding or abutting upon the road, and consequently were not liable.

The Queen's Bench Division affirmed the decision of the magistrate, but gave leave to appeal.

Upon the case coming before the Court of Appeal, it appeared from photographs, produced by consent, that there were parapet walls running the whole length of each side of the bridge for the protection of passengers crossing it.

The Court of Appeal held that the parapets were land of the company bounding or abutting on the road, and that the company were liable to contribute.

The company appealed.

Charles, Q.C., and *French*, for the appellants, and

Sir H. Giffard (*Poland* and *Avory* with him), for the respondents, repeated in substance the arguments used in the Court below.

The following cases were referred to—*Angell* v. *The Paddington Vestry* (2), *The Plumstead Board of Works* v. *The British Land Company* (3), *The North Staffordshire Railway Company* v. *Dale* (4), *Coverdale* v. *Charlton* (5), *The London, Brighton and South Coast Railway Company* v. *The Vestry of St. Giles's, Camberwell* (1), *The London and North Western Railway Company* v. *The Vestry of St. Pancras* (6), *Higgins* v. *Harding* (7) and *Lord Northbrook* v. *The Plumstead Board of Works* (8).

Cur. adv. vult.

Lord Watson.—The facts of this case are simple enough, but the questions of law to which these give rise are attended with considerable difficulty. A street in the Hackney district, known as Cazenove Road, runs nearly at right angles to the

(1) 48 Law J. Rep. M.C. 184; Law Rep. 4 Ex. D. 239.

(2) 9 B. & S. 496; 37 Law J. Rep. M.C. 171; Law Rep. 3 Q.B. 714.

(3) 44 Law J. Rep. Q.B. 38; Law Rep. 10 Q.B. 203.

(4) 8 E. & B. 836; 27 Law J. Rep. M.C. 147.

(5) 48 Law J. Rep. Q.B. 128; Law Rep. 4 Q.B. D. 104.

(6) 17 Law Times, N.S. 654.

(7) 42 Law J. Rep. M.C. 31; Law Rep. 8 Q.B. 7.

(8) 41 Law J. Rep. M.C. 51; Law Rep. 7 Q.B. 183.

appellants' line of railway, which at that point is in a deep cutting, and is carried over the railway by means of a bridge. The roadway of the bridge, measuring from parapet to parapet, is of the same uniform width as the remainder of the street. The parapets of the bridge consist of two brick walls bounding the roadway, which rest upon arches of brickwork, having their foundations (outside the lines of the roadway) in the land of the appellant company.

The respondents have paved part of Cazenove Road, which is admittedly a new street in the sense of section 105 of the Metropolis Local Management Act, 1855, and they now maintain that the appellants are liable to contribute to the expenses of that operation, inasmuch as they are owners of lands bounding or abutting on both sides of the roadway of the bridge, within the meaning of section 77 of the Metropolis Management Amendment Act, 1862. On each side of the bridge there is a narrow way or passage, the private property of the appellants, leading directly from Cazenove Street to their railway, and it is not disputed that the appellants are liable to contribute in respect of these two passages, as bounding or abutting on the street. The controversy between the parties is confined to those portions of the street which are lined by the parapet walls of the bridge.

A Divisional Court of the Queen's Bench, consisting of the Lord Chief Justice and Mr. Justice Manisty, decided in favour of the appellants, holding that the present case was ruled by that of *The London, Brighton and South Coast Railway Company* v. *St. Giles's* (1). The Court of Appeal (Lords Justices Baggallay, Brett and Holker) unanimously set aside that decision, on the ground that the parapet walls of the bridge are lands owned by the appellants within the meaning of section 77 of the Act of 1862.

I agree with the observation made in the Court of Appeal, that *The London, Brighton and South Coast Railway Company* v. *St. Giles's* (1) is not an authority which the Judges of the Queen's Bench were bound to follow, seeing that judgment went in favour of the railway company on the express ground that the roadway of the bridge was not a new street. That being so, it became quite unnecessary to determine whether the railway company would have been liable if the bridge had been part of a new street. Still, the deliberate opinion of the Court is entitled to its due weight, because, although unnecessary to the ultimate disposal of the case, it was formed and expressed after hearing full argument on the point. In the Case stated by the magistrate, there was no mention made of parapets or bounding walls, and, though presumably there must have been some sort of fence for the protection of wayfarers, Mr. Justice Hawkins, who delivered the opinion of the Court, deals with the question as if the whole upper portion of the bridge had consisted of roadway or street.

It was maintained, on behalf of the appellants, that the bridge in Cazenove Road, including the carriage-way, footpaths and parapet walls, is now vested in the respondents, by virtue of certain enactments contained in section 96 of the Metropolis Management Act, 1855. That clause (*inter alia*) provides that all streets being highways, and the pavement, stones and other materials thereof, shall vest in and be under the management and control of the vestry or district board. And, as the interpretation clause of the Act (section 250) declares that the word "street" shall "apply to and include" any bridge not being a county bridge, it was argued that the fabric of the bridge in question, at least to the extent above indicated, must be held to have passed to, and become vested in, the respondents in terms of section 96.

I am unable to assent to the appellants' argument upon this part of the case. It was assumed, no doubt rightly, by the counsel on both sides of the bar, that the rights and liabilities of the appellants, with reference to this bridge, were regulated by the Railways Clauses Act, 1845. The object of the enactments of that statute, so far as these bear upon the present case, was to compel railway companies to provide and maintain convenient roads, in substitution for such portions of turnpike roads or public highways as might be intersected by their line of railway. In the case of the company electing to keep their line below the level of the substitute

road, the language of the Act appears to me to distinguish the road itself from the bridge by which it is to be carried over the line. Section 46, in that case, provides that the "road" shall be carried over the railway "by means of a bridge." Again, section 50 enacts, with regard to "every bridge erected for carrying any road over a railway," that there shall be a good and sufficient fence "on each side of the bridge," and also that "the road over the bridge" shall have a clear space of a certain width between the fences thereof. The real import of these enactments is, that the substitute road shall be supported by means of a bridge provided by the railway company, the land upon which the old highway rested having been taken and used for railway purposes. In my opinion, the right of the public, or of the highway authority, is not thereby enlarged. Their right is, in the first place, in and to the road, and may extend to the materials of which it is composed; and, in the second place, to have subjacent support to the road from a properly constructed bridge. They are also entitled, in terms of the statute, to have the road maintained, and to have the bridge kept properly fenced, by the railway company; but these provisions do not appear to me to imply that they are to have any greater interest in the bridge and its fences, as distinguished from the road proper, than they had in the strata upon which the original road rested. These remained the property of the landowners, although burdened with a public right of way in perpetuity.

The Metropolis Management Acts do not, in my opinion, confer upon district boards any larger right in the streets and highways placed under their charge than had previously belonged to the public. The statutory functions of the district board are limited exclusively to the surface of the road or street proper. In the case of new streets, what section 105 of the Act of 1855 authorises the board to do is to "pave the same, either throughout the whole breadth of the carriage-way and footpaths, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair." Keeping in view, then, that the sole object of vesting streets, and the materials of which they are composed, in district boards is to enable them effectually to perform their statutory duties in relation to the streets, I cannot suppose that the Legislature, in enacting that the word "street" shall "apply to and include" any bridge, intended to vest in the board anything more than the street which is carried or supported by the bridge.

Accordingly, I understand the position of matters to be this. The whole bridge, from its foundation upwards, is part and parcel of the appellants' land, with the exception of those portions of it, consisting of the carriage-way and footpaths, and the materials of which they are made, which have become vested in the respondents by force of statute. The bridge, with that exception, appears to me to be as much the appellants' property as an embankment would be, constructed upon land acquired for that purpose, in order to carry their approaches to the bridge.

Although the parapet walls of the bridge in question are, in my opinion, part of the appellants' land, that does not appear to me to be, of itself, necessarily conclusive of their liability to contribute to the expense of paving Cazenove Road. If these walls had been erected by the appellants at their own hand and for their own purposes, the present case would have been within the principle of *The London and North Western Railway Company* v. *St. Pancras* (6). As I understand the facts of that case, the line of the railway company ran parallel to, but at a depth of 18 feet below, the level of the street. On the side of the railway next to the street the company built a retaining wall, which was carried up to the edge of the street and for several feet above its level. I think the Court were right in holding that the wall was land of the railway company abutting on the street, because, to my mind, it is obvious that the wall was necessary for the construction of the line and the protection of traffic upon it, and, in short, formed part of the works from which the company were deriving profit. I do not think the case of *The London and North Western Railway Company* (6) differs in principle from *Higgins* v. *Harding* (7). It seems to me that no substantial distinction can be

taken between the retaining wall of a railway cutting and the retaining wall of a railway embankment.

The authorities cited in the course of the argument appear to me to establish this proposition—that the proprietor of heritable subjects which have been placed *extra commercium*, or are subject in perpetuity to the burden of a public right, which deprives him of their beneficial use, is not an owner of land within the meaning of the 77th section of the Act of 1862. In *Angell* v. *The Paddington Vestry* (2), it was decided by the Court of Queen's Bench that a church abutting upon a new street, the site of which had been conveyed to the commissioners for building new churches, is neither a "house" nor "land" within the meaning of the Metropolis Management Acts. Then in *The Plumstead Board of Works* v. *The British Land Company* (3), it was held by the Exchequer Chamber, reversing the judgment of the Court of Queen's Bench, that the owners of the *solum* of roads which had been dedicated to the public were not, although these roads abutted on a new street, owners of "land" within the meaning of these Acts. The Court of Queen's Bench had previously decided in *Lord Northbrook* v. *The Plumstead Board of Works* (8) that the owner of the soil of certain private roads leading out of a new street was liable to contribute in terms of section 77, and the view taken by that Court in *The Plumstead Board of Works* v. *The British Land Company* (3) seems to have been that there was really no difference in principle, but only an immaterial difference in degree, between the case of a public highway and that of a road the use of which had been granted to private proprietors. In the Exchequer Chamber a somewhat broader view was taken of the policy and import of the enactments of section 77. Lord Coleridge, in whose opinion the other five Judges constituting the Court concurred, there lays it down that the property to which the Legislature intended to attach liability was, in popular language, either house property or land property in the street; that the public roads belonging to the company were not such land property in any reasonable sense, and consequently that the company were not owners of land within the meaning of the statutes.

The circumstances of the present case are, in my estimation, materially different from those with which the Court of Queen's Bench had to deal in *The London and North Western Railway Company* v. *St. Pancras* (6). The parapet walls and their supports were not erected by the appellants at their own hand and for their own railway purposes, but under the compulsion of a statutory enactment made in the interest, and for the benefit, of such members of the public as might have occasion to use that part of Cazenove Street which crosses the line of railway. Nor does the present case appear to me to come within the principle of *Lord Northbrook* v. *The Plumstead Board of Works* (8), because, as was pointed out by the Judges who decided that case, the use of his private roads was part of the consideration in respect of which his lordship's tenants agreed to pay rent, so that he was actually getting a return from them in the shape of rent. But should these parapets, and the bridge itself, which are a source of expense and not of profit to the appellants, be taken down, the earnings of the appellants' railway would not be thereby diminished.

On the other hand, it must be conceded that these parapet walls are not, in all respects, in the same position as soil irrevocably dedicated to the public as a highway. If they were, I should have little difficulty in holding that the present case was ruled by *The Plumstead Board of Works* v. *The British Land Company* (3). The surface of land occupied as a highway is incapable of being turned to a profitable account by the owner without encroaching on the rights of the public. In the case of a bridge carrying a public road across a railway, the statutory obligation of the company is to provide and maintain "a good and sufficient fence on each side of the bridge, of not less height than four feet"; and it has been argued that, inasmuch as the parapet walls which they have erected remain the property of the appellant company, they may be used by the company for any profitable purpose not inconsistent with their continuing to be efficient fences. The

only such purpose to which it was suggested that the walls in their present state might be turned was the letting of their surfaces for posting advertisements. The suggestion is ingenious, and may or may not have some possible foundation in fact, but it fails to satisfy me that the Legislature, in framing the Metropolitan Management Acts, intended to deal with the surface of a mere roadside fence as "land" which might be let at a rack-rent.

Another suggestion—to my mind much more worthy of consideration—was this, that the appellants may take down these parapet walls, and erect tenements supported by arches in their stead, abutting and opening upon the street. I am not prepared to say that such a proceeding would be *ultra vires* of the company, but the suggestion does not appear to have any bearing upon the character of these parapet walls. If, as they now stand, these walls are not "land" within the meaning of the statutes, I do not think they ought to be regarded as "land" because they may be removed in order that the appellants may build houses or offices abutting on foot-pavements of the bridge. I can understand, however, an argument to the effect that the land of the appellants ought, notwithstanding its being at present below the level of Cazenove Street, to be considered as bounding or abutting upon the street in the sense of the statutes, seeing that the appellants may erect buildings upon it along the sides of the bridge.

Being unable to come to the conclusion that these parapet walls are land owned by the appellant company within the meaning of the Metropolis Management Act, I am compelled to consider whether the land owned by the appellants, irrespective of these parapets, bounds or abuts upon Cazenove Road. If the land of the appellants were on the same level as the street, and only separated from it by the walls in question, I should be inclined to hold that it none the less abutted on the street because of that separation. But the appellants' railway and the slopes on either side of it are very much below the level of the street—at least I so infer from the statement in the Case, which is that the line of railway is in a deep cutting. In its present condition, therefore, it appears to me that the appellants' railway bounds or abuts upon Cazenove Street, in much the same sense in which the waters of the Thames might be said to bound or abut on the foot-pavements of Westminster Bridge, and that is not, according to my opinion, the sense in which the words "bound" and "abut" are used in the Metropolis Management Acts. But the question still remains, Must not the appellants' land be deemed to abut upon the street, seeing that, without interfering with its use for railway purposes, part of it at least might be utilised in order to support a line of habitable buildings along both sides of the bridge?

Whether land situated below the level of a street is or is not to be deemed as abutting upon it appears to me to be a question of degree, depending upon the circumstances of the case. One can easily imagine a case in which it would be scarcely possible to suggest that land in that position could be utilised for any other purpose than that of erecting buildings upon it having a frontage to the street; and it is not more difficult to figure a case in which it would be beyond the bounds of reasonable probability to suppose that the land could be utilised for any such purpose, although there were no absolute physical impossibility in the way. There are many cases lying between these two extremes, and the present appears to me to be one of them. To the best of my judgment, the appellants' land cannot in any reasonable sense be said to bound or abut upon the street in question. I think that, as it is laid out and used at the present time, the land does not, in point of fact, bound or abut upon the new street which has been paved by the respondents. It is used, no doubt, to support fences which do bound that new street; but these fences are mere accessories of the public highway, and are not, in my opinion, land capable of yielding a rack-rent to the appellants within the meaning of the statutes. The present use of their land as railway, and the maintenance of these fences in their present condition, are strictly in accordance with the statutory

powers and liabilities of the railway company, and I do not think that the possibility of the company one day or another making a different use of their land is attended with such imminent probability as would justify me in treating their land, for the purposes of this case, as if the change had actually been made.

I am accordingly of opinion that the judgment of the Court of Appeal ought to be reversed, and that of the Queen's Bench Division restored.

LORD BLACKBURN.—I have requested the noble and learned lord (Lord Watson) to speak first, because, having read his opinion, I find that I quite agree with him as to the facts and the points to be decided, and I should unnecessarily delay your lordships by saying over again what he has said. The difficulty, which is to my mind considerable, arises from the necessity of construing the words of 25 & 26 Vict. c. 120, s. 77, "the owners of the land bounding or abutting on such street shall be liable to contribute as well as the owners of houses therein," when applied to such property as is described in the Special Case. I think that neither the land beneath the bridge, where the road is carried on the bridge, nor the bridge itself, so far as it is beneath the road, could properly be said either to "bound or abut on" the new street into which that road has been turned. In one sense, no doubt, it may be said that such subjacent land does bound the street, but not, I think, in the sense which from the context it must be taken that the Legislature intended to express in 25 & 26 Vict. c. 120. s. 77. On the other hand, I think that the land which runs along each side of the line of street does bound and abut on it, whether that land be steep or not, and whether built on or not, and consequently I think that the decision in *The London and North Western Railway Company* v. *St. Pancras* (6) was right. But, to adopt the illustration used, I do not think that the land covered by water, on which the Thames flows, either bounded or abutted on the road which was carried over old London Bridge, though I think that the houses which stood on each side of the road which was carried over old London Bridge did bound and abut on that road; and, if we can suppose such a case, if that road had been turned into a new street, those houses would have been liable to contribute to the expense of paving it. And I think that on this I do not differ from the Court below. This disposes of all but the parapets and fences of the bridge. I agree with Lord Watson in thinking that the whole bridge, from its foundation upwards, is part of the appellants' property, with the exception of those portions of it consisting of the carriage-way and footpaths, and the materials of which they are made, which have become vested in the respondents by force of the statute. The parapets or fences of the bridge are not, I think, vested in the respondents; they remain part of the appellants' property; and as the bridge, of which they are part, is fixed to, and so is part of, the land, they are part of the land.

But the Legislature, when framing 25 & 26 Vict. c. 120, had not present to their minds any such case as this. We have, what is always a difficult task, to say what is the intention expressed by the words of the Legislature when applied to a state of facts of which they probably were not thinking, and as to which, consequently, they had not really any intention at all. On this I have had more difficulty than seems to have been felt by either of the two other noble and learned lords who heard the argument. I feel that the conclusion to which the Court of Appeal has come is hard upon the railway company, and is scarcely what the Legislature, if such a case had been present to their minds, would have wished to say; but I have doubts and difficulty as to whether the Legislature have not said it, and therefore I have difficulty about reversing the decision. But my doubt and difficulty (for it is no more) is not strong enough to make me dissent from what I find is the opinion of both the noble and learned lords who heard the argument.

LORD FITZGERALD. — The question brought before us on this appeal is, whether the railway company is liable to be rated for the paving and maintaining the

street called Cazenove Road, Stamford Hill, in respect of the fence walls of a bridge by which that road is carried over the railway.

The facts have been already stated, and they are made clear by the photographic views attached to and forming part of the Case. It is admitted that Cazenove Road is a new street within the meaning of the statute 18 & 19 Vict. c. 120. s. 105. The company exercised their statutable powers by making a deep cutting through the road for their permanent way, and have carried the road across the cutting by means of a bridge flanked by fence walls. There appears to be a railway station (Stoke Newington) close to the bridge, and, as was to be expected, Cazenove Road has become a street with houses continuously built on both sides, and, as such, the local board has undertaken to pave and keep it in repair.

The decision of the Court of Appeal seems to have been that the fence walls of the bridge formed no part of the roadway or street, but did constitute land the property of the company, fronting and abutting on the street from one side of the bridge to the other, and in respect of which the company was liable to be rated. It would seem from the judgment of the Court of Appeal that if there had been no fence walls, or if the fence, whatever it was, stood within the limits of the old roadway, the decision of the Court would have been for the company. The question is one of construction of several statutes, and I prefer considering it irrespective of the cases which have been quoted. The company had authority by statute to carry their railway across the Cazenove Road, and had an option in doing so to carry the road over the rail by means of a bridge of the requisite dimensions. The statute 8 & 9 Vict. c. 20. s. 46, provides that "such bridge, with its immediate approaches and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company."

Section 50 of the same statute enacts rules for the construction of bridges to carry a road over the rail, and, amongst others, that "there shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet. The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road."

Section 51 provides that if the available width of the road should thereafter be increased beyond the width of the bridge, the company should be bound, at the request of the trustees of the road, to increase the width of the bridge.

The regulations thus made are for the public safety and convenience. The statute does not prescribe what the fences of the bridge should be made of, and it may be that a fence of wood or of iron, or an iron rail, might constitute a good and sufficient fence. In the case before us the fence appears to be a brick wall. It seems also that, although the bridge must have a clear space of certain dimensions between the fences, it need not necessarily be of the same width as the roadway of the road with its footpaths (if any), and we may suppose instances in which the whole bridge with its fence walls might be erected within the boundaries of the roadway as it stood before being interfered with by the company.

The bridge in question, with its fence walls and approaches, was, I assume, made in conformity with the regulations of the statute. When completed, with its fence walls, it was intended by the Legislature as a substitute for the piece of public road or public highway which the company had appropriated to the use of the railway. It seems to me that the roadway and the fence walls are parts of one entire thing, and form together the statutable bridge provided for the public convenience and safety in lieu of that which the company had taken, and to be "at all times thereafter maintained at the expense of the company" for the use of the public.

In the view which I take it is not necessary now to consider in whom the property in the bridge and its necessary works was vested when completed and opened for public use. The determination of that question, if it was necessary, might involve the consideration of some rather complicated statutes; but, assuming that the Legislature intended by the Railways

Clauses Act, 1845, for wise purposes and for the protection of the railway companies, that, save as to the mere roadway or space between the fences, the dominion should belong to the company, so as to prevent any other body or person interfering with the structure, it was, nevertheless, a dominion given to or left in them for the benefit of the public, and subject to the obligation of maintaining the structure for the public use and at their own cost.

I now proceed to consider the question arising under the subsequent statutes of 18 & 19 Vict. c. 120. s. 105, and 25 & 26 Vict. c. 120. s. 77, and for that purpose I shall assume that the following passage from one of the judgments in the Court of Appeal is not, in fact, inaccurate:—"We are bound to say that there is a street running across the bridge; but I take this to be clear, that that street consists only of the width of the footway and carriageway. The walls which are at the side of this bridge along the whole length of it on either side I take it to be clear are not part of the street; they are no more part of the street than if those walls were the walls of houses on land and built on the same level as the roadway; and the houses which bound the street have been held to be, and in my opinion clearly rightly held to be, not part of the street. They form the street, but they are no part of the street. If they were part of the street they would vest in the local board, which is absurd. Therefore I think that the walls of this bridge are no part of the street. Then what are they? They are walls supported by brickwork (it does not signify very much whether by brickwork or not) or by permanent work fixed into land." And I shall further assume that the walls of the bridge rest on a structure fixed into land belonging to the company, and that, as such, the walls represent land in legal and technical phraseology, and that the ownership of both land and walls is in the company.

The question then is, whether the company is liable to be rated in respect of these fence walls. Every owner of land bounding on the street is not necessarily liable to be rated—see *The Plumstead Board of Works* v. *The British Land Company* (3)—but only such owners as come within the interpretation clause, section 250, of the first of the two Acts, which declares "owner" to mean the persons for the time being receiving the rack-rent, or who would receive the same if let at a rack-rent.

Then is this company in respect of those fence walls the owner of land within that meaning? In my humble judgment, they are not such owners. The bridge and its fence walls are, by the statute, dedicated for public use and public protection; and if the ownership and control of the walls are in the company, they are so for public purposes, and subject to the obligation of perpetual maintenance for the public protection. The company could not let the walls at a rack-rent, and if they might use them for any purpose it must be a use subordinate to the public purposes to which the bridge as a structure is in its whole devoted. If the view I have taken is correct, it is unnecessary to consider the cases which have been cited, or the very learned reasons given in the Court of Appeal for their judgment now under consideration.

In my opinion the judgment of the Court of Appeal should be reversed.

Order appealed from reversed. Order of the Queen's Bench Division restored; the respondents to pay the costs in this House and in the Court of Appeal.

Solicitors—W. F. Fearn, for appellants; R. Ellis, for respondents.

[IN THE COURT OF APPEAL.]

1883. July 16. THE QUEEN *v.* THE JUSTICES OF THE CITY OF LIVERPOOL.*

Licensing Acts—Neglect of Occupier to apply for Renewal Licence—Application by New Tenant for Licence after Effluxion of Current Licence—Jurisdiction of Justices—9 *Geo.* 4. *c.* 61. *s.* 14.

An application for a licence to continue to sell exciseable liquors in licensed premises is equivalent to an application for a "renewal licence" in respect of such premises.

Where the occupier of licensed premises, being about to quit the same, wilfully omits or neglects to apply at the general annual licensing meeting, or at any adjournment thereof, for a renewal licence, it is not essential that an application for such a licence must be made by a new tenant or occupier before the expiration of the current licence; neither is it essential that the occupier who omits or neglects as aforesaid should be the holder of the current licence.

Therefore the magistrates have jurisdiction to entertain an application for a renewal licence in respect of licensed premises, even after the expiration of the current licence.

In such cases the 14*th section of* 9 *Geo.* 4. *c.* 61, *prescribes no time within which such an application should be made.*

In re Todd (47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407) *and* White *v.* The Justices of Coquetdale (50 Law J. Rep. M.C. 128; Law Rep. 7 Q.B. D. 238) *overruled.*

This was an appeal from a Divisional Court on a Special Case, which raised the question whether Justices have jurisdiction, under 9 Geo. 4. c. 61. s. 14, to grant a renewal licence to a new tenant or occupier of licensed premises, after the current licence has expired, in cases where the tenant or occupier has removed from the premises without making the usual application for a renewal licence.

The material facts of the Special Case were as follows:—

In January, 1881, one A. S. Street became tenant of the Prince of Wales Hotel in Liverpool, and all licences were duly transferred to him.

In June, 1881, A. S. Street gave up possession of and removed from the said premises under some arrangement with a person named Wood, who subsequently relet the said premises to a Mrs. Barker, a widow, who thereupon entered into possession.

The said premises were not open for the sale of exciseable liquors, nor were such liquors sold in the same, nor was there any licensed person in occupation thereof after the month of June, 1881.

Mrs. Barker applied at a special sessions held some time before the general annual licensing meeting in 1881 for a transfer of the licences from A. S. Street to herself; but by reason of an opposition to her application, made by A. S. Street, on the ground that the arrangement under which he had given up possession had not been carried out, the transfer was not granted.

At the time of the general annual licensing meeting Mrs. Barker was the occupier of the said premises; but at or about the time of that meeting scarlet fever broke out in the house among Mrs. Barker's children, and they were removed from the premises by the officers of the health committee of the city, and Mrs. Barker left the premises at the same time and never returned. After Mrs. Barker left the premises they were disinfected by the health officers and closed, and they remained closed and unoccupied until the mortgagees took possession.

Mrs. Barker did not apply to the general annual licensing meeting, or at any adjournment thereof, for a renewal of the licences to the said premises, and no application for a renewal of the said licences was then made by any one, and the said licences expired on the 10th of October, 1881, by effluxion of time.

The mortgagees had no notice until the 21st of September, 1881, that Mrs. Barker had left the premises or that the premises were closed, or that there had been an omission to apply at the general annual licensing meeting for a renewal of the licences to the said premises. Upon the

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

mortgagees becoming aware of these facts, they at once took possession.

A special session for the transfer of licences was held on the 13th of October, 1881, but no application was then made for a grant of a licence to the said premises under 9 Geo. 4. c. 61. s. 14.

On the 5th of January, 1882, the appellant, A. H. Davis, became possessed of the premises under an arrangement with the mortgagees, and on the same day applied at a transfer sessions to the respondent Justices to grant to him a licence in respect of the said premises under the provisions of 9 Geo. 4. c. 61. s. 14.

The respondent Justices refused the application, on the ground that they had no jurisdiction to grant it.

On an appeal by A. H. Davis to a Court of Quarter Sessions, the Court held that the Justices had jurisdiction, subject to the opinion of the Queen's Bench Division upon a Special Case embodying the above facts.

On the Special Case being heard and argued before the Queen's Bench Division of the High Court, the decision of the Court of Quarter Sessions was reversed on the authority of *In re Todd* (1), and an appeal to a Divisional Court was dismissed on the same grounds.

A. H. Davis again appealed.

The Solicitor-General (*Sir F. Herschell, Q.C.*) and *Hodgson Bremner*, for the appellant.—The question turns on the construction of the 14th section of the Act 9 Geo. 4. c. 61 (2). We contend that we come strictly within these words, "that the occupier of the house"—namely, Mrs. Barker—"being about to quit the same, omitted or neglected at the general annual meeting, or any adjournment thereof, to apply for a licence to continue to sell exciseable liquors," and that under those circumstances it was competent for us, we coming within the words "new tenant or occupier," at the subsequent special sessions, to apply for the licence. The ground of the decision in the Court below was this, that under the section there is no power for special sessions ever to grant a licence in any of the cases mentioned where the existing licence has expired; and therefore that on the 10th of October it had become incompetent for any special sessions of Justices to comply with the application that was made in the present case. That decision was arrived at on the authority of *Simpkin* v. *The Justices of Birmingham* (3), *Ex parte Todd* (1) and *White* v. *The Justices of Coquetdale* (4); but the decisions in those cases are all distinguishable from the present case, and although there are *dicta* in the judgments in those cases which cover the present decision, those *dicta* were not necessary for the decisions in those cases, and cannot,

(1) 47 Law J. Rep. M.C. 89; Law Rep. 3 Q.B. D. 407.

(2) The material words of the section are these:—"If any person duly licensed under this Act shall (before the expiration of such licence) die, or shall be by sickness or other infirmity rendered incapable of keeping an inn, or shall become bankrupt, or shall take the benefit of any Act for the relief of insolvent debtors; or if any person so licensed, or the heirs, executors, administrators or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such licence; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a licence to continue to sell exciseable liquors by retail, to be drunk or consumed in such house, ... it shall be lawful for the Justices assembled as aforesaid at a special session holden under the authority of this Act for the division or place in which the house so kept, or having been kept, shall be situate, in any one of the above-mentioned cases, and in such cases only, to grant to the heirs, executors or administrators of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent, or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators or assigns shall by sale or otherwise have *bona fide* conveyed or made over his or their interest in the occupation and keeping of such house, a licence to sell exciseable liquors by retail to be drunk or consumed in such house, or the premises thereunto belonging, ... provided always that every such licence shall continue in force only from the day on which it shall be granted until the 5th day of April or the 10th day of October then next ensuing, as the case may be. . . ."

(3) 41 Law J. Rep. M.C. 102; Law Rep. 7 Q.B. 482.

(4) 50 Law J. Rep. M.C. 128; Law Rep. 7 Q.B. D. 238.

we submit, be supported on the true construction of the section. Now in *Simpkin* v. *The Justices of Birmingham* (3) the decision turned on the words "if any person so licensed shall remove." Those words do not apply here, and the case is clearly distinguishable on that ground. Again, in *Ex parte Todd* (1) the decision was, we submit, upon other words in the section than those which we now have to construe. It was not a case at all of the occupier having neglected or omitted to apply, because he did apply, and was refused on the ground of misconduct. It was the ordinary case of a person claiming on the removal of the previous occupier after the licence had expired, and was therefore argued and determined on the same words as *Simpkin* v. *The Justices of Birmingham* (3).

[BRETT, M.R.—The decision is in general terms, and lays down that the 14th section does not apply to any case where the previous licence has already expired.]

Yes; but they do not point out the words in the section which prevented the application being complied with. And if it is against us, then we submit that the decision goes too far, and is against the spirit of the section, and should be overruled. In *White* v. *The Justices of Coquetdale* (4) the Court considered, and rightly, that the point was governed by the decision in *Ex parte Todd* (1), and followed it. But there is no limit of time in the section, and nothing to restrict the natural signification of the words in question; and if the working of the section is to be restricted to applications made during the currency of the existing licence, it will make the section in such a case as this entirely nugatory. For this reason, licences run from the 10th of October in each year for twelve months, and renewal applications are granted only at the annual general licensing meetings in August and September, and the licences then granted run from the succeeding 10th of October. If, therefore, the occupier neglected or omitted to apply in August or September, and application was subsequently made during the current licence, it could only be granted until the 10th of October then next, and would therefore expire in a few days, and the landlord and the new occupier would be just in the same position as if no application had been made, and the premises would have to remain unlicensed until the next general licensing meeting.

Aspinall, Q.C., and *Pickford*, for the respondent Justices.—The Justices hold they had no jurisdiction, on two grounds. First, they thought they had no right to grant a licence under this section after the expiration of the old licence; and, secondly, they thought that, although there might have been a leaving of the premises vacant by Street, there was no omission or neglect in this case by an occupier about to quit the premises. On the first point they considered they were bound by the authorities that have been referred to, especially *Ex parte Todd* (1). The second point turns on the words "or if the occupier of any such house, being about to quit the same, shall have wilfully omitted or shall have neglected to apply at the general annual licensing meeting." Therefore the existence of some such person as that, or the wilful omission or neglect of such a person as that, is the condition upon which the jurisdiction of the magistrate arises; and it is submitted that in this case there is no such person, and there has been no such wilful omission or neglect.

[BRETT, M.R.—You do not contest the wilful omission or neglect, do you?]

Certainly. We say there has been neither omission nor neglect by any person such as is meant by the words of the section. Before the magistrates, and in the notice of appeal to Quarter Sessions, and at Quarter Sessions, it was the neglect or omission of Street they relied upon. Mrs. Barker was not mentioned at all; but we do not seek to press this objection. Now Street not only was not about to quit the house at the time when the neglect took place, but he had quitted it for many months. He was gone, and had nothing more to do with it. And it is impossible to say that the person who has departed and gone from the premises, and apparently parted with all interest in them as early as June, was an occupier about to quit the same at the time of the licensing sessions in August or September. That was one of the grounds on which the magistrates proceeded. Then as to Mrs. Barker. She was, it is true, the

occupier about the time of the licensing sessions; but we submit she was not an occupier, as contemplated by the section, who could do the act which it is suggested that she omitted to do. She was not a person who had in any way been entitled to sell exciseable liquors. She had no right to apply for a continuing licence. She could have applied for an original licence, no doubt; but what is here meant is an omission by the previous licensed tenant, he being also the occupier, and he being the person who, at the time of the licensing sessions, was about to quit the house. The only person who in that sense could have applied was Street, but he was not the occupier. Mrs. Barker, on the other hand, was not a licensed person, and therefore she could not neglect or omit to do it, and she has never, until to-day, been treated as the person who made the omission or neglect.

[BRETT, M.R.—You must take it that the Solicitor-General did not rely on Street. He relied on Mrs. Barker.]

We submit she is not a person who, upon the true construction of the Act of Parliament, could have applied for a licence to continue to sell exciseable liquors, because she had never had a licence; nor was she a person who was ever in occupation of such house "being about to quit the same" within the meaning of the section; nor was she a person who would have been entitled to apply at the general annual licensing meeting for a licence.

Sir F. Herschell in reply.

[BRETT, M.R.—Which do you rest your case upon—Barker or Street?]

I am prepared to rest upon Street if necessary, but I prefer to rest on Mrs. Barker, because I think she does come distinctly within the language of the section. I do not admit at all that Mrs. Barker could not have obtained a renewal of the licence within the meaning of the Licensing Act, although she had not got a transfer to herself at the time of the licensing sessions. A licence to continue to sell exciseable liquors is equivalent to a renewal of a licence to sell at the particular house. The licences are considered to be granted in respect of the premises. A new licence means "a licence granted at a general annual licensing meeting in respect of premises not theretofore licensed for the sale of intoxicating liquors"—35 & 36 Vict. c. 94. s. 74. Now, if the Justices had been minded to grant Mrs. Barker a licence, that would clearly have been a renewal of the old licence; not a new licence, because a new licence, as defined by the Act, is a licence granted in respect of premises not theretofore licensed.

BRETT, M.R.—In this case it seems to me that Mrs. Barker, on the facts stated, was a person who could have made a claim for a renewal of the licence. According to the definition which has been read to us by the Solicitor-General, if she had obtained a licence at all, it would not have been a new licence; it would have been a renewed licence for the premises. Then, that being so, at the time of the general annual licensing meeting, Mrs. Barker was the occupier of the house and premises, and Mrs. Barker, from unhappy circumstances in her family, it is obvious at that time was a person who was about to quit the premises. Mrs. Barker, at the time of the general annual licensing meeting, being a person in the occupation of the premises, it seems to me was entitled to ask at that time for a renewal, as is stated in the case, "of the licence of the said premises." If so, she did not apply, in fact, for the renewal. Then, after the 10th of October, and after, therefore, the licence which had been granted for these premises had expired, the applicant, the appellant here, applies to the magistrates to exercise the jurisdiction given to them under the 14th section of 9 Geo. 4. c. 61; and the question is whether they had jurisdiction. The question is not whether they were obliged to do it, because by the Case it is stated that, if they had jurisdiction, they saw no objection to do it, and were prepared to do it; and it is taken that, if they had jurisdiction, they were prepared to grant to this applicant a renewal licence for the premises. Now, if Mrs. Barker was a person who, if she had obtained a licence at all, would have obtained a renewal licence, then it seems to me she is a person, in so far as she was an occupier who was about to quit the same, who did neglect to apply "to the general annual licensing meeting

for a licence to continue to sell exciseable liquors to be drunk or consumed in such house." That is, I construe the words "to continue to sell exciseable liquors" to be equivalent to an application for the renewal of the licence. It does not mean that it is the person who is to ask for a licence that shall continue to sell, but that a licence shall be granted which shall allow liquors to continue to be sold and drunk on those premises. If that be so, Mrs. Barker was a person who might have applied for a renewal, who was in occupation at the time when she might so have applied, and who did not do so.

Then the question is, whether the magistrates under these circumstances had, when the appellant applied to them, jurisdiction. Now, the case having been brought within section 14, the whole question is whether the efflux of time which happened has prevented the magistrates from having jurisdiction. In *Ex parte Todd* (1) it was certainly held, and the meaning of the judgment was, that there does come a time when by efflux of time the magistrates have no jurisdiction, and that is at any time after the licence which has been in existence has become exhausted. The case of *White* v. *The Justices of Coquetdale* (4) obviously was decided in obedience to the case of *Ex parte Todd* (1), and the question is clearly raised before us, therefore, whether we agree with *Ex parte Todd* (1). This case seems to me to be exactly governed by the principles there laid down, and by the construction of the Act there enunciated, and unless we can say that we do not agree with the construction put upon the 14th section in *Ex parte Todd* (1) we are bound to decide this case against the appellant. But I confess that I do not agree with the construction put upon this section in *Ex parte Todd* (1). It is admitted there are no words which specifically put this limitation of time on the power of the Justices. Therefore, we ought not to say that there is this limitation, unless there is a necessary implication from the words of the section. So far from that, it seems to me that, by putting the restriction upon the section which was put upon it in *Ex parte Todd* (1), you immediately raise the most formidable case of difficulty that can be, and which has been pointed out during the discussion, namely, that if there are persons in possession of licences and in the occupation of premises who can apply for a renewal, or who, although not in possession of the premises, are persons who can apply for a renewal, and who, in August and September, omit or neglect to do so, and continue in the occupation of the premises over the 10th of October, then no person but those persons can apply for the renewal. In other words, the person who is called a new tenant, and who comes in in November, or at any time after the 10th of October, cannot apply, and the licence is exhausted on the 10th of October. So that, if the construction put upon the section in *Ex parte Todd* (1) be true, there would be no one who could remedy the matter, and the premises would remain without a licence until the following 10th of October. That would be a *casus omissus* of such a formidable kind in the section that, instead of saying there is a necessary implication in the restriction of time, one would have to say that it was almost a necessary implication that the restriction of time was not there. I think that that view of the section was overlooked in *Ex parte Todd* (1). I do not think that the case of *Ex parte Todd* (1) is strengthened by the case of *White* v. *The Justices of Coquetdale* (4), because in the latter case the Judges did not exercise their minds upon the section. They only followed the former decision, as they were bound to do. I think that the magistrates in this case were bound also to act upon *Ex parte Todd* (1), but that, the case having now been discussed before us, we are at liberty to say that we disagree with that case. It seems to me that that case was within the section, that there is no limitation of time which deprived the Justices of their jurisdiction, and that they, therefore, have jurisdiction to grant this appellant a renewal licence.

With regard to the case of *Simpkin* v. *The Justices of Birmingham* (3), I do not think we need interfere in the least with that case, because the real decision there was not upon the limitation of time. The

circumstances there were not any of the circumstances mentioned in the section, and therefore the application of the section in that case did not arise.

COTTON, L.J.—There are two points which have to be considered. First, whether the event has occurred which enables the magistrates to act under the 14th section, and then whether in the latter part of the section there is any limit as to the time within which the magistrates can exercise the jurisdiction in the events which have occurred. The Master of the Rolls has said almost all I intended to say upon *Simpkin* v. *The Justices of Birmingham* (3). In that case the question was whether the facts or circumstances had occurred which gave the magistrates jurisdiction under the first part of the section; and it certainly is no authority in any way in the present case. But what we have to consider here is whether there is any limit of time as to when the magistrates are to exercise their discretion.

I will refer to the event which has here happened. I do not for a moment say that the removal of the licensed tenant, Street, during the existence of the licence, would not be an event which might be relied upon here; but the event which has been relied upon is the neglect of Mrs. Barker to apply for a renewal, and I think that neglect is an event which justified the present applicant in applying to the Justices. Of course it is another question whether the time allowed within which they could exercise the jurisdiction has expired. I agree that Mrs. Barker was in a position to apply for a licence to sell exciseable liquors—that is, really, a licence for a continued use of the house as a house where liquors might be sold; and when one looks at the notice which is given with reference to a transfer of a licence, it is a transfer to So-and-so, and is intended to apply to the licence to sell at the old house. The house is not considered as being removed. That continues; and there is a new licence granted to the person who is to sell; but it is not itself a new licence within the words within which he has a right to sell, but only a continuing of the old licence, because the new person continues in the old house. I think here the words may probably be referred, not to the person licensed going on, but to the unlicensed person applying for and getting a licence to go on in the old house. Therefore, I think Mrs. Barker was entitled to apply for a licence to continue the sale of exciseable liquors in the old house, and, as she neglected to do that, an event occurred which justified an application to the magistrates.

Then, as regards the limit—could they do it at a special sessions held after the previous licence had expired? In my opinion, there is nothing to limit their powers. All that is said is this—that, if the event happens, "it shall be lawful for the Justices, assembled, as aforesaid, at a special session, to grant a licence." There is no limit whatever there, and, as pointed out by the Master of the Rolls, it is very difficult to say, if the occupant does neglect to apply for a renewal in August, or in the adjournment, which must be in September, how there can be an application under the section before the expiration of the licence in October. I say in October, because it must then expire in that particular part of the country. In some places it must expire in April and in others in October. This is in October, and the general annual licensing meeting and the adjourned meeting must be one in August and the other in September. Therefore, it seems to me that it would be impossible practically to work the section, as regards the neglecting of the occupier to apply for the licence to continue, if the application under this section must of necessity be made at a special session called and held during the continuance of the licence. Under the Act of Parliament there need not be more than four special sessions in the year, and it is obvious that it might very well be that there could be no special sessions to which the application could be made after the neglect of the occupier to apply in September. That being so, I think the construction we ought to give to these words, which is really the natural construction, is not to limit the time in which the jurisdiction ought to be exercised. Undoubtedly that is at variance with *Ex parte Todd* (1),

but we are in a position to say whether that was rightly decided. In my opinion it was wrong to put it on the ground that the jurisdiction of the magistrates could not be exercised after the licence had expired.

BOWEN, L.J.—I am of the same opinion. There are two questions we really have to decide. First, whether Mrs. Barker is a person who falls within the description given in the 14th section of a person "who neglects or wilfully omits to apply for a licence to continue to sell." With regard to that point, my opinion is certainly the same as that of the other members of the Court, although I confess I do not feel so clear as they do about it. But I should like to add a few words about the second point, which is, assuming she is, is this application made too late? That depends upon whether *Ex parte Todd* (1) is good law or not. Distinguish *Ex parte Todd* (1) as we may, and justify it, as we may endeavour to do, as a decision upon the special facts of that case, it still remains clear that the Court in *Ex parte Todd* (1) laid it down in distinct language, and with their minds clearly brought to the discussion of the question, that the application under section 14 must be during the pendency and currency of the period during which the old licence is in force. Now, is that good law? With the greatest respect for the Court who decided it, I confess that I cannot think that it is good law. And there is one almost conclusive point against it, which is this: it is reading into the section words which limit the *prima facie* general operation of the section, and make it do something different and smaller than it does in terms say. Now, if any such limitation is to be put upon the Act, one certainly would not expect to find, and one would not readily acquiesce in, any limitation which made the remedy given by the Act otherwise than commensurate with the blot or mischief which the Act was intended to cure. In this case we have to deal with the licensing system. It hangs upon two kinds of licensing sessions. First, there is the general licensing sessions, to which applications are made to renew for one year, to begin on the 10th of October then next, and besides that, as changes must occur in the tenure of these houses, special sessions are wanted to provide during the year for special changes which occur in the occupation of the tenancy. It is obvious that provision must be made for contingencies such as death, changes of occupancy, bankruptcy, and other similar contingencies, and section 14 is intended to deal with these; and the branch of that section under which this case falls is that which provides that "If the occupier of any such house, being about to quit the same, wilfully omits or neglects to apply to the general annual licensing meeting," then the beneficial portion of the section is to take effect. Now, what would be the protection which the landlord would gain, or the benefit which the occupier would obtain, if he did apply to the general annual licensing meeting? The landlord would gain the protection, and the occupant would gain the benefit of the licence then to run, from the 10th of October then next, for a year. If we were to construe the section as the Court in *Ex parte Todd* (1) construed it, the provision which the section made for an accidental omission to apply for the licence at the general annual licensing meeting would not be commensurate with the protection and benefit which would have been obtained if the application had been duly made. That is to say, you would not be really curing the slip or blunder completely, but only curing it to a very limited and almost, perhaps, imperceptible degree, because, as has been pointed out, it must be rare indeed that an occupier of a house has omitted to apply to the general annual licensing meeting. It must be hard indeed if the next occupier has no opportunity of applying during the pendency of the current licence for a fresh grant, and therefore the remedy would not be coextensive with the mischief if those restrictive words were to be read into the section. It seems to me, upon the general principle of construction, to be a very good reason for not construing the Act in that way. You may, perhaps, do violence to an Act of Parliament in order to cure a mischief, but you certainly ought not to do violence to the language, or to read it in an unnatural sense, when the effect of

so doing would be to leave the mischief unremedied, or to a certain extent unremedied.

Appeal accordingly allowed, but without costs.

Solicitors—Gregory, Rowcliffes & Co., agents for Bremner, Son & Pennington, Liverpool, for appellant; F. Venn & Co., agents for G. J. Atkinson, Liverpool, for respondents.

1883. Feb. 11. } THE QUEEN *v.* THE JUSTICES OF THE CENTRAL CRIMINAL COURT.

Mandamus—Central Criminal Court—Restitution of Stolen Goods—24 & 25 Vict. c. 96. s. 100.

The Central Criminal Court is a Superior Court, and mandamus will not lie to compel the Judges and Justices thereof to order restitution of stolen goods under 24 & 25 *Vict. c.* 96. *s.* 100.

In this case an order *nisi* had been obtained calling on the Judges and Justices of the Central Criminal Court to shew cause why a mandamus should not issue against them commanding them to grant an order for the restitution of certain cloth pledged by a woman who was charged before the Recorder of London with stealing the same and convicted, which order the Recorder, upon application made to him under 24 & 25 Vict. c. 96. s. 100, refused to make, on the ground that the prisoner might have been summarily convicted.

The Solicitor-General (*Sir Farrer Herschell*) (with him *R. S. Wright*) shewed cause.—No mandamus will lie to the Central Criminal Court, which is a Superior Court established by 4 & 5 Will. 4. c. 36. Its nature and constitution appear from sections 1, 2, 16 and 19 of that Act. It is at least as high as the Court of Assize; and in *Ex parte Fernandez* (1) it was never doubted that the Central Criminal Court was a Superior Court. There is no authority for the issue of a mandamus from the Court of Queen's Bench to a Superior Court. To order the restitution of the property is not a purely ministerial, but a discretionary, act, and mandamus will not lie in such a case. It would not lie even to compel them to "hear and determine."

C. E. Jones, in support of the rule.—For the trial of a case of larceny the Central Criminal Court is on the same footing as a Court of Quarter Sessions. *Ex parte Fernandez* (1) does not apply. That was a case of bribery, and tried at the Court of Assize, which is no doubt a Superior Court. The commission to the Court of Assize is to "deliver the gaol"; that to the Central Criminal Court is to "hear and determine."

POLLOCK, B.—This is an order *nisi* calling on the Judges and Justices of the Central Criminal Court to shew cause why a mandamus should not issue commanding them to order the restitution of certain goods stolen by a woman who was tried before the Recorder of London and on her own confession convicted of larceny of the goods. I think the order *nisi* was granted under the idea that the duties of the Justices of the Central Criminal Court are divisible; and that when trying cases of murder and graver offences they constitute a Superior Court, but when engaged on cases that are more commonly brought before a Court of Quarter Sessions they are only a Court of Justices. If this could be sustained I think there would be good reason for us to make this order absolute. But the statute creating the Court does not bear out this contention. Originally the Justices of the City of London sat to dispose of small cases at the Old Bailey, the commission being also issued by the Crown to the Judges of the Courts of Queen's Bench, Common Pleas and Exchequer, and also, because cases of piracy and offences on the high seas were most conveniently tried in the City Courts, to the Judge of the Admiralty. In 1834 the Act under which the Central Criminal Court now sits was passed. That constitutes the Lord Mayor, the Lord Chancellor, or Lord Keeper, all the Judges

(1) 10 Com. B. Rep. N.S. at p. 3; 30 Law J. Rep. C.P. 321.

of the Courts of King's Bench, Common Pleas and Exchequer, the Judges of the Court of Bankruptcy, the Judge of the Admiralty, the Dean of the Arches, the Aldermen of the City of London, the Recorder, the Common Sergeant, the Judges of the Sheriffs' Court, and those who had been Lord Chancellor, Lord Keeper, or the Judge of the Superior Courts at Westminster, Judges of that Court, with a general commission to hear, try and determine all offences committed, or alleged to be committed, as are specified in the Act. Under section 2 commissions are issued from time to time, and not to the Justices and Judges by name, but to all those enumerated in section 1. There is nothing in that commission to shew that the Judges and Justices of the Central Criminal Court sit to hear murder and other grave offences in any different capacity from that held by them when trying other crimes. I think, therefore, that the Judges sitting at the Central Criminal Court are in the same position there as when they sit in the High Court. There is no authority or precedent for or of this Court, though the highest common law Court of criminal jurisdiction, issuing a mandamus to a Superior Court, which the Central Criminal Court clearly is; and therefore this order must be discharged.

MANISTY, J.—I am of the same opinion. The question is whether the Central Criminal Court is a Superior Court. All the authorities on this point are summed up by Mr. Justice Willes in *Ex parte Fernandez* (1):—"The Courts of Assize, as being Courts of general jurisdiction in all criminal cases, and having power to try all issues of fact of whatsoever importance arising in the several counties on their circuits, do stand in the place of the antient iters of the Justices itinerant, and are a Superior Court, so to speak, by succession; whilst practically, regard being had to the powers which they exercise, they are, as to criminal matters, Courts of the most extensive jurisdiction; and as to civil causes, periodical sittings of the Judges of the Superior Court, or, in their necessary absence, of others thought worthy to be associated with them, for trying in the country those issues of fact which can be more conveniently disposed of there than in London or Middlesex. For this purpose they are as much branches of the Superior Courts, having all the power which could be exercised by those Courts themselves at the trial, as are the Chief or other Justices of those Courts sitting at *nisi prius* in London or Middlesex" (2). This equally applies to the Judges and Justices of the Central Criminal Court. No authority has been cited to shew that this Court ever has issued, or can issue, a mandamus to the Central Criminal Court; and, in the absence of any such authority, I think there is no power to issue it.

Rule discharged, with costs.

Solicitors—Phelps, Sidgwick & Biddle, for applicant; Sir T. Nelson, City Solicitor, for Justices.

[CROWN CASE RESERVED.]

1883. June 2. } THE QUEEN *v.* LOWE.*

Evidence—Notice in the "London Gazette" — Bankruptcy — Bankruptcy Act, 1869 (32 *& 33 Vict. c.* 71), *s.* 10.

A petition in bankruptcy was presented against the prisoner in the County Court, and an order made that the publication of a notice of the petition in the "London Gazette" should be deemed service of the petition on the prisoner. The prisoner was adjudicated bankrupt in his absence, and was subsequently indicted under section 11 *of the Fraudulent Debtors Act,* 1869. *At the trial there was produced the file of bankruptcy proceedings under the seal of the County Court; and on such file was an entire page of a printed document, headed "London Gazette," in which an advertisement occurred addressed to the prisoner, giving him notice of the petition:* —Held, *that this cutting from the "London*

(2) 30 Law J. Rep. C.P. at p. 336.

**Coram* Lord Coleridge, C.J.; Pollock, B.; Manisty, J.; Lopes, J., and Stephen, J.

The Queen v. *Lowe, C.C.R.*

Gazette" was not properly receivable as evidence of the publication of the notice in the "London Gazette."

Case reserved by the Chairman of the Derbyshire Quarter Sessions.

The prisoner was indicted under the 1st, 2nd and 3rd sub-sections of the 11th section of the Debtors Act, 1869.

1. For that he, being duly adjudged a bankrupt, did not to the best of his knowledge and belief fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as had been disposed of in the ordinary way of his trade or laid out in the ordinary expenses of his family.

2. And that he did not deliver up to such trustee, or as he directed, all such part of his real and personal property as was in his custody or under his control, or which he was required by law to deliver up.

3. And that he did not deliver up to such trustee, or as he directed, all books, documents and papers in his custody or under his control relating to his property or affairs.

The following facts were proved at the trial:—

The prisoner, who was a trader at Chesterfield, sold his effects by auction, received the proceeds of the sale, and immediately left the neighbourhood, without paying his debts or disclosing his address.

A petition in bankruptcy was presented against him in the County Court of Derbyshire.

The County Court made an order that the publication of a notice of the petition in the *London Gazette* should be deemed service of the petition on the prisoner.

On the file of bankruptcy proceedings, under the seal of the County Court, produced at the trial, was an entire page of a printed document, headed "*London Gazette*, March 31st, 1874," in which an advertisement occurred addressed to the prisoner, giving him notice of the petition and the order of Court for substituted service; and that the petition would be heard in the said County Court on the 22nd of April, 1874, on which day he (the prisoner) was required to appear, and, if he should not, the County Court might adjudge him bankrupt in his absence.

Prints of the same advertisement appeared also on the file of proceedings, with memoranda subscribed stating that they had respectively been inserted in the *Derbyshire Times* and *Derbyshire Courier*, two newspapers published at Chesterfield on the 28th of March, 1874.

The prisoner did not appear according to this notice.

There was no evidence that it had come to his knowledge.

On the 22nd of April, 1874, he was adjudged bankrupt.

At the first meeting of creditors an accountant was appointed trustee of the prisoner's estate.

The County Court ordered the trustee to prosecute the prisoner for offences against section 11, sub-sections 1, 2 and 3, of the Debtors Act, 1869.

The following question of law was raised at the trial on the prisoner's behalf—namely, That the page alleged to be part of the *London Gazette* of the 31st of March, 1874, did not contain the imprint of any printer or purport to be published by authority, and therefore should not be admitted in evidence.

The Court of Quarter Sessions admitted in evidence the page of the *London Gazette*.

The prisoner was convicted, and the Court of Quarter Sessions reserved the said question of law.

No counsel appeared.

LORD COLERIDGE, C.J.—We are all of opinion that this conviction must be quashed. In order to make out the case for the prosecution it was necessary to shew that the notice of the petition in bankruptcy had appeared in the *London Gazette*; and the prosecution produced only a cutting of that part of the *London Gazette* which contained the advertisement of the notice of the petition having been filed, instead of the entire Gazette. The Court of Quarter Sessions received that as evidence of the notice without

anything more, and appear to have assumed that because it came from the Bankruptcy Court and was filed with the other proceedings, it was all right. It is obvious that it would be dangerous to allow a piece of newspaper cut out of a newspaper to be assumed to be proof of what was stated in the *London Gazette*. It seems to us that the cutting from the Gazette was improperly received, and that the conviction cannot stand.

Conviction quashed.

[IN THE QUEEN'S BENCH DIVISION AND IN THE COURT OF APPEAL.]

1883. June 14. July 4. } *In re* BILLERICAY HIGHWAY BOARD; THE QUEEN *v.* THE JUSTICES OF ESSEX.

Highway Board—Corporation—Dissolution of District—Continuance of Board for Winding-up Purposes—25 & 26 Vict. c. 61 (the Highway Act, 1862), s. 39—Appeal.

The district of a highway board was dissolved under 25 & 26 Vict. c. 61. s. 39. In a proceeding then pending to which the board was a party, it was objected that by reason of the dissolution of the district the board had ceased to exist and could not appear:—Held, *that the board continued to exist for the purpose of winding up its affairs.*

Rule *nisi* for a *mandamus* to Justices to enter continuances and hear an appeal.

The Billericay highway board, formed under 25 & 26 Vict. c. 61 (the Highway Act, 1862), s. 5, obtained, on the 22nd of February, 1883, an order of a Court of summary jurisdiction, whereby the Shorthorn Dairy Company were required to pay to the highway board a certain sum, as being extraordinary expenses incurred by the board in repairing a highway by reason of extraordinary traffic of the company thereon. The company, on the 1st of March, 1883, gave notice of appeal to Quarter Sessions against that order. Before the appeal could come on for hearing, the district of the highway board was, on the 25th of March, 1883, dissolved under 25 & 26 Vict. c. 61. s. 39 (1), by the effect of a provisional order of Justices made on the 3rd of January, 1882, and confirmed in October, 1882. The appeal coming on for hearing in April, 1883, objection was taken on behalf of the company to any one being heard in opposition to such appeal, on the ground that the respondents thereto, the Billericay highway board, had ceased to exist. The Justices decided in favour of that objection, and thereupon quashed the order appealed from. A rule *nisi* having been obtained on behalf of the Billericay highway board, as respondents to the appeal, for a *mandamus* to the Justices to enter continuances and hear the appeal,

Philbrick, Q.C., and *H. C. Bennett* (on June 14), shewed cause.—The highway board had ceased to exist when the appeal came on for hearing, and the Justices were therefore right in refusing to hear any one on behalf of the board in opposition to the appeal. The dissolution of a highway district implies the dissolution of the board of that district. Possibly the express provision of the section under which the order for dissolution was made (1), that

(1) 25 & 26 Vict. c. 61. s. 39, enacts: "Any highway district formed under this Act may from time to time be altered, . . . or any highway district may be dissolved; but any such alteration . . . . or dissolution . . . . shall be made by provisional and final orders of the Justices; and all the provisions of this Act with respect to the formation of highway districts, and provisional and final orders of Justices, and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway districts, shall, in so far as the same are applicable, extend to such alteration . . . . or dissolution, ... and in addition thereto provision shall be made if necessary in any order of Justices made under this section for the adjustment of any matter of account arising between parishes or parts of districts in consequence of the exercise of the powers given by this section. . . . Where any highway district is dissolved, . . . the highways in such district . . . . shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways in the same manner as if such highways had never been included within the limits of a highway district."

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in any orders of Justices made thereunder provision shall be made if necessary for the adjustment of any matters of account arising between parishes or parts of districts, may keep the board of a dissolved district alive for the purpose of such adjustment; but the board cannot be held to remain in existence for any wider purpose.

They referred also to 25 & 26 Vict. c. 61. ss. 5, 6 and 11; 41 & 42 Vict. c. 77. s. 9, and to *The Queen* v. *The Justices of Monmouthshire* (2).

Poland (*Earle* with him), in support of the rule.—A highway board is, by 25 & 26 Vict. c. 61. s. 9. sub-s. 2, a corporation; and the corporation cannot be considered to be dissolved by the dissolution of its district. The corporation remains, and may do and require what honesty demands that it should be able to do and require. To contend that a board which may have a large sum of money and heavy liabilities is to come to an end in the manner suggested is absurd. The enactments of the Act in relation to the dissolution of a district contain no provision for transferring the assets and liabilities of the district, and it cannot have been intended that they should be transferred to the surveyors of the individual parishes composing the district. The enactments as to the formation of a district expressly provide that the assets and liabilities of the surveyors of parishes forming parts of the district are to pass to the board of the district. No doubt 25 & 26 Vict. c. 61. s. 39, enacts that all the provisions with respect to the formation of districts shall, in so far as they are applicable, extend to the dissolution of districts; but the provisions as to the transferring of assets and liabilities are clearly inapplicable.

They referred also to 41 & 42 Vict. c. 77. ss. 7 and 11, *The Queen* v. *The Justices of Middlesex re Slade* (3), *The Queen* v. *The Justices of Worcestershire* (4) and *The Queen* v. *The Mayor of Monmouth* (5).

(2) 4 B. & C. 844.

(3) 46 Law J. Rep. M.C. 225; Law Rep. 2 Q.B. D. 516.

(4) 3 E. & B. 477; 23 Law J. Rep. M.C. 113.

(5) 39 Law J. Rep. Q.B. 77; Law Rep. 5 Q.B. 251.

WILLIAMS, J.—I am clearly of opinion that the rule for a *mandamus* ought to be made absolute. The magistrates adjudicated without hearing any argument whatever on behalf of the respondents, and the contention that they were right in holding that the respondents had ceased to have any existence cannot be upheld. The powers of the highway board to act in relation to the management of the highways ceased upon the dissolution of the district, and reverted to the authorities to whom they would have belonged if those highways had never been included in a highway district; but the board continued, I think, to exist for the purpose of winding up its affairs.

SMITH, J.—I also think that the *mandamus* ought to go. I think, first, that 25 & 26 Vict. c. 61. s. 39 has no such absurd effect as the arguments of Mr. Philbrick and Mr. Bennett seek to attach to it, but that the highway board of the dissolved district still exists for the purpose of winding up its affairs. I think, secondly, that there was no hearing by the magistrates.

Rule absolute.

The Shorthorn Dairy Company appealed.

Philbrick, Q.C., and *H. C. Bennett* (on July 4)*, for the appellants.—The highway board, which, under the provisions of 25 & 26 Vict. c. 61. s. 9. sub-s. 2, is a body corporate having a perpetual succession, can only exist so long as the highway district is in existence. The board does not come into existence until after the highway district has been duly formed. And when under section 39 the highway district has been dissolved, the board also ceases to exist; and the rights and liabilities of the board are transferred again to the surveyor of each particular parish. It is a necessary implication of law that when the highway district is dissolved, the board also has no longer any existence. The surveyors did not appear, as they might and ought to have done, when the appeal came on for hearing, and the decision of the Justices was therefore right.

Poland, for the respondents, the highway board.—The board were the governing

* *Coram* Brett, M.R., and Fry, L.J.

body of a highway district, consisting of various parishes. After the order for the dissolution of the district took effect, on the 25th of March, 1883, each parish would after that date have to manage and maintain its own highways; but the highway board is still in existence for the purpose of winding up its affairs. If the order of the Justices is right, any highway district would, by giving notice that it was going to be dissolved, be enabled to get rid of all liability. Section 7 of 41 & 42 Vict. c. 77 provides for the payment of the expenses of the highway district out of the common fund of the district, which is formed by the issuing of a precept to the way-wardens of each parish, who make a highway rate. It was not for the surveyors of the individual parishes to appear on the appeal. The notice of appeal having been given, and necessarily given, to the highway board, it was for the board and not for the surveyors to appear. All property, real or personal, which before the formation of the board vested in the surveyor or surveyors of any parish forming part of the district, by section 11 of 25 & 26 Vict. c. 61, passes to and vests in the highway board after the highway district has been formed. There is nothing in the Act which says that such property shall vest in the highway district, nor that, after the dissolution of the highway district, it shall vest in any person or body other than the board. The board still exists as a corporate body for the purpose of winding up its accounts, of collecting its debts, and of distributing any funds which it may have in hand.

Philbrick, Q.C., replied.

BRETT, M.R.—In this case an order was obtained by the board, which was constituted and declared by Act of Parliament to be a corporation, against the company who are the appellants. Thereupon the appellants appealed to Quarter Sessions, and it is not denied that at the time when the appeal was entered the board was the proper respondent. But before the appeal was heard something happened; and we are to say what in point of law is the effect of the procedure followed under section 39 of 25 & 26 Vict. c. 61. It was alleged on the one side that that procedure dissolved the board—the respondent—before the appeal could come on for hearing; and then it was said that the board being dissolved and gone there was no respondent, and that the appellant was therefore entitled to judgment for want of a respondent. But on the other side it was said that the board was not dissolved, and, having been a respondent, was still a respondent. It seems to me that if the board was dissolved the appeal could not be heard as between it and the appellants. Whether the result of that should have been that the appellants would be entitled to judgment in the absence of the respondent I will not say. I have a strong doubt about that. I should be disposed to say that no one can read this Act of Parliament without seeing that the board, if it was dissolved, had a successor, and that the Justices should have adjourned the appeal until the successor could come in, and that they should not have given judgment. But it is unnecessary to deal with that question. It seems to me that the board, if it was still in existence, was the right respondent; and if it was throughout the respondent, the decision of the Justices cannot be supported. The real question is, whether in our judgment the board was, at the time when the appeal came on for hearing, dissolved. It was alleged that by virtue of the Act of Parliament it was dissolved; and that gives rise to the question as to what is the true interpretation of the Act. It cannot be denied that the board was properly constituted, and sub-section 2 of section 9 of 25 & 26 Vict. c. 61 provides that the board shall be a body corporate, by the name of the highway board of the district to which it belongs, having a perpetual succession. We must see if there is any provision that takes away that corporate life. It is said that section 39 takes it away if certain things are done. But that section says that any highway district formed under the Act may be dissolved if certain things are done. The section does not in terms say that any highway board (which is a highway board of a highway district, and in a former part of the Act has been declared to be a body corporate having a perpetual succession) shall be dissolved, but only that the district shall be

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dissolved. Section 39 goes on to say what is the consequence of dissolving a district; and says that where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in such district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways in the same manner as if such highways had never been included within the limits of a highway district. The consequence, therefore, of the dissolution of a district is to throw back the management of the highway, and of all such matters and things as are managed by the highway board, so that they shall be managed in the same way as they would be managed under the principal Act. If, therefore, the body corporate existed only for the purpose of managing the highways, I should have thought it would be a necessary implication that that body would, by the dissolution of the district, also be dissolved. But the highway board is also constituted for purposes other than those of managing the highways. This corporate body has power to make contracts, to bring or to defend lawsuits; to make rates in order to pay the costs of lawsuits which are not unreasonable. Now those are matters which are separate and distinct from the management of the highways. It is not true, therefore, to say that the only power and only duty of this body corporate is to manage the highways. Therefore, when you find that, how can it be implied, upon the dissolution of a board as to this one set of powers and duties, that the corporation is dissolved with regard to other powers and duties? I think that we come to the conclusion with Mr. Philbrick that he could not maintain that proposition unless it could be maintained simply and absolutely that by the dissolution of the highway district the board also was entirely dissolved. I am of opinion that this cannot be maintained. This board, therefore, could not be said to be non-existent; it existed, therefore, for the purpose of being a respondent in the appeal in this case.

FRY, L.J.—I am of the same opinion. The highway board was constituted under the Act of 1862. By section 9 it became a body corporate, having a perpetual succession; and, as a necessary incident, it acquired power to hold chattel property; also power to enter into contracts which might result in debts payable by or to the corporation under certain circumstances. Then section 39 provides for the dissolution of a district which is constituted under the Act of 1862. But the statute is entirely silent as to the dissolution of the perpetual corporation, and as to any successor to that corporation. It is plain that the only way in which we can come to the conclusion that the corporation is to be dissolved, is by holding that that was the implied intention of the Legislature. I have not been convinced by Mr. Philbrick as to the necessary implication, and it seems to me that the balance of convenience is in favour of the corporation continuing to exist. If the corporation is dissolved, it becomes necessary to enquire in whom does the property vest. It was suggested that all the land which was held for the common purposes of the corporation would, upon the dissolution of the corporation, become vested in the various surveyors of the highways in the parishes in proportion to the sums which had been contributed to the common fund. But there is a difficulty in the way of that view, because the contributions may vary. Many difficult questions may arise before it can be known in whom the undivided shares in the land vests; and the inconveniences of the land so vesting, and as to which the Act is silent, are numerous. Take, again, the case of chattel property. It was suggested that, upon the dissolution of the highway district, it would vest in some manner in the various surveyors. Could anything be conceived to be more inconvenient than the vesting of the property such as the carts and horses in the surveyors? Supposing that part of the property of or debts due to the corporation is withheld, are all the surveyors to bring separate actions to recover their undivided shares, or one joint action? The same observations apply, *mutatis mutandis*, to sums which are due from the corporation, as are applicable to sums due to the corporation. It was suggested that the corporation

have no power after dissolution to levy rates for the payment of these debts; but, without expressing any opinion, I am not convinced that section 33 of the Highway Act of 1864 would not remain applicable as long as was necessary in order to pay the debts of the corporation. Shortly, there is a convenience in the corporation continuing to exist, which will then get in all debts which are due, will pay its debts, will realise the property, and take such steps as are necessary for the settlement of its accounts. It was suggested that there would be some absurdity in a corporation being in existence at a time when it had no duties to perform. But it seems to me that no difficulty will occur. The effect, in my judgment, of the latter part of section 39 of the Act of 1862 is that, after the dissolution of a highway district, the board will, for time to come, have no duties with regard to making and maintaining roads, for that parochial duty is revived and restored. And when the board has no functions or duties to perform, it will eventually die and come to an end. That is the view which I take of the construction of this Act. The appeal must therefore be dismissed.

Appeal dismissed.

Solicitors—Beaumont & Warren, for appellants; W. W. Brown, agent for C. C. Lewis, Brentwood, for respondents.

1883. June 14, 21.

THE QUEEN (*on the prosecution of Sibley*) *v.* WHITE (*Auditor of West Gloucestershire*) AND OTHERS.

Poor—Overseers—Opposing Bill in Parliament—Costs.

Parish overseers, by desire of a vestry meeting, incurred expense in procuring the rejection of a bill in Parliament which gave power to levy as part of the poor rate in that parish, and in other parishes of a union of which it formed part (so far as they were comprised within a certain area), a contribution to a dock fund:—Held, *that the expense could not be defrayed out of the poor rate.*

This was a rule for a *certiorari* to bring up, for the purpose of quashing it, a certificate of the auditor of the West Gloucestershire Audit District, allowing the amount of a taxed bill of costs of a solicitor employed by the overseers of the parish of St. George, in the Barton Regis Union, for opposing a bill in Parliament. The facts are stated in the judgment.

Charles, Q.C., and *Pitt-Lewis*, for the overseers of the parish, and *Petheram, Q.C.*, and *Barry*, for the guardians of the union, shewed cause.

Wills, Q.C., and *A. Glen*, for the prosecutor, supported the rule.

The arguments appear sufficiently in the judgment.

The judgment of the Court (1) was (on June 21) delivered by

SMITH, J.—In this case a rule *nisi* for a writ of *certiorari* was obtained on behalf of Thomas Sibley, a ratepayer of the parish of St. George, in the Barton Regis Union, in the county of Gloucester, to remove into this Court a certificate of allowance made, on the 19th of December, 1882, by Mr. J. S. White, the auditor of the Gloucestershire Audit District, whereby he allowed the sum of 327*l.* 14*s.* 8*d.*, being the amount of a duly taxed bill of costs of a solicitor employed by the overseers of the said parish of St. George for opposing in Parliament in the session of 1882 a bill entitled "The Bristol Port and Docks Commission Bill."

The material facts are as follows:—On the 18th of December, 1881, the bill in question was deposited. On the 30th of December, 1881, notice for convening a vestry meeting of the said parish of St. George was given by the churchwardens and overseers thereof; and pursuant thereto, on the 10th of January, 1882, a vestry meeting was held, at which it was resolved that the bill should be opposed, and that the overseers should take such steps and incur such expense as they might think necessary. The overseers thereupon did

(1) Williams, J., and Smith, J.

oppose the bill in Parliament, and obtained its rejection, and incurred therein costs amounting to 327*l.* 14*s.* 8*d.* The bill in Parliament, amongst other provisions, contained the following clause :—

76. (1.) If the commission (meaning thereby the commissioners incorporated by the bill) at any time find that they cannot have at their immediate disposal, under their borrowing powers or otherwise, funds sufficient to provide for the punctual payment of the whole of the interest on the consolidated stock on the day appointed for payment of the same, they shall, at such time before that day as will enable provision for such punctual payment to be made in manner after-mentioned, issue precepts to the corporation, and to the Barton Regis guardians and to the Bedminster guardians respectively, requiring each of such bodies to pay, within a specified time to be named in such precept, the amount therein mentioned as payable by such body.

(2.) It shall be the duty of each of such bodies to comply with the requisitions of such precept by paying the sums mentioned out of any moneys in their hands, or by levying the amount required, in the case of the corporation, as part of the borough rate, and in the case of the said guardians as part of the poor rate leviable in the portions of their respective unions comprised in the dock rate area, exclusive of the city.

(3.) If default is made in payment by any of the said bodies of the sums required to be paid by them in pursuance of the section, the amount in default shall be deemed to be a debt due to the commission from the defaulting authority, and to be enforceable at the instance of the commission by *mandamus.*

(4.) The amount payable by each of the said bodies shall be calculated by the commission in proportion to the rateable value of the city, and of the portions of the said unions comprised in the dock rate area exclusive of the city, according to the valuation list for the time being in force; or if there is no valuation list, then according to the last rate for the relief of the poor.

The reasons given by the auditor for the allowance which he made were as follows :—

"Because it was proposed by the said bill to take power to charge the poor rate of the parish, and to impose other or additional rates on property within the parish, which in the opinion of the parish officers would injuriously affect the value of property therein; it was their duty as trustees to oppose such bill, and they were justified, having acted on the opinion of solicitor and counsel, in applying the funds in their possession (raised by rates) in opposing such bill, which was thrown out by the Lords' Committee."

The question now raised before us is, whether this is an expenditure which the overseers were legally entitled to make; or, in other words, is it an allowance which could in point of law be made.

It was insisted on behalf of the overseers that the provisions of the bill cast upon the ratepayers an additional burthen, inasmuch as it provided for the taking of more money out of the parish than otherwise would have been the case, and thereby might exhaust the ability of the parish to pay rates; that it affected the poor of the parish, inasmuch as it diminished the rateable capacity of the parish; that it cast an additional duty upon the overseers themselves—namely, that of making an additional levy for the purposes of the bill—and that thereby "rights, privileges and duties" of the overseers, within the meaning of the two cases hereinafter referred to, were directly attacked; that by statute 43 Eliz. c. 2. s. 1, the overseers of the poor were to raise, weekly or otherwise, by taxation of every inhabitant and of every occupier, competent sums for and towards the necessary relief of the poor according to the ability of the parish; that the overseers, as trustees for the poor, either by reason of the provisions of the statute itself, or, if not by the direct authority thereof, at any rate as incidental to the powers thereby conferred, were entitled to defend themselves from the proposals made by the Bristol Port and Docks Commission Bill, and to expend moneys derived from the poor rate in opposing the same.

If it could be established that the overseers were trustees as suggested, and that rights, privileges and duties, similar to those dealt with by the then Lord Chan-

cellor in *Bright* v. *North* (2), and by the late Master of the Rolls in *The Attorney-General* v. *Brecon* (3), were being attacked, we are of opinion that those cases are authorities for the proposition put forward on behalf of the overseers; and, indeed, this was not disputed at the bar. We are, however, of opinion that the overseers wholly fail in point of fact. In the first place, no trust is imposed upon them to maintain the ability of the parish to pay rates; and, even if there were, the duty to maintain the ability of the parish to pay rates is wholly dissimilar from the duty which existed in the case of *Bright* v. *North* (2)—namely, to maintain the stability of the banks.

Overseers (though a *quasi* corporation for some purposes not material to this case—see *Gouldsworth* v. *Knights* (4),) are officers annually or (as in this case) triennially appointed; their duty is to keep the parish books, to make up proper accounts, to collect the required rate, and to hand over the proceeds to the proper persons. They have not even the ordering, governing or directing of relief to the poor; that appertains to the guardians—see 4 & 5 Will. 4. c. 75. s. 54. They (the overseers) have nothing whatever to do with maintaining the ability of the parish to pay the required rate. An overseer is, as stated by Lord Chief Justice Denman in *The Queen* v. *Stewart* (5), a statutable officer dealing with a statutable fund, and accountable for its application to statutable purposes. If the contention of the overseers in this case were well founded, they would be entitled to expend the moneys of the poor rate in opposing every local or other scheme which might tend to alter, lessen or interfere with the rateable value of the parish. As to the suggestion that their own duties may be varied by the Bristol Port and Docks Commission Bill, in having to make an additional levy on that behalf, we are of opinion that such a matter does not bring them within either of the decisions cited.

In our judgment, neither by the statute of Elizabeth, nor by any powers incident thereto, were the overseers entitled to oppose the bill in question and charge the costs thereof upon the poor rate; they have no rights, privileges or duties within the meaning of the two cases cited; and, inasmuch as it was not contended that any right to property was sought to be attacked, we are of opinion that the rule must be made absolute, with costs against the overseers.

Rule absolute.

Solicitors—Merediths & Co., agents for Sibly & Dickinson, Bristol, for prosecutor; Warry, Robins & Co., agents for J. W. S. Dix, Bristol, for overseers; Gregory & Co., agents for Benson & Carpenter, Bristol, for guardians; Peacock & Goddard, agents for Mullings, Ellett & Co., Cirencester, for respondent White.

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(2) 2 Ph. 216; 16 Law J. Rep. Chanc. 255.

(3) 48 Law Rep. J. Chanc. 153; Law Rep. 10 Ch. D. 204.

(4) 11 Mee. & W. 337; 12 Law J. Rep. Exch. 282.

(5) 12 Ad. & E. at p. 773.

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TO THE REPORTS OF CASES

CONNECTED WITH

THE DUTIES AND OFFICE OF MAGISTRATES.

MICHAELMAS 1882 TO MICHAELMAS 1883.

TABLE OF CASES.

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THE

LAW JOURNAL REPORTS

FOR

THE YEAR 1883:

CASES

IN THE

Probate, Divorce and Admiralty Division

OF

THE HIGH COURT OF JUSTICE,

REPORTED BY

EDMUND FULLER GRIFFIN AND HENRY STOKES,

BARRISTERS-AT-LAW;

AND ON APPEAL THEREFROM

IN

The Court of Appeal and House of Lords,

REPORTED BY

ARTHUR CLEMENT EDDIS, H. LACY FRASER,

ROBERT BRUCE RUSSELL, WILLIAM EDWARD GORDON,

AND

(*in the House of Lords*) LIONEL LANCELOT SHADWELL,

BARRISTERS-AT-LAW.

MICHAELMAS 1882 TO MICHAELMAS 1883.

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

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LONDON:

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MDCCCLXXXIII.

CASES ARGUED AND DETERMINED

IN THE

Probate, Divorce and Admiralty Division

OF

THE HIGH COURT OF JUSTICE,

AND ON APPEAL THEREFROM TO THE

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MICHAELMAS 1882 TO MICHAELMAS 1883.

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[IN THE HOUSE OF LORDS.]

ADMIRALTY. 1882. June 2, 5. July 26.

THE STOOMVAART MAATSCHAPPY NEDERLAND *v.* THE PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY.

Collision — Both Vessels to blame — Damages — Limited Liability — Set-off — The Merchant Shipping Act, 1854 (17 & 18 *Vict. c.* 104), *s.* 514—*The Merchant Shipping Act*, 1862 (25 & 26 *Vict. c.* 63), *s.* 54. *sub-s.* 2.

In an Admiralty action for damages caused by a collision, the House of Lords had held both ships to be in fault, and condemned each in a moiety of the damage caused to the other. The present respondents brought an action, under section 514 *of the Merchant Shipping Act*, 1854, *against the present appellants and others to limit the amount of their liability, and brought into Court the amount of their statutory liability. The appellants' vessel had sustained the greater damage:*—Held, *that the appellants were entitled to set off the damages due from them to the respondents against the damages due to them from the respondents, and to prove for the balance against the fund in Court.*

The true result of the Admiralty Rule is that in a case in which both ships are to blame only one of them is really liable in damages to the other, such damages representing a moiety of the difference of the loss beyond the point at which one balances the other.

Chapman *v.* The Royal Netherlands Steamship Company (48 Law J. Rep. Chanc. 449; Law Rep. 4 P. D. 157) *overruled.*

This was an action brought by the Peninsular and Oriental Steam Navigation Company, the owners of the steamship *Khedive*, against the owners of the steamship *Voorwarts*, for the purpose of limiting, under the provisions of the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63. s. 54), their liability for damage caused by their vessel to the *Voorwarts*.

The two ships had been in collision in May, 1878, and the House of Lords had, in the action of *Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Company* (1), held both vessels equally to blame, and in accordance with the Admiralty Rule condemned each to pay the moiety of the damages of the other.

The plaintiffs accordingly brought the present action, for the purpose above mentioned, against the owners of the *Voorwarts* and all other persons claiming damages for the collision, and brought into Court the amount of their statutory liability.

(1) Law Rep. 5 App. Cas. 876.

The amount of the damage caused to the *Voorwarts* exceeded that to the *Khedive*, and the question raised by the present appeal was whether the owners of the *Voorwarts* were entitled to prove against the fund in Court for the whole moiety of their damage, and to be paid in respect of such moiety *pari passu* with the other claimants as the respondents contended, or whether they were to prove for the moiety of their damage less the moiety of the damage sustained by the *Khedive*.

This question had been decided by the Court of Appeal in favour of the contention of the respondents, on the authority of *Chapman* v. *The Royal Netherlands Steamship Company* (2).

The owners of the *Voorwarts* appealed to the House of Lords.

The Solicitor-General (*Sir F. Herschell*), *Webster*, *Q.C.*, and *Phillimore*, for the appellants, argued that according to the old Admiralty practice only the balance of the damages, after setting off the damages to one ship against those of the other, was payable, and cited *The Seringapatam* (3), *The North American* (4), *The Ettrick* (5) and *De Vaux* v. *Salvador* (6).

Butt, *Q.C.*, *Benjamin*, *Q.C.*, and *Myburgh*, *Q.C.*, for the respondents.—Before the Judicature Act, proceedings being by action and cross action, there could be no setting off and judgment for the balance. Since that Act, although there are proceedings by claim and counter-claim, still the practice of the Admiralty Court to give two distinct judgments one against each ship is unaffected by the Act. In cases before the Act—*The General Havelock* and *The Wilhelm*, *The Atalanta* and *The Lumley Castle*; and since, in *The Lady Mostyn* and *The R. L. Alston*, and *The Seaham Harbour* and *The Harraton*, not reported, but cited from the Admiralty Registrar and two decrees by the Court, separate reports were made by the Registrar. For the practice before the Merchant Shipping Act, 1862, see *The Calypso* (7). It is not proper to consider what the form of final judgment would be. The object of this Act was to stop actions and not to let them go on to final judgment—Merchant Shipping Act, 1854, ss. 504 and 514.

Under Order XIX. rule 3, and Order XXII. rule 10, of the Rules of Court, "the Court 'may' if the balance is in favour of the defendant"—not "must"—"give judgment for the defendant for such balance"; that is, the Court are to do so unless there be some reason to the contrary—and we say that this limitation of liability is such reason.

When a statute fixes arbitrary value some cases may arise which produce curious results—*e.g.*, the case of *Aitcheson* v. *Lohre* (8), where, on an insurance, more was recovered for a partial loss than would have been recovered on a total loss; but the established rule should not be altered.

If the set-off claimed by the appellants be allowed, a shipowner is really made liable for more than 8*l.* a ton. It is not the proper view of the statute to speak of the sum payable as a dividend—it is all that is due. The Admiralty law has struck a balance between common and civil law, which held that a principal could not be liable for the acts of his agent unless he could have been present and prevented it. The Act of 1862 has fixed an entirely new sum as the limit of responsibility for damage. The shipowner was not, in addition to paying that sum, intended to give up a claim. The rule we contend for gives an equal dividend to ship and cargo owners—the appellants would give a different dividend.

The Milan (9) was also referred to.

The Solicitor-General, in reply.—The record in *The Washington* (10), a case heard in 1841, shews that the old form was to divide equally damages and costs, and make each party pay half, not to order each party to pay half of the other party's.

(2) 48 Law J. Rep. Chanc. 449; Law Rep. 4 P. D. 157.
(3) 3 Wm. Robin. 38.
(4) 1 Lush. 79; Swabey, 466.
(5) 50 Law J. Rep. P., D. & A. 65; Law Rep. 6 P. D. 127.
(6) 4 Ad. & E. 420; 5 Law J. Rep. K.B. 134.
(7) Swabey, 28.
(8) 49 Law J. Rep. Q.B. (H.L.) 123; Law Rep. 4 App. Cas. 755.
(9) Lush. 388.
(10) 5 Jur. 1067.

An old case in the time of Queen Anne, cited in *The Judith Randolph*, not reported (11), shews that the practice then was the same as the present practice. The end in view is to apportion the damage, that the one which has received most damage shall receive something from the other. The form adopted is merely a machinery for carrying out that object. By the limitation of the statute it is only intended that the amount to be paid should not exceed 8*l.* per ton.

Cur. adv. vult.

Their Lordships gave the following judgments on the 26th of July:—

THE LORD CHANCELLOR (LORD SELBORNE).—This case has been to me one of unusual difficulty. In the Courts below judicial opinion has been equally divided, and I fear that even in your Lordships' House there is not unanimity. In most cases the argument from abstract justice and equity is (*in re dubia*) of great importance; but here it seems to me that there is little, if any, room for that argument. Whatever in this case was the liability to damages within the meaning of the Merchant Shipping Amendment Act of 1862, to that liability the statutory limitation must be applied. That liability depends upon a rule of the Admiralty jurisdiction, which to myself has always seemed arbitrary; and in examining the practice and procedure of the Court of Admiralty, in order to ascertain the true results of that rule, we not only enter upon a branch of forensic jurisprudence, the forms of which are different from those of the common law Courts (in which other questions of liability to damage usually arose), but we find important variations in those forms themselves. The rule was thus stated by Sir William Scott, in the case of *The Lord Melville* (in 1816, not reported):—"When it (that is, loss by collision at sea) happened by the common fault of both parties, the ancient rule of the Admiralty was, that it should be considered a common loss, to which both parties were liable." In the case of *The Woodrop* (12) the same very learned Judge said:—"The rule is that the loss must be apportioned (meaning, equally apportioned) between them, as having been occasioned by the fault of both of them." The Merchant Shipping Amendment Act of 1862 provides that in all cases of collision, where there is no loss of life or personal injury (no special reference being made in the Act to the particular case of both ships being in fault), the owners of any ship "shall not be answerable in damages in respect of loss or damage to ships, goods, merchandise or other things" to an aggregate amount exceeding 8*l.* for each ton of the ship's tonnage. This is a limitation of the amount for which the owner shall be "answerable in damages"; it does not make him, in any case, "answerable in damages" upon any principle or to any extent upon or to which he would not have been so "answerable" if the Act had not passed. Nor does it relieve him, wholly or partially, from any loss to which he might have been subject, otherwise than by liability in damages. If, for instance, his whole ship were wholly lost in a collision, for which it was alone to blame, he must bear that whole loss, in addition to his liability in damages, as limited by the statute, to the owners of the other ship, and also to the owners of any cargo. And if the true result of the Admiralty rule is, as the Master of the Rolls and Lord Justice Brett considered it to be, that in a case in which both ships are to blame only one of them is really liable in damages to the other, such damages representing a moiety of the difference of the aggregate loss beyond the point at which the one loss balances the other, the fact that the rest of the loss must be borne by each shipowner who has suffered it is quite consistent with the limitation of liability by the Merchant Shipping Amendment Act. The question is whether there are in these cases two cross liabilities in damages of each shipowner to the other for half the loss which that other has sustained, or only one liability for a moiety of the difference of the aggregate loss beyond the point of

(11) Both cases are cited in *Hay* v. *Le Neve*, 2 Shaw Sc. App. 395.

(12) 2 Dodson, 83.

equality. If both parties were solvent, and if there were no statutory limit of liability, the result either way would practically be the same; because up to the point of equality the loss would be borne, in the one view, by the owner who suffered it, and, in the other view, the one liability would be compensated by, or set off against, the other, according to an equity which would certainly have been enforced in the Court of Admiralty. If, however, by the effect of a supervening bankruptcy before judgment, or of the statutory limitation of liability, the position of the two parties were rendered unequal, so that a claim by the one would only be to receive a dividend out of a fund, while a claim by the other would be payable in full, the distinction may become important. But a consequence arising out of circumstances foreign to the rule itself ought not to be regarded in the determination of this question, whether it may tend practically to disturb or to maintain that equality of participation in the loss arising from a common fault, which is the principle of the Admiralty rule. The solution of this question appears to me to depend upon the true effect of the procedure, and the forms of decrees of the Admiralty Court in this class of cases; for the new method of procedure under the Judicature Acts, by claim and counter-claim, cannot, in my opinion, make any difference. If the course of the Court had been to deal with the whole controversy between the owners of the two ships in a single proceeding the natural result of the rule would, I think, certainly be that for which the appellants contend. If both ships had suffered an exactly equal amount of damage, ascertained in the same suit, it cannot be conceived that the Court, acting on such a rule, would adjudge the owner of the one ship to pay any damages at all to the other. In general this would not happen, but one ship would have suffered more damage than the other. The natural result of this inequality of loss would seem to be, not that either owner should pay anything to the other up to the point at which (if there had been no such difference) the loss would have been equal, but that the difference only should be equally divided between them, the one bearing and the other paying a moiety of that difference. The whole difficulty, as it seems to me, arises out of the fact that the course of the Court of Admiralty was not, and from the nature of the case hardly could have been, to deal with the whole controversy between the owners of the two ships in a single suit. When a suit for collision was brought it was always by one party alleging the other party to be in fault; and there was also generally (when both were ultimately found to blame, and when both had sustained damage) a cross suit by the other party, with a like allegation of fault against his opponent. At the hearing, whether of one such suit only, or of two such suits, heard separately, or conjoined, the Court, when it determined that both ships were to blame, usually pronounced in each suit a separate decree. It cannot be denied that the more common and recent form of such decrees seems (*prima facie*, at all events) favourable to the contention of the respondents. In each suit there was, as I have said, a separate decree declaring that both ships were in fault, "and that the damage arising therefrom ought to be borne equally" by the owners of both ships; and afterwards proceeding to "condemn" the defendants and their bail "in a moiety of the damages proceeded for by the plaintiffs"; and referring it to the Registrar, assisted by merchants, to assess the amount of such damages (with or without costs, as the Court might think fit). Under every such decree the Registrar made a report, finding that a moiety of the damages sustained by the plaintiffs amounted to so much, and (ordinarily) computing interest thereon from the date of the decree. A moiety of the damages sustained by the other party (if plaintiff in a cross suit) was in like manner found (also with interest) sometimes by the same, and sometimes by a separate report. It does not appear that, on the face of the reports made under this form of decree, any balance was ever struck; but unless the parties, by a voluntary settlement, rendered further resort to the Court unnecessary, the proper course would have been for that plaintiff to whom

a balance was due to apply to the Court for a monition requiring the other party to pay it. A monition was seldom issued in practice; indeed, Mr. Butt, in his argument for the respondents, stated that he had been unable to find one on the records of the Court. But there cannot, I think, be any doubt that, if issued, it would have been in favour of one plaintiff only, and that for the balance, representing one moiety of the excess of the aggregate loss beyond equality, and the interest thereon, and the costs (if any) to which that plaintiff might be entitled. The computation of interest by the Registrars in cases of this class might, at first sight, seem to imply that there was, in that stage, an ascertained judgment debt carrying interest. But I think this cannot be a correct view, whatever (in other respects) may be the effect of the decrees under which the Registrars acted. It does not appear to have been the general course of the Court that those decrees should contain any direction as to interest; and I think it more probable that the principle on which interest was computed under them is that mentioned by Mr. Sedgwick in his book on Damages (chap. xv., pp. 373 and 385–7), where he treats of the power of a jury to allow interest, as in the nature of damages, for the detention of money or property improperly withheld, or to punish negligent, tortious, or fraudulent conduct; the destruction of or injury to property involving the loss of any profit which might have been made by its use or employment. I understand the Master of the Rolls and Brett, L.J., to have been of opinion that everything in this course of procedure, prior to monition, was not in form only (according to the style of the Admiralty Courts), but substantially interlocutory; that the decree was not, either before or after the report of the Registrar, equivalent to a final judgment constituting a liability in a certain amount of liquidated damages; that, for this purpose, a monition (which, both in form and in substance, would be an order to pay) was necessary; that such monition could only issue for a moiety of the excess of the aggregate loss beyond the point of equality, in conformity with the principle of the rule declared on the face of the decree itself; and that there was, therefore, no liability in damages except for that balance. Lord Justices Baggallay and Cotton, on the other hand, thought that the amount of the liability of each party to pay damages to the other was fixed by the decree in the suit of each plaintiff, and that the monition was merely a step towards execution. If no light could be obtained from any other source than the analogy of the forms of procedure in Courts of common law and equity, I should have found great difficulty in dissenting from the conclusions of Lord Justices Baggallay and Cotton. But, in determining the effect of Admiralty procedure, authorities in the Admiralty Courts ought to prevail over reasoning founded upon the procedure of other tribunals. I referred in the outset to the terms in which the "ancient rule of the Admiralty" was stated by Sir W. Scott in the case of *The Lord Melville*; and I recur to them for the purpose of observing that they would hardly seem to be quite accurate if the loss to be "apportioned" (according to the other form of expression used by him) were only that of one ship considered separately and without regard to the loss of the other. At all events, the phrase "a common loss" seems to me to point, more naturally, to what Lord Chief Justice Denman understood to be the result of the Admiralty rule. "The positive rule" (he said in *De Vaux* v. *Salvador*) (6) "of the Court of Admiralty requires the damage done to both ships to be added together, and the combined amount to be equally divided between the owners of the two." The observation which I have ventured to make upon Sir W. Scott's words is, in itself, slight, and would be of no weight at all if there were no precedents of the Court of Admiralty in accordance with Lord Denman's statement of the rule. But there do appear to be such precedents, older than the forms recently in use, and differing from them. Whatever else may be doubtful in this case, it is, at all events, certain that the ancient rule of the Admiralty and the present rule are the same. The earliest recorded precedent is that of the *Peters-*

field and the *Judith Randolph* (11), decided by Sir James Marriott in 1789 (following, as it would seem, a case determined in Queen Anne's time), which was treated by Lord Gifford, when delivering the opinion of this House in *Hay* v. *Le Neve* (11), as an authority for the application of the Admiralty rule, which the House of Lords ought to follow. In *Hay* v. *Le Neve* (11) the question, which is now so important, did not arise, because there only one of the ships which came into collision had sustained any damage. But a decision, so recognised by this House, is entitled to great weight on all points relating either to the principle or to the application of the rule. The exact terms of the final judgment entered up in the *Petersfield* and the *Judith Randolph* (11) were thus stated to the House of Lords by Lord Gifford: "The Judge by his interlocutory decree pronounced that both ships were in fault, and that the *Judith Randolph* was most in fault, and decreed that the whole damage sustained by the owners of the ship *Petersfield* and her cargo, which was sunk and lost, as well as the 230*l.* damages and expenses given against the ship *Petersfield*, and the costs of suit here on both sides, be borne equally by the parties to this suit; and assigned for liquidation of damages and taxation of expenses the third session of next term; and referred the liquidation of the said damages and expenses to the Registrar, taking to his assistance two merchants." This form of decree agrees with Lord Denman's statement of the rule. Its effect is, I think, clear; 230*l.* damages and expenses had been ascertained (I presume, in a suit brought by the owners of the *Judith Randolph*) as the amount of the loss and expenses suffered by the *Judith Randolph*, in a moiety of which (as I suppose) the *Petersfield* had been "condemned." But the amount of the loss and expenses suffered by the *Petersfield* was, as yet, unascertained. Let it be supposed, for illustration's sake, that, when ascertained, the loss and expenses suffered by the *Petersfield* and her cargo might amount to 1,770*l.*, which, added to 230*l.*, would make 2,000*l.* This decree certainly could not and did not mean that the owners of the *Petersfield* and her cargo, who had suffered in damages and expenses 1,770*l.*, should be liable in 1,000*l.* damages and costs to the owners of the *Judith Randolph*, whose total loss and expenses did not exceed 230*l.*, and should themselves be entitled to receive back from the owners of the *Judith Randolph* the exact amount which they so paid. The effect of that operation would simply be that the parties would be left in the same position as they would have been at common law, each bearing his own total loss. The effect of such a form of decree could, therefore, only be that the owners of the *Petersfield* and her cargo should bear their own greater loss to the extent of 1,000*l.*, and that the owners of the *Judith Randolph*, after bearing the whole amount of their smaller loss—namely, 230*l.*—should pay the residue of 1,000*l.*, being a moiety of the difference of the aggregate loss, to the owners of the *Petersfield*. This is, in substance, that mode of applying the Admiralty rule for which the appellants here contend. Dr. Lushington appears to have followed this precedent in 1841, referring expressly to *Hay* v. *Le Neve* (11), in the case of *The Washington* (10), when, two cross actions being tried by agreement at the same time, he "decreed the damages, costs and expenses of both parties to be thrown together, and to be equally divided." It further appears to me that this view of the real meaning of the procedure in such cases goes far to reconcile with sound principle the course taken by Dr. Lushington in *The Seringapatam* (3) and *The Tecla Carmen* (13), which (in the former case especially) would otherwise have seemed arbitrary, and hardly consistent with the respect due to those decrees of Her Majesty in Council in favour of the owners of the *Harriett* and the *Tecla Carmen*, the fruits of which he thought himself entitled to withhold from the plaintiff, unless (in the one case) they would "submit to the deduction of a moiety of the damages which had been sustained by the owners of the *Seringapatam*" (without a decree in any cross suit), and (in the other) until a cross suit should

(13) Lush. 79.

be brought to hearing. These authorities are, I think, sufficient to prove that the course of the Court of Admiralty has been to use its powers over its own procedure, so as either at the hearing of a cross suit after decree and report in the original suit, or at the hearing of two conjoined suits, or in that later stage at which a monition might be applied for, to bring about the same result as if the whole controversy between the owners of the two ships had been, from the first, dealt with in one proceeding, and this, not by way of set-off, but in a manner which can only be explained as resulting from the view which that Court took of the principle, and the just consequences, of its own rule. One further observation I desire to make, as offering what seems to me a not improbable explanation of the ordinary form of decree. It is that, as every suit of this kind was originally brought by a plaintiff alleging his adversary to be in fault (and not admitting the existence of fault on both sides), and as each suit was or might be separately brought to a hearing, the form of the decree made separately in each suit, before "liquidation of damages," would naturally be such as might be applicable to the possible case (which actually occurred in *Hay* v. *Le Neve* (11) of that plaintiff's ship only having suffered any damage; in which case the moiety of that damage only which was mentioned in that decree would be taken into account. My conclusion, upon the whole, is that the opinion of the Master of the Rolls and Lord Justice Brett ought to prevail, and that the judgment appealed from should be reversed. In arriving at this conclusion, I have not only the hesitation which I must always feel in differing from the opinion of my noble and learned friend Lord Bramwell, but I am also bound to acknowledge that my own impression, down to the conclusion of the arguments, had been different. A fuller consideration of the authorities to which I have referred has convinced me that they are not reconcilable with the judgment of the Court of Appeal.

LORD BLACKBURN.—In this case two ships, the *Voorwarts* belonging to the appellants, and the *Khedive* belonging to the respondents, came into collision, and damage was thereby occasioned to each of the ships and to the cargo on board, so that the owners of each ship and the owners of the cargo each sustained loss arising from the same accident, and each had a claim for recompense from those who were responsible. No loss of life or personal injury was incurred. It was ultimately determined that the collision arose from the fault of both ships, and according to the rule in the Admiralty, that being so, the whole damage arising from the collision ought to be borne equally by the owners of the two ships, without enquiring in what degree each was to blame. There was no fault or privity on the part of the owners of the *Khedive*, and they were entitled to take steps for limiting their liability; and as the moiety of the damage in any view of the case exceeded the amount to which their liability was limited, they instituted an action for this purpose in the Admiralty Division, bringing that amount into Court, and making the owners of the *Voorwarts* and all other persons claiming damages from the collision defendants. The amount of the damage to the *Voorwarts* exceeded the damage to the *Khedive*, and the question which it is intended to raise is whether the owners of the *Voorwarts* were to prove for the whole moiety of the loss and damage sustained by them and to be paid in respect of such moiety *pari passu* with the other claimants on the fund, which is the contention of the respondents, or whether they were to prove for the moiety of the loss and damage sustained by them, less a moiety of the loss and damage sustained by the *Khedive*. One practical difference is, that if the respondents are right the amount to be paid out of the fund in Court to the owners of the cargo, who are not to blame, will be diminished for the benefit of the *Khedive*, which was to blame; and, as was said by Lord Justice Baggallay in *Chapman* v. *The Royal Netherlands Steam Navigation Company* (2), "it certainly strikes one as improbable that such an apparently inequitable

result should be in accordance with a true construction of the Merchant Shipping Acts; but, if such be their true construction, we are bound to adopt and act upon it, however inequitable the result may be." Perhaps it is too strong to call the result inequitable, but I think it is certainly one which the Legislature were not likely to have wished to bring about, and that if they had had it brought to their notice they probably might have altered the language of the Acts, so as to make it clear that they did not intend to bring about such a result. Whether, on the true construction of the Acts as they are framed, the result follows is the question. Another result is that, as between the shipowners, the ship which seeks to limit its liability will always, whether its damage be greater or less than the other, obtain a benefit; whether that is to be wished depends upon which was most to blame. This is in substance an appeal from the decision in *Chapman* v. *The Royal Netherlands Steam Navigation Company* (2), in which the question was decided, and it was so argued. In that case the *Savernake* and the *Vesuvius* had come into collision, and both were to blame. The owner of the *Savernake* brought the amount of his statutable liability into Court, and made the owners of the *Vesuvius* and all other claimants defendants. The Master of the Rolls, in that suit, declared "that the defendants, the Royal Netherlands Steam Navigation Company, are entitled to prove for the moiety of the loss and damage sustained by them less a moiety of the loss and damage sustained by the *Savernake*, and to be paid in respect of such balance *pari passu* with the other claimants out of the fund in Court." That is the declaration which the appellants say ought to be made here, and if it were made the rest of the order would easily be framed. But this declaration was altered in the Court of Appeal by a majority consisting of Lord Justices Baggallay and Cotton, Lord Justice Brett dissenting and thinking that the declaration of the Master of the Rolls was right; so that as far as mere weight of authority goes it was pretty equal. I need hardly say that the question is one of difficulty. On the best consideration I can give I think that the Master of the Rolls and Lord Justice Brett were right. The solution of the question before the House depends upon two questions: First, what is the true construction of the statutes putting a limit on the liability of shipowners to make recompense in damages to those injured by a collision brought about in whole or in part by the negligence of their servants? Secondly, what is the nature of the recompense in damages awarded by the rule of the Admiralty between the owners of the two ships which came into collision, when both are to blame? I will first consider the statutes. The first Act which limited the liability of shipowners in cases of collision was the 53 Geo. 3. c. 159, and though that Act has been repealed by the 17 & 18 Vict. c. 104, I think its provisions are material in construing those provisions which have been by the 17 & 18 Vict. c. 104, as amended by the 25 & 26 Vict. c. 63, substituted for those contained in it. Statute 53 Geo. 3. c. 159, begins by a recital that it was expedient to prevent any discouragement to merchants and others from being interested in shipping belonging to this realm, and it was confined to British ships. Section 1 enacts "that no person, owner or part owner of any ship, shall be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act, neglect, matter or thing done, omitted or occasioned without the fault or privity of such owner, which may happen" to the cargo of the ship, "or to any other vessel," or to any goods being in or on board any other vessel, "further than the value of his or their ship or vessel, and the freight due, or to grow due for and during the voyage which may be in prosecution, or contracted for at the time of the happening of such loss or damage." There were three cases decided between the passing of this statute and its repeal which were not cited in the argument, but I think it right to bring them before your Lordships' notice. In 1818, in *Wilson* v. *Dickson* (14), the Court of

(14) 2 B. & Ald. 2.

King's Bench decided that the value of the ship was to be taken as "the existing value at the time when the loss takes place." In *Brown* v. *Wilkinson* (15), in 1846, Baron Parke intimates a strong opinion that the value, if it was *res integra*, ought to be taken as the value at the time of the commencement of the voyage; but adds, "As, however, the point has been decided by the case referred to, we should pause before we overruled that authority. It is not, however, necessary in this case to do so, for we think that according to the true meaning of that decision the value at the time of loss, to which the damages were then restrained, is the value at the moment the loss commences by the collision whence the injury, and it is not to be reduced by the consideration that the defendant's vessel is about to founder, at which time it is really of no value, for that would be to exempt the defendant altogether, which the statute certainly does not contemplate under any circumstances." This was quite sufficient to suggest the expediency of substituting a fixed rule for ascertaining the amount of the limit of liability, as was afterwards done, though not till 1862, by the 25 & 26 Vict. c. 63. s. 54. In the interval between these two cases, that of *The Dundee* (16) was decided by Lord Stowell, in 1823. That was a case of collision in which *The Dundee* was solely to blame, and consequently her owners were liable for the whole loss. The question there raised was what was to be included in the word "appurtenances" in the 53 Geo. 3. c. 159, a question no longer of importance since the repeal of that statute. On a prohibition in *Gale* v. *Laurie* (17), the King's Bench put the same construction on the words as Lord Stowell had done, so that the point, if still important, would probably be held concluded by authority. But the judgment of Lord Stowell contains a great deal material to the present enquiry. He begins by saying that the loss arose from "a want of that attention and vigilance due to the security of other vessels that are navigating on the same seas, which, if so far neglected as to become, however unintentionally, the cause of damage of any extent to such other vessels, the maritime law considers as a dereliction of bounden duty, entitling the sufferer to reparation in damages. The quantum of reparation due in such cases has been differently measured in the maritime laws of different commercial countries, and of the same country, our own amongst others, at different periods. The ancient general law exacted a full compensation out of all the property of the owners of the guilty ship upon the common principle applying to persons undertaking the conveyance of goods" (I should rather say undertaking the management of anything likely to do mischief unless attention and vigilance is used by those who manage it) "that they are answerable for the conduct of the persons whom they employed, of whom the other parties who suffered damage knew nothing, and over whom they had no control. To this rule our own country conformed, and it is not to be denied that the term compensation is not very accurately applied to any restitution that falls short of a fair and full indemnification for the injury done. But Holland having introduced a law for the protection of its navigation, that persons interested in it should not be liable beyond the value of that property of their own which they exposed to hazard, their ship, freight, apparel and furniture, England followed in successive statutes, by which it protected owners from responsibility beyond their interests. First, in the case of embezzlements committed by some of the crew of the ship herself, by 7 Geo. 2. c. 15; and in a succeeding statute (26 Geo. 3. c. 86) this protection was extended to the case of embezzlements committed by other persons. The Legislature proceeded in a later statute (53 Geo. 3. c. 159) to give the same protection in the case of all losses otherwise produced. The latter statute, which most immediately applies to the present question, in the first enacting clause subjects the ship, tackle, apparel and furniture and its freight, but in the following clauses the word 'appurtenances' is introduced, and is repeated

(15) 15 Mee. & W. 391; 16 Law J. Rep. Exch. 34.

(16) 1 Hag. Adm. 109.

(17) 5 B. & C. 156.

as subject to contribution." He then discusses the nature of the fishing stores on a Greenland voyage, and the case of *Hoskins* v. *Pickersgill* (18), in which it was held that fishing stores were not included in the word "furniture" in the construction of a policy of insurance, and proceeds: "I am not sufficiently aware whether this would govern the construction of the same word occurring in an Act of Parliament or in the phraseology of a Court in which its meaning is, perhaps, more to be collected from its proper and genuine import than from a prevailing understanding controlling its proper meaning in a contract between two individuals whose words were not to be carried beyond their own intentions in the contract. But it is unnecessary for me to pursue that question further, because it is an admitted fact that this mode of initiating a suit, by the arrest of the ship, tackle, apparel and furniture, is the ancient formula of the Court, though leading to a full remedy affecting all the property of every kind belonging to the owners. The same formula has existed and operated its remedy under all the variations by which the remedy has been modified. It has been no further restricted than as the statute has restricted it; but the initiatory terms 'tackle, apparel, and furniture' founded the suit sufficiently to enable it to embrace all the objects which the statute left subject to its operation. These restrained them only by their own particular restrictions. The same words went as far as the general law went, notwithstanding the narrowness of those terms, and they must now go as far as the general law, limited only by that statute, extends." Before going further, I may observe, first, that neither in *Wilson* v. *Dickson* (14), *The Dundee* (16), nor *Brown* v. *Wilkinson* (15), did any question arise as to how a Court of equity was to work the jurisdiction given it in cases where there were several losses to several parties arising out of the same collision, and the fund brought into Court was to be distributed among them rateably, which is the present case. In each of these cases there was one loss only. Next, that Lord Stowell treats it as quite clear that, though the mode in which the Court of Admiralty founded its jurisdiction was by a seizure of the ship, the recompense in damages decreed by that Court could be enforced against the owners out of all their property of every kind, so that the result was that by the general law the owners might be made to pay to their uttermost farthing the recompense in damages decreed by the Court of Admiralty, however small the value of their ship when seized was. Baron Parke, in *Brown* v. *Wilkinson* (15), says: "From the practice of the Court of Admiralty no light could be derived on this question, for that Court proceeds *in rem*, and can only obtain jurisdiction by seizure, and the value when seized is the measure of liability." It is not, I think, necessary to decide between these very high authorities. If it were, I should wish to make further search among the cases on prohibition; but *prima facie* one would say that Lord Stowell was more familiar with the subject, and, therefore, more likely to be accurate. And lastly, that Lord Stowell seems to me to think that the recompense in damages was to be regulated according to the established law in the Court of Admiralty, which is my own opinion. What that established law is, is a question which I will discuss hereafter. Where there were several losses occasioned to several persons by one act of negligence of those for whom the owner was responsible, the 53 Geo. 3. c. 159. s. 7, permitted the owner to file a bill "in any Court of equity having competent jurisdiction against all the persons who shall have brought any such actions, &c., and all other persons who shall claim to be entitled to any recompense for any loss or damage arising or happening by the same separate and distinct accident, act, neglect or default, or on the same occasion, to ascertain the amount of 'the value,' and for the payment and distribution thereof rateably amongst the several persons claiming recompense as aforesaid, in proportion to the amount of the several losses or damages sustained by such persons so claiming such recompense, according to the rules of equity and as the case may

(18) Marsh. Ins. 765.

require." There are carefully drawn provisions requiring the plaintiff in such a bill to make all persons whom he knows of as having any claim for recompense arising out of that one transaction, defendants, so that they may, if they please, claim; and by section 10 it is enacted that the Court in which the bill is filed shall have full powers for ascertaining the value and the amount of the losses or damages claimed by the defendants respectively, and "generally to do what may appear to be just" in such suit. By the 17 & 18 Vict. c. 104, this statute was repealed, and other enactments provided in the ninth part of that Act, sections 504 and 505, were repealed by the 25 & 26 Vict. c. 63, and for these was substituted section 54 of that latter Act. It is in these words: "The owners of any ship, whether British or foreign, shall not in cases where all or any of the following events occur without their actual fault or privity, that is to say: 1. Where any loss of life or personal injury is caused to any person being carried in such ship; 2. Where any damage or loss is caused to any goods, merchandise or other things whatsoever on board any such ship; 3. Where any loss of life or personal injury is, by reason of the improper navigation of such ship as aforesaid, caused to any person carried in any other ship or boat; 4. Where any loss or damage is, by reason of the improper navigation of such ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise or other things whatsoever on board any other ship or boat, be answerable in damages in respect of loss of life or personal injury, either alone or together, with loss or damage to ships, boats, goods, merchandise or other things, to an aggregate amount exceeding 15*l.* for each ton of their ship's tonnage, nor in respect of loss or damage to ships, goods, merchandise or other things, whether there is in addition loss of life or personal injury or not to an aggregate amount exceeding 8*l.* for each ton of the ship's tonnage." The case which we have to deal with falls within the fourth of these heads, and, as I think, in respect of such losses the only difference intended to be made from the law as it was under 59 Geo. 3. c. 159, was to extend the protection to foreign ships as well as British, and to substitute as the limit of liability a fixed and easily ascertainable sum for the value of the ship, freight and appurtenances. As regards the mode in which the limitation of liability was to be worked out where there were more persons than one who had sustained loss from the same separate neglect or on the same occasion, the elaborate provisions of 59 Geo. 3. c. 159, are repealed, and in lieu of them is substituted section 514 of 17 & 18 Vict. c. 104, which I think was intended to give the jurisdiction to any Court of equity in any part of the British dominions, and in Scotland to the Court of Session, but to make no other difference in the substance of the law. And I think, though the words are changed—principally I think with a view to brevity even at the risk of obscurity—they ought to be construed with reference to the former law and the extent to which it was intended to alter it. And, doing so, it seems to me that the phrase "be answerable in damages" is not to be confined to the damages to be recovered or enforced in an action directly brought against the owner, but it is to be construed as meaning that the aggregate of the recompenses which he has to distribute under section 7 of 59 Geo. 3. c. 159, "according to the rules of equity, and as the case may require," shall be so limited. This is an important link in my chain of reasoning. I think that the principle laid down in *The King* v. *Loxdale* (19), as to the construction of statutes *in pari materia* applies; if I am wrong in this, so much of what I rely on is *debile fundamentam*, and I agree that so far *fallit opus*. If I am right, I cannot but think that if Lords Justices Baggallay and Cotton had had their attention called to the very wide words of section 7 and section 10 of the 53 Geo. 3, giving the Court of equity, whose powers the Master of the Rolls was exercising, every power for distribution of the value amongst the several persons entitled to such recompenses, and "generally to do therein as shall appear

(19) 1 Burr. 445.

to be just," and had agreed with me in thinking that though these words are not repeated in 17 & 18 Vict. c. 104, s. 514, the previous law is to be borne in mind when construing that section, their opinions might have been different; at least, Lord Justice Baggallay would have more fully developed his reasons for thinking that the true construction of the Act compelled him to put a construction on it which he in the passage already cited calls "apparently inequitable in its result." And Lord Justice Cotton would have given his reasons for saying as he does that the result the Master of the Rolls had come to was "apparently against the words and meaning of the Merchant Shipping Act." But the argument at your Lordships' bar was mainly rested on the effect of the rule in Admiralty in the Court of Admiralty, and the proceedings in the Court of Admiralty, before there was any limitation of liability at all. That Court has jurisdiction over both the parties to a collision. Either of them may, if he pleases, abandon or not exercise his right to claim a recompense from the other. But when one does institute a suit the other cannot baffle him by refusing to appear, even though his ship is not within reach of the Court; the institution of the suit gives a maritime lien against the ship forming the foundation of an inchoate right to seize the vessel whenever it comes within the reach of the Court, even though in the meantime it had become the property of a *bona fide* purchaser without notice — *The Bold Buccleugh* (20). And according to Lord Stowell in *The Dundee* (16), the Court of Admiralty, when it seized the ship, could enforce a full remedy affecting all the property of every kind belonging to the owners, however small the value of the ship seized might be. These cases were not cited by Lord Justice Brett, but they seem to me strong authorities in favour of the view he took of the Admiralty procedure. In this case, as in most others, both parties appeared and both made claims. And the great question was, whether both, or only one, and if so which, of the vessels was to blame. It was ultimately decided that both were to blame, and then the Court pronounced the judgment which since the decision of this House in *Hay* v. *Le Neve* (1) has always been pronounced in such cases, namely, that the collision in question in the cause was occasioned by the fault or default of the master and crew of the *Khedive*, and by the fault or default of the master and crew of the *Voorwarts*, and that the damage arising therefrom ought to be borne equally by the owners of the *Khedive* and the owners of the *Voorwarts*. I say that this has always been the form of the judgment since *Hay* v. *Le Neve* (11). I do not think that such could have been the form of the judgment before that case, for it would have had an important bearing on the question then in issue, and not only was Lord Gifford, who presided, a very accurate lawyer, but it appears from the report that he consulted Lord Stowell, who furnished him with authorities, and would certainly have quoted the form of the judgment if it had then existed. Before the decision in *Hay* v. *Le Neve* (11), Lord Stowell had in *The Woodrop* (12) laid down that when both ships were to blame "the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both of them." As the *Woodrop* was solely to blame he had no occasion to say on what principle it was to be apportioned. In *The Lord Melville*, a case not reported anywhere as far as I can find, but cited by Lord Gifford in *Hay* v. *Le Neve* (11), from a shorthand note of the judgment furnished to him, he said—"The ancient rule of the Admiralty was that it should be considered a common loss to which they were justly liable." I do not doubt that "justly" is a misprint for "jointly." The Court of Session had in *Hay v. Le Neve* (11) apportioned the damage by making the ship most to blame bear two-thirds of it, and the ship least to blame one-third. And the question before the House was, if this was right? In that case only one of the ships had put in a claim, and there was no cross-claim—why, I do not know—but the House had not to consider any question arising from the absence of a cross-claim.

(20) 7 Moo. P.C. 267.

Lord Gifford consulted Lord Stowell, and was furnished by him with a note of a decision of Sir T. Marriott. That was in a case in which the *Petersfield* and the *Judith* had come in collision, and both were to blame, but the *Judith* most, and in which—I do not quite understand how—the *Judith* had recovered 230*l.* damages against the *Petersfield*. The decision of Sir T. Marriott was, "that the whole damage sustained by the *Petersfield* and her cargo, as well as the 230*l.* damages and expenses given against the ship *Petersfield*, and the costs on both sides, be borne equally by the parties in this suit." I may observe that Lord Stowell introduced a rule that, though the damages were to be divided, each party should, in such cases, bear his own costs, and that it has been determined that the liability of the shipowner to make good costs is in no way affected by the statutes limiting his liability—see *Ex parte Rayne* (21). In these authorities the decision of the House of Lords was that the damages arising from the collision ought to be borne equally by the owners of the two ships in fault. I do not think attention was called to the effect which this might have on the interest of the innocent owners of cargo. In the possible event of one set of owners proving insolvent whilst the others were solvent, the owner of the cargo would, if the rule was as laid down in the *Lord Melville* that the owners were liable jointly, receive full indemnification for his loss from the solvent owners; by the rule as laid down in *Hay* v. *Le Neve* (1) he only gets one-half from them, and gets a dividend only from the insolvent owners. This rule has been stigmatised as *judicium rusticorum*, and is justified on the ground of general expediency avoiding interminable litigation at the cost of some inevitable injustice in particular cases. But if the recompense in damages which the one ship is to make to the other is to be considered as quite a distinct thing from that which the other is to make to it, this injustice is increased in a manner which is not only not inevitable, but which, as it seems to me, it requires some subtle and technical reasoning to bring about. It was not disputed that in practice, when the damages were ascertained, and it proved that the damage to one ship was greater than that to the other, the balance, and the balance only, was paid. The Master of the Rolls, in *Chapman* v. *The Royal Netherlands Steam Navigation Company* (2), said that balance "was all that is ever recovered in the action, that is the substance of it." He had just before said that "the monition finally issues for the balance." Enquiry has been made, and it turns out that the parties to collision suits having always given substantial bail, there is no instance to be found in which a monition ever issued at all, the money being always paid without anything in the nature of an execution. But I think it can be hardly doubtful that if in any case it ever should be necessary to issue a monition it would not be issued for more than the balance. Had the statute of 53 Geo. 3. c. 159, been unrepealed, and had the Master of the Rolls been exercising the jurisdiction given in such wide terms by the 7th section to determine "according to the rules of equity, and as the case may require," and by the 10th section "generally to do therein as shall appear to be just," I do not think that there could be much doubt that he did right in making his order according to the substance of what was done. I have already expressed my opinion that the statute now in force, though couched in different words, is to be construed as giving the same power as was given by the repealed Act. The very ingenious argument of the counsel for the respondent was I think this: there was from very early times a jurisdiction exercised by the Courts of common law, and I presume by all Superior Courts, to prevent their process being abused or used for the purposes of oppression, and therefore when A had obtained a judgment in one Court against B, on which he was about to issue execution for the full amount, the Court, on its being brought to their notice by B that he had obtained a judgment against A either in the same Court, or another on which he could issue execution against A, would restrain A from issuing execution on the

(21) 1 Q.B. Rep. 982; 10 Law J. Rep. Q.B. 354.

judgment in their Court, except on the terms that he consented to set the one against the other, and would issue execution only for the balance. There were differences of practice in the Queen's Bench and in the Common Pleas at one time, as to the extent to which the interests of the attorneys were considered—see *Hall* v. *Ody* (22)—but those I need not notice; and it was argued with great ingenuity that the cross-claims of the two ships which had come into collision were as distinct as any two actions in different Courts, and that the undenied practice merely arose from the Admiralty interfering to prevent the abuse of its process. Even if this were made out I should be unwilling to give effect to what I cannot but think very technical and artificial reasoning. But I do not think it made out. The two claims arose out of one and the same accident. They are determined in one and the same Court, and they depend on one and the same question, namely, were both or only one of the parties to blame? And that question is determined once for all between the same parties, and the amount of the damage is also determined by the same Court and between the same parties. Even if the course of pleading had always been, as it appears latterly to have been, to condemn each separately, and order the damages to be assessed separately, I should still say that they were, in substance at least, not distinct and separate actions. But as I have pointed out, I think there can have been no settled form before *Hay* v. *Le Neve* (11). I think the forms produced were all comparatively modern. No practical consequences resulted from these forms, and consequently nothing called upon the Courts to consider to what consequences they led. In the case of *The Seringapatam* (3), where the *Seringapatam* and the *Harriet* had come into collision, and the owners of the *Harriet*, which had gone to the bottom, refused to give bail to the action against them by the *Seringapatam*, Dr. Lushington decided, I cannot but think erroneously, that he had no power to stay the action by the owners of the *Harriet* till they gave bail in the action against them. Whether he was right or not is not, since the 24 Vict. c. 10, material, but he so thought, and that looks as if he thought them distinct actions. But when the *Seringapatam* dropped its action against the *Harriet*, and the *Harriet* proceeded against the *Seringapatam*, and finally judgment was given that both were to blame, and that judgment was affirmed on appeal, the question was raised in a very practical shape. The counsel for the owners of the *Harriet* argued that the Court of Appeal had in effect, though not in express terms, said that the owners of the *Harriet* "shall receive a clear moiety of the damage." Dr. Lushington took a course which could not be justified on the ground that the Court was preventing an abuse of its process, or on any other ground than that taken by the Master of the Rolls in *Chapman* v. *Royal Netherlands Company* (2), that they were not independent actions, and that the substance was that the balance only should be paid. I have only to add that, whilst I think that the Chancery Division in *Chapman* v. *Royal Netherlands Company* (2), and the Admiralty Division in the present case, are to conduct the limitation action brought under the 17 & 18 Vict. c. 104, s. 514, according to the procedure as altered by the various subsequent Acts, those Acts make no difference in the substance of what they are to do. They ought to make exactly the same declarations, and do the same things which the Court of Session, following their own procedure, ought to have done if the limitation action had been brought in that Court. I began by saying what was the question intended to be decided in this House. I doubt if it is raised; I doubt if the appeal is not premature; but I do not think that your Lordships should on that account refrain from deciding it. If the House adopts the view which I take of the law, I think the proper order would be to adopt that of the Master of the Rolls in the former case, and declare "that the defendants, the owners of the *Voorwarts*, are entitled to prove for the moiety of the loss and damage sustained by them less a moiety of the damage sustained by the steamship *Khedive*,

(22) 2 Bos. & P. 28.

and to be paid in respect of such balance *pari passu* with the other claimants out of the fund in court," and with the declaration to remit the action to the Admiralty Division to do what is just in the action. I have had the opportunity of perusing the opinion of Lord Bramwell, who takes the opposite view. I have read it very attentively, but it has not changed my opinion.

LORD WATSON.—I have only to state my entire concurrence in the judgments which have just been delivered.

LORD BRAMWELL.—I entirely agree that the question is, what was the practice, or what is the practice, or law of the Court of Admiralty, in proceedings in that Court where both ships are held to be to blame? If I had had to form my own opinion upon that matter unassisted and unbiased by the opinions of my noble and learned friends who have addressed your Lordships, I confess that I should have come to a different conclusion from that to which they have come, because I should, upon an examination of the practice and what I may call the necessity of the case, have come to the conclusion that there were separate decrees in each case for the damages, or a moiety of the damages, sustained by each ship, and that the fact that the balance was afterwards ascertained was a mere matter of arrangement and convenience for the avoidance of what I may call a sort of circuity of proceeding—that is to say, a payment by one ship and repayment by the other. And I must say that at the present moment it seems to me extremely difficult to say that that must not of necessity be the law; because what is to happen if proceedings are brought by the owners of one ship in one Court and by the owners of the other ship in another Court in another country? or if the owners of the ship sued in this country do not think fit to bring their cross-action or to make their counterclaim—I cannot see what is to happen in such a case as that; and I can foresee great difficulties from the opinions which have just been expressed in your Lordships' House in the case of actions which may be brought in the common law Courts in this country. I must acknowledge that I had written a long judgment in support of the views which I am now expressing, but it is not my intention to trouble your Lordships with that opinion, for I really have not confidence enough in my own opinion in a matter of this description to differ from the opinions which have been expressed by my noble and learned friends who have already addressed your Lordships. It is not a question of principle; it is not a question of reason; but it is a question of what was the law of the Court of Admiralty; because, undoubtedly, what was the law formerly is the law still, for the Judicature Act has not changed the law in that respect. I therefore will not trouble your Lordships with the opinion which I should have expressed, for I feel bound to give up my own judgment in a case of this description, yielding to the opinions of my noble and learned friends.

THE LORD CHANCELLOR (LORD SELBORNE).—The order which I should propose to your Lordships, and move for the purpose of giving effect to the opinions which have been expressed by the majority of your Lordships upon this appeal, is to reverse the order appealed from, and to affirm the judgment of the Admiralty Division dated the 5th of April, 1881, with the following declaration: That the defendants, the owners of the steam vessel *Voorwarts*, are entitled to prove against the fund paid into Court under that judgment for a moiety of the loss and damage sustained by them, less a moiety of the loss and damage sustained by the steam vessel *Khedive*, and to be paid in respect of the balance due to them after such deduction *pari passu* with the other claimants out of such fund. It will be for your Lordships to consider what ought to be done with regard to the costs in the Court below and here. With respect to that question, I venture to point out to your Lordships that this case comes before the House not under the ordinary circumstances, which make it fit to apply the rule that the costs should follow the event, but under these circumstances, that in

another case—namely, the case of *Chapman* v. *The Royal Netherlands Steam Navigation Company* (2) between other parties, a decision had been pronounced by the Court of Appeal reversing the judgment of the Master of the Rolls, which it was inevitably necessary for the Court below to follow unless it was reversed by this House. The point also was one which all your Lordships felt to be a point of difficulty involving an abstruse matter of law. Taking all these circumstances into account, and I may add quite consistently, as it seems to me, with the principle of the rule which we are applying, I would submit to your Lordships that no costs should be given, either in the Court of Appeal or of this appeal.

Order appealed from reversed. Decree of the Admiralty Division, dated the 5th of April, 1881, *affirmed, with a declaration. No costs in the Court of Appeal, or of the appeal to this House.*

Solicitors—Clarkson, Greenwell & Wyles, for appellants; Freshfields & Williams, for respondents.

PROBATE. 1882. May 23.

PERCIVAL *v.* CROSS AND OTHERS.

Infant—Guardian ad litem—Appointment—Reference to Registrar.

The plaintiff, who was the brother and executor of the testator, had been appointed guardian ad litem of the testator's three infant children. The will under which the plaintiff had been appointed executor was disputed by the defendants as executors of a later will; and the testator's widow, who had been added as a defendant, applied for an order superseding the appointment of the plaintiff as guardian ad litem.

The Court referred the case to the Registrar, to report whether the action was for the benefit of the infants; and if so, to appoint another guardian ad litem.

The defendants propounded as executors the will, bearing date the 18th of June, 1880, of Walter Percival, deceased.

The deceased left a widow and three infant children, and by the will which the defendants propounded he had given certain legacies to his widow and children, and had directed his business as a horsehair manufacturer to be carried on for their benefit.

The plaintiff, Joseph Percival, the brother of the testator, propounded an earlier will, by which the deceased had directed the sale of his business immediately after his death. The plaintiff had obtained an order for the appointment of himself as guardian *ad litem* of the three infants.

The widow of the testator afterwards obtained an order that she should be added as a defendant.

Bayford, for the widow, moved for an order superseding the appointment of the plaintiff as guardian *ad litem*. He produced certain affidavits in which it was alleged that the plaintiff was not a proper person to be appointed guardian, and that the suit was not for their benefit.

Fillan, for the plaintiff.

Searle, for the executors.

THE PRESIDENT (SIR JAMES HANNEN) ordered that it be referred to one of the Registrars to report whether the action was for the benefit of the infants; and if so, to appoint another guardian *ad litem*.

Solicitors—Hatchett, Jones & Fletcher, for plaintiff; Beard & Sons, for the executors; W. P. Moore, for the widow.

DIVORCE. 1883. Feb. 10. } THE MARCHIONESS OF BLANDFORD *v.* THE MARQUIS OF BLANDFORD.

Desertion — Condonation — Revival by Subsequent Adultery.

Condonation is forgiveness upon condition that no matrimonial offences are committed in the future, and therefore one matrimonial offence committed after condonation is sufficient to revive all the matrimonial offences committed before it.

The parties to the suit were married in 1869. *In* 1874 *the respondent formed an adulterous connection with a married woman, and in* 1875 *he was guilty of an act of cruelty. He deserted the petitioner from* 1876 *till* 1878, *in which year the petitioner commenced a suit for a judicial separation, which was discontinued upon a deed of separation being signed. Later in the same year a reconciliation was effected, and the parties cohabited till* 1882, *when the petitioner discovered that the respondent had resumed his former adulterous connection, and commenced a suit for a dissolution of marriage:—*

Held, *that the condoned desertion, as well as the condoned adultery, had been revived by the subsequent adultery, and that the petitioner was entitled to a decree dissolving the marriage.*

This was a wife's petition for a dissolution of her marriage on the ground of her husband's adultery, cruelty and desertion.

The respondent, by his answer, denied that he had been guilty of the offences alleged against him in the petition.

The case was tried before the President of the Division, without a jury.

The parties were married in 1869. In 1874 differences arose between them in consequence of the relations existing between the respondent and the Countess of Aylesford; and the petitioner swore that in June, 1875, the respondent struck her in the face, this having occurred a few weeks before a confinement. There was no direct corroboration of the petitioner's evidence as to this act; but her sister, the Marchioness of Lansdowne, was examined, and stated that the petitioner had complained to her of her husband's conduct upon the occasion in question. Two letters were also put in evidence. In a letter written by the petitioner to the respondent in October, 1875, she alluded to the blow which he had inflicted, and told him that the child recently born had a mark upon the back of its head as a result of it. A letter was written by the respondent in reply. He returned the petitioner's letter, and alluded to the blow as "the historic event."

In August, 1875, the respondent left his wife. Several interviews took place, and the petitioner made repeated efforts to induce him to return to her and to discontinue his connection with Lady Aylesford; but at an interview in February, 1876, he definitely refused to live with her again.

In February, 1878, the petitioner commenced a suit for a judicial separation, but this was not proceeded with, a deed of separation being executed in the following March. Shortly afterwards the petitioner heard that her husband was no longer living with Lady Aylesford, and made a fresh offer of reconciliation. An interview between the parties took place at Paris in May, 1878, and it was agreed that they should resume cohabitation; but they arranged to postpone doing so until Lord Aylesford's suit in this Division for a dissolution of his marriage on the ground of his wife's adultery with the present respondent had been disposed of.

Lord Aylesford obtained a decree *nisi* in July, 1878, which decree was afterwards rescinded, at the instance of the Queen's Proctor, on the ground of collusion and the petitioner's adultery.

Cohabitation was resumed in August, 1878, the respondent having previously executed a settlement whereby he made a permanent provision for the petitioner and her children, and the parties lived together till April, 1882, when the petitioner commenced the present suit, on discovering that her husband's intercourse with Lady Aylesford had been renewed, and that the latter had been delivered of a child in April, 1881, of which the respondent was the father.

Evidence was given of the birth at Paris of Lady Aylesford's child, and also as to adultery committed between her and the respondent in the years 1880 and 1881.

Blandford v. *Blandford, Div.*

Inderwick, Q.C. (with him *Searle*), for the petitioner, referred to *Palmer* v. *Palmer* (1) and *Newsome* v. *Newsome* (2).

Hall, Q.C. (with him *Lehmann*), for the respondent, called no witnesses.

THE PRESIDENT (SIR JAMES HANNEN).—I do not entertain any doubt as to the principles upon which I ought to proceed, and therefore I will at once give judgment. In the first place I think there was an act of cruelty committed in June, 1875, and the letter which the petitioner wrote to her husband some time after, in which reference is made to it, coupled with his answer and with his absence from the witness-box to-day, satisfies me that what the petitioner states is true, and that the letter which the respondent wrote in answer to her allusion is one which reflects the greatest possible discredit upon him and aggravates the act of cruelty which he then committed. However, there being but one act of cruelty, and that act having taken place more than seven years ago, it is probable that if the petitioner's case had rested upon that alone I should not have granted the prayer of the petition.

With reference to the other points in the case it is necessary, considering the novelty of the point here raised, to look at these circumstances. It seems clear that the respondent deserted his wife for a period of two years. She had become aware of his connection with Lady Aylesford, and had begged him to give it up, and he had refused, and had given as the reason for his connection with Lady Aylesford that he could not and would not live with his wife. It is obvious, not only from what the petitioner said and did at that time, but also from her subsequent conduct, that if he had abandoned that connection she would have been glad to receive him back; but for two years he refused to give up that connection and to live with his wife, and therefore there would be a complete desertion on his part extending over a period of two years, and the petitioner was thus entitled, by reason of his adultery and his desertion of her for two years, to institute a suit for the dissolution of marriage. For reasons, however, which reflect the greatest possible credit upon her, she was willing at that time to abstain from insisting upon her rights; but when the event occurred for which she had been hoping—namely, the separation of her husband from Lady Aylesford, she made overtures to her husband for the purpose of winning him back, which overtures were in the end successful, and she thus condoned his past offences, as is shewn by her letters which have been read. These all shew that she forgave him upon condition that he sinned no more; and the legal definition of condonation is, forgiveness upon condition that no matrimonial offences shall be committed in the future. It was held in the cases referred to by Mr. Inderwick that, where the right has thus accrued from a combination of matrimonial offences to have the marriage dissolved, if one of those offences is committed again after condonation, that combination is sufficiently revived. Adultery revives cruelty, cruelty revives adultery, and I see no reason why the subsequent adultery should not revive the right to complain of the desertion as well as of the adultery of the past. In that view I consider that the charges of adultery and desertion have been established, and I grant a decree *nisi* for the dissolution of the marriage.

(1) 2 Sw. & Tr. 61; 29 Law J. Rep. Prob. & M. 114.

(2) 40 Law J. Rep. Prob. & M. 71; Law Rep. 2 P. & D. 306.

Solicitors—A. W. White, for the petitioner; Lewis & Lewis, for the respondent.

ADMIRALTY. 1883. Jan. 15, 23. THE UNITED SERVICE. COLE *v.* THE GREAT YARMOUTH STEAM TUG COMPANY (LIMITED).

Towage — Negligence — Exemption of Owners of Tug from Liability—Contract by Notice.

Where the owners of a tug gave notice that they would not be answerable for any loss or damage occasioned to any tow by any negligence or default of them or their servants, and such notice was brought to the knowledge of the owners of the tow, and the latter was lost through the tug taking more vessels than she could properly manage, and more than were allowed by

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regulations made under the Piers and Harbours Act, 1847 (10 & 11 *Vict. c.* 27), *and the Great Yarmouth Port and Haven Act*, 1866,—Held, *that the owners of the tug were exempt from liability.*

This was an action arising out of a contract by the defendants, the Great Yarmouth Steam Tug Company, Limited, the owners of the steam tug *United Service*, to tow a fishing smack, the *Red Rose*, the property of the plaintiff. The *Red Rose* had been lost during the service, and the plaintiff brought this action for damages for breach of the towage contract.

Butt, *Q.C.*, and *Phillimore*, for the plaintiff.

Webster, *Q.C.*, *Hall*, *Q.C.*, and *Witt*, for the defendants.

The defendants relied on the following notice, which was admitted by the plaintiff to form part of the contract of towage :—

"Notice to shipowners, fishing boat owners, shipmasters and others. The Great Yarmouth Steam Tug Company, Limited, owners of steam tugs *Victoria*, *United Service*, &c., respectfully give notice that they will tow vessels, boats or other crafts by the above-named steam-tugs on the following conditions only :—

"That they are not to be answerable or accountable for any loss or damage whatever which may happen to or be occasioned by any vessel, boat or craft, or any of the cargoes on board of the same, while such vessel, boat or craft is in tow of either of the steam tugs in the river or at sea, and whether arising from or occasioned by any supposed negligence or default of them or their servants, or defects or imperfections in the said steam tugs, or either of them, or the machinery or any other part of the same, or any delay, stoppage or slackness of the speed of the same; however occasioned, or for what purpose wheresoever taking place; and that the owner or persons interested in the vessels, boats or crafts, or of the cargoes on board the same so towing, undertake, bear, satisfy and indemnify the said tug owners against the same."

The facts stated in the pleadings and set out in the judgment of the Court were taken as correct, and the legal question was argued on this assumption.

The plaintiff relied on *Steel* v. *The State Line Company* (1).

The defendants relied also on *Steel* v. *The State Line Company* (1), and on *Symonds* v. *Pain* (2), *The Peninsular and Oriental Steam Navigation Company* v. *Sand* (3), *Stevens* v. *Jeacock* (4), *Atkinson* v. *The Newcastle Water Company* (5) and *Taubman* v. *The Pacific Steam Navigation Company* (6).

The facts of the case appear from the following judgment (delivered on Jan. 23) :—

SIR R. PHILLIMORE. — The question which I have now to decide is an important one, though lying within narrow limits.

It arises in an action for breach of contract brought by the owner of a smack against the owners of a steam tug engaged to tow the smack. The facts with which I have to deal are set forth in the allegations in the plaintiff's statement of claim ; they have not been proved, but are admitted as true by the defendants, for the sake of argument, in order that the legal question which arises may be decided. They are shortly as follows :—

On the 3rd of November, 1881, the plaintiff, who was the owner of the fishing smack *Red Rose*, of the port and harbour of Great Yarmouth, requested the master of the steam tug *United Service*, belonging to the defendants, to tow the *Red Rose* out to sea.

The *United Service* was at that time lying moored at the quay at Great Yarmouth, alongside of a brigantine called the *Hannah*, and the *Red Rose* was some little way lower down the river.

In compliance with the plaintiff's request, the *United Service*, being under the command of her master, a servant of the defendants, came down the river and harbour having the *Hannah* in tow, and when alongside the *Red Rose* she made that vessel fast to herself and proceeded seawards, having the *Hannah* and the *Red Rose* both in tow side by side.

(1) Law Rep. 3 App. Cas. 72.
(2) 6 Hurl. & N. 709 ; 30 Law J. Rep. Exch. 256.
(3) 2 Mar. L.C. 244 ; 3 Moore P.C. N.S. 272.
(4) 11 Q.B. Rep. 731 ; 17 Law J. Rep. Q.B. 163.
(5) 46 Law J. Rep. Exch. 775 ; Law Rep. 2 Ex. D. 441.
(6) 26 Law Times, N.S. 704.

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Shortly afterwards two other vessels were taken in tow by the *United Service*, and were towed side by side of each other astern of the *Hannah* and the *Red Rose*. The wind at this time was blowing strongly into the entrance of the river, and the tide was flood. The engines and machinery of the tug were in good order, and she appeared able to manage the four vessels which she already had in tow, but could do no more.

She proceeded, however, to take in tow two other vessels, besides the four already mentioned, and finally a seventh vessel. As the vessels approached the mouth of the harbour the wind and sea proved too strong for the tug with so many vessels in tow; the tow-ropes got out of order, and ultimately the *Red Rose* was carried out of her course, took the ground so that she could not be got off, and became a total wreck. For this loss the plaintiff claims damages.

The seventh vessel was taken in tow in breach of a regulation duly made by the harbour master or pier master under the Harbour, Docks and Piers Clauses Act, 1847, and the special Act, 1866—a regulation which forbids a tug to take more than six vessels in tow at once.

The master of the tug, moreover, disobeyed certain oral directions given him by the pier master with regard to the vessels he was towing.

Before entering into the towage contract mentioned above, the plaintiff had received the following notice issued by the defendants, which he admits formed part of the contract.

[The learned Judge here read the notice already set out.]

The defendants rely upon this notice as protecting them against the plaintiff's claim in respect of the alleged wrong-doing of their servant, the master of the *United Service*.

The contention of the plaintiff is that the defendants are liable notwithstanding the notice—that it was an implied term of the contract that the master of the tug—first, should obey the regulations framed under the statutory authority; and, secondly, should, under the general law, apart from any statutory rule, take no more vessels in tow than the tug was competent to manage—that this implied condition is in the nature of a warranty, and that a breach of it constitutes something more than negligence against which the defendants are protected by this notice. According to the argument of the plaintiff's counsel, the negligence referred to in the notice is merely the ordinary negligence of a tug master during the performance of a towage contract, not a breach of warranty implied in the contract, and that if such warranty was intended to be negatived, the notice should have expressly provided for it.

It appears to me that the only point to be decided is whether or not the words in the notice "negligence or default of their servants" cover the alleged wrong-doing of the master of the tug in disobeying the statutory regulations and the directions of the pier master and taking in tow more vessels than his tug was competent to manage.

It is important to observe that the tug is admitted to have been competent to have towed four vessels, and that at the time when the performance of the contract began, and during the first part of such performance, the tug was altogether within her rights; the alleged unlawfulness not occurring until the seventh, or at least the fifth and sixth, vessels were taken in tow, when part of the contract had already been performed.

Of the authorities cited I think the case of *Steel* v. *The State Line Steamship Company* (1) was most in point. In that case a bill of lading contained a special clause which added negligence of the persons in the service of the ship to the usual excepted perils. Part of the cargo was damaged during the voyage by sea-water coming in through an insufficiently secured porthole. It seems to have been considered that if the evidence had established the fact that the deficiency of the porthole had arisen during the voyage through negligence of the crew, and was not due to any defect existing before the departure of the ship from harbour, then the shipowners would have been protected by the special clause in the bill of lading.

The circumstances of the present case seem to me to be analogous. I am of opinion that the alleged wrong-doing, as it arose entirely during the performance on the contract, was "negligence and de-

fault" within the meaning of the notice issued by the defendants, and nothing more. I cannot allow that the somewhat subtle distinction attempted to be drawn by the plaintiff's counsel between negligence and breach of a warranty impliedly contained in the contract is to be found in the circumstances before me; nor am I able to see any material difference between the negligence of a master breaking a statutory rule and his negligence in breaking the general law. On these grounds I pronounce on the question before me in favour of the defendants.

Solicitors — Ingledew & Ince, for plaintiff; Pritchard & Sons, agents for C. H. Wiltshire, Great Yarmouth, for defendants.

ADMIRALTY. 1882. Dec. 2, 19.

THE FAIRPORT.

Lien—Master's Disbursements—Necessaries—Laches.

A master has, under the Admiralty Court Act, 1861 (24 *Vict. c.* 10. *s.* 10), *a maritime lien for his disbursements. A liability to pay a debt incurred for necessaries supplied to the ship confers the same rights on the master as an actual payment by him when the res is in the hands of the Court.*

Where bills were given by a master on the 3rd of April and 4th of May, 1880, *and the drawees of such bills subsequently became insolvent, and judgment on the bills was obtained against the master in July*, 1881, *and he issued a writ against the ship on the 23rd of November*, 1881, *and the owners' solicitors then gave an undertaking to put in bail*,—Held, *that there was no laches which would prevent the plaintiff from maintaining the action.*

This was an action by a master for disbursements. The chief facts and authorities referred to during the case are mentioned in the judgment. In addition to these facts, the following appear material:—The original owners of the ship stated to the plaintiff, after the writ in the action on the bills of exchange had been served on him, that they would "see him through it"; and the judgment against him was obtained during his absence at sea. After judgment had been given against the plaintiff, the *Fairport* was only in England on two occasions, and that for a day or two only, and the defendants' solicitors gave an undertaking to put in bail.

J. G. Barnes, for the plaintiff.

W. G. F. Phillimore, for the defendants.

SIR R. PHILLIMORE.—This is an action *in rem*, in which the plaintiff, who was formerly master of the steamship *Fairport*, seeks to recover a sum of money for which he has become liable on two bills of exchange drawn by him whilst he was master, in order to provide necessaries for the vessel. The *Fairport* was owned by Messrs. Roy & Sons, of Arbroath, in Scotland. In the spring of 1880 she was chartered by Messrs. Lunham & Co., of London, and sent to the Mediterranean, with the plaintiff as master. On the 13th of April, 1880, the plaintiff obtained coals at Gibraltar for the use of his vessel, and paid for them by drawing a bill for 40*l.* 14*s.* on Lunham & Co. He did this in accordance with his previous practice on similar occasions, and in obedience to instructions received from the charterers, and confirmed by Messrs. Roy & Sons, the owners of the vessel. On his return voyage, on the 4th of May, 1880, he obtained a further supply of coals and other necessaries at Gibraltar, paying for them as before by a bill which he drew on Messrs. Lunham & Co. for 58*l.* 18*s.* These two bills came into the hands of a Mr. de Mattos, who is still the holder of them. The first bill was accepted by Messrs. Lunham & Co.; the second was not; and Lunham & Co., having shortly afterwards become insolvent, neither of the bills was met at maturity, nor have they been subsequently met. Mr. de Mattos, as holder of the dishonoured bills, served a writ on the plaintiff as drawer, in August, 1880, and obtained his judgment against him in July, 1881, for 113*l.* 8*s.* 10*d.*, being the amount of the two bills and costs. This sum has not yet been paid. In October, 1881, Messrs. Wallace & Co., the defendants in this action, bought the *Fairport* from Roy & Sons; and in the following November the plaintiff began the present action *in rem* to recover the

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above-mentioned sum of 113*l.* 8*s.* 10*d.*, with costs. A writ was issued in this Court, and bail had been given for the vessel.

The defence raised by Messrs. Wallace & Co., the present owners, is reducible to the three following propositions, two of law, one of mixed law and fact.

The two propositions of law are—

1. That a master's disbursement does not constitute a maritime lien.

2. That even if it does, the subject of the present action is a liability, and not properly a disbursement, the plaintiff as yet having actually paid nothing: and that a mere liability cannot create a maritime lien.

3. The proposition of mixed law and fact is, that if there were a maritime lien, the plaintiff is precluded by his own *laches* from enforcing it against a *bona fide* purchaser for value.

The law as to the first proposition appears to me to be laid down correctly in the judgment of Dr. Lushington in *The Mary Ann* (1), which expressly decides that since the passing of the 10th section of the Admiralty Court Act, 1861, a master has a maritime lien for his disbursements. I followed this decision in *The Feronia* (2). The second proposition depends upon the true construction of the words in the before-mentioned 10th section—"disbursement made by him"; and the cases of *The Chieftain* (3) and *The Edwin* (4) were cited by the defendants' counsel in support of his contention that disbursement must mean money actually paid by the master, and cannot be applied to a mere liability created, as in the present case, by a bill of exchange drawn by him and afterwards dishonoured. Both those cases were carefully considered in the judgment of *The Feronia* (2), in which case I held that the money earned by the freight having been paid into Court, the liabilities incurred by the master for the benefit of the ship were to be considered as disbursements, and to be discharged out of the fund in Court. In the present instance there is no freight paid into Court; but the Court has its hand upon the *res*, and ought not to part with it, in my opinion, until justice is done to all parties.

The judgment in *The Feronia* (2) was followed in a subsequent judgment which I delivered in *The Marco Polo* (5) in 1871, and was mentioned without disapprobation in the case of *In re The Rio Grande Do Sul Steamship Company* (6). I must also refer to the report of the Registrar in the case of *The Red Rose*, which is printed at the end of the case of *The Feronia* (2), and which is stated in the judgment in that case to have been approved by Dr. Lushington. Upon the whole, I think that any doubt that may have arisen from the decisions in *The Chieftain* (3) and *The Edwin* (4) must be holden to be now set at rest; and that the law is correctly laid down in *The Feronia* (2). The conclusion at which I arrive is that the liability which the plaintiff has incurred for the use of the ship is a disbursement within the meaning of the 10th section of the Admiralty Court Act, 1861, and that he has a maritime lien on the ship.

It remains to consider the question of *laches*. The law on this subject is established by the cases of *The Bold Buccleugh* (7) in 1850, and *The Europa* (8) in 1863. It results from these cases that a maritime lien is not indelible, and may be lost by negligence or delay where the rights of third parties may be compromised; but where reasonable diligence is used, and the proceedings are had in good faith, the lien travels with the thing into whosesoever possession it may come. What constitutes reasonable diligence must depend upon the particular circumstances of each case. In the present case I hold that it is proved that until judgment was actually obtained against the plaintiff, who, by the way, was continually at sea, he believed, and not unreasonably so, that his liability would not become absolute, and that Messrs. Roy & Sons, his previous employers, would protect him from having to meet the bills himself. I am of opinion that he cannot fairly be charged with such want of diligence as would forfeit his lien.

(1) Law Rep. 1 Adm. & Eccl. 8.
(2) 37 Law J. Rep. Adm. 60; Law Rep. 2 Adm. & Eccl. 65.
(3) Browning and Lush, 104.
(4) Ibid. 281.
(5) 1 Aspinall, Mar. Law Cas. 54.
(6) 46 Law J. Rep. Chanc. 277; Law Rep. 5 Ch. D. 386.
(7) 7 Moore P.C. 267.
(8) 2 Moore P.C. N.S. 1; Br. & L. 89.

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If it were necessary to decide whether the defendant, Mr. Wallace, was, as a matter of fact, aware of the liability attaching to the ship when she was bought by his firm, I should be inclined to believe the positive evidence of Mr. Breslauer on the subject, in preference to that of Mr. Wallace, who could only speak to his want of recollection of the alleged conversations.

I pronounce for the plaintiff.

Solicitors—Ingledew & Ince, for plaintiff; W. Batham, for defendant.

PROBATE. 1882. Dec. 12. } *In the goods of* JAMES DANIELL.

Will—Incorporation—Codicil—List of Legacies—Identification.

The testator, after duly executing his will, handed to his brother, who had not been named an executor under the will, a paper headed "A list of small sums of money." It was signed by the testator, and it began with the words, "I request you to give these donations," and ended with the words, "to be given after my death from the moneys in the bank." Among the sums named was "5l. to S. J. R." He requested his brother to attend to the paper after his death. The testator afterwards duly executed a codicil in the form of a letter to his brother, which began as follows: "It is my wish and will to leave after my death to S. J. R., instead of 5l. which I named in the legacies I gave to you, my wish is 19l. 19s. 6d., besides all wages belonging to her":—Held, *that the list of legacies, being sufficiently identified by the codicil, was incorporated therein, and was entitled to probate with the will and codicil.*

James Daniell, butcher, died at Bisley, Gloucestershire, on the 30th of July, 1882.

On the 5th of May, 1882, the deceased had duly executed a will, and he afterwards handed to his brother, William Daniell, who had not been named an executor under the will, a paper bearing date the 26th of May, 1882, and headed, "A list of small sums of money."

The document was in the following form: "I request you to give these donations, that is, 20*l.* towards the debt of the Tabernacle Schoolroom, 20*l.* to Mrs. Ann Watts, 5*l.* to Sarah Jane Randall." It concluded with the words, "to be given after my death from the moneys in the bank," and was signed by the testator, but it was not attested. He requested his brother to take care of it, and to attend to it after his death.

On the 30th of June the testator addressed to his brother the following letter:—

"June 30, 1882.

"Dear brother William,—It is my wish and will to leave after my death to Sarah Jane Randall instead of five pounds which I name on the legacies which I gave you my wish is nineteen pounds, nineteen shillings and sixpence, besides all her wages belonging to her, and I wish you to hand over after my death has [*sic*] she has been a good servant.

"James Daniell."

This letter was signed in the presence of, and was attested by, two witnesses.

Bayford moved for a grant of probate of the will of the testator together with the letter of the 30th of June, 1882, and the list of legacies bearing date the 26th of May, 1882. The letter, being duly attested, is entitled to probate as a codicil, and the list of legacies is also entitled to probate, as being referred to in the codicil, and sufficiently identified by the reference to Sarah Jane Randall's legacy.

He referred to *Allen* v. *Maddock* (1), *Sheldon* v. *Sheldon* (2), *In the goods of Widdrington* (3) and *Van Straubenzee* v. *Monk* (4).

THE PRESIDENT (SIR JAMES HANNEN).—It appears to me that the codicil, which is undoubtedly duly executed, refers to and sufficiently identifies the document of

(1) 11 Moo. P.C. 427.
(2) 1 Rob. Ecc. 89.
(3) 35 Law J. Rep. Prob. & M. 66.
(4) 3 Sw. & Tr. 6; 32 Law J. Rep. P., M. & A. 21.

In the goods of James Daniell, Prob.

the 26th of May, 1882, since no other paper was given by the testator to his brother, and the legacy of 5*l.* to Sarah Jane Randall is specifically mentioned. The words, "the legacies which I gave you," are in the plural; and, in my opinion, they convey the same meaning as "which I named in the paper I gave to you containing the legacies I desire to leave." I therefore arrive at the conclusion that the list of legacies, being sufficiently identified, is incorporated in the codicil, and is entitled to probate with the will and codicil.

Solicitors—Burton, Yeates, Hart & Burton, agents for Ball, Son & Smith, Stroud, for all parties.

PROBATE. 1882. Dec. 12.

ALLEN *v.* HUMPHREYS.

Administration — Married Woman — Separation Deed—Limited Grant—Husband and Wife.

By a deed of separation it was provided that all the property of which the wife was possessed should be for her separate use, without any interference on the part of the husband, in like manner as if he were dead; and that, in case of the wife's death, her property should go to the persons who would have been entitled under the Statute of Distributions if she had survived her husband. The wife afterwards died intestate and without issue.

The Court passed over the husband, and granted administration to the father of the intestate, limited to the property covered by the separation deed.

Alice Mary Humphreys, a married woman, died intestate and without issue, leaving her husband and her father surviving her.

The deceased was at the time of her death living apart from her husband under a deed of separation, whereby it was provided that all the property of which the wife was possessed should be for her separate use, without any interference on the part of the husband, in like manner as if he were dead; and that in case of the wife's death her property should go to those persons who would have been entitled under the Statute of Distributions if she had survived her husband.

Bayford, for the father of the deceased, moved for a grant of administration of the property to which the deceased became entitled under the deed of separation. The husband of the deceased has no interest in her estate, and is now in the same position as if his wife had obtained a protection order; and *In the goods of Stephenson* (1) is therefore an authority against his right to the grant. He also referred to *In the goods of Weir* (2) and *In the goods of Maychell* (3).

[The PRESIDENT referred to *In the goods of Ewing* (4).]

H. B. Deane, for the husband.—In the absence of any allegation of unfitness the husband is the person entitled to administration.

THE PRESIDENT (SIR JAMES HANNEN).—I have the authority of Sir Cresswell Cresswell (2) for holding that the Court has a discretion in this matter. I should have been ready to listen to Mr. Deane if he could have shewn that a grant to the father would prejudice the husband; but, in the absence of any evidence that such a result is probable, I hold that the husband has no right to the grant. His interests will be sufficiently protected by limiting the grant to the property covered by the separation deed. The costs of both parties will be paid out of the estate.

Solicitors—Gamlen, Son & Burdett, agents for Cottrell & Son, Birmingham, for applicant; Collins & Wilkinson, agents for Buller, Bickley & Co., Birmingham, for the husband.

(1) 36 Law J. Rep. P., M. & A. 20; Law Rep. 1 P. & D. 287.

(2) 31 Law J. Rep. P., M. & A. 31; 2 Sw. & Tr. 451.

(3) 47 Law J. Rep. P., D. & A. 31; Law Rep. 4 P. D. 74.

(4) 1 Hag. Ec. 281.

[IN THE COURT OF APPEAL.]

DIVORCE. 1883. March 12.

ROSE v. ROSE.*

Separation, Deed of — Covenant not to plead past misconduct in Future Proceedings — Condonation — Subsequent Adultery—Revival—Costs.

The bargains contained in separation deeds are binding on both parties to them, and will be enforced against both equally.

The right to compromise a suit is an incident of the right to sue, and there is nothing on the ground of public policy or otherwise to prevent a wife contracting not to bring any suit in respect of cruelty committed by her husband before the date of the contract, and she will be bound by such contract.

The doctrine that the condonation for adultery is not final, but only conditional, disapproved per JESSEL, M.R.

This was an appeal by the petitioner from a decision of Sir J. Hannen refusing to pronounce a decree dissolving the marriage between the petitioner and her husband, and only decreeing judicial separation.

The case is reported 51 Law J. Rep. P., D. & A. 79.

The parties had in 1877 executed a deed of separation, which contained a covenant on the part of the petitioner that she would not in any future proceedings against her husband avail herself of any of his acts of which she might have had reason to complain before the date of the deed. The wife some years after the deed petitioned for a decree of dissolution on the ground of her husband's adultery and cruelty.

The husband had since the date of the deed committed adultery, but no cruelty subsequent to the deed had been proved.

The President, on the authority of *Gandy* v. *Gandy* (1), had, as above stated, refused to pronounce a decree for dissolution.

The petitioner appealed.

Dr. Tristram, Q.C., and *Barnard*, for the appellant, contended that the subsequent adultery having been proved, the cruelty committed before the deed could be revived so as to entitle the wife to dissolution of the marriage, notwithstanding the covenant in the deed; or, in the alternative, that the covenant was against public policy, and therefore could not be supported.

They referred to section 31 of the Divorce Act, 1857 (20 & 21 Vict. c. 85).

C. A. Middleton, for the husband, was not called upon, but cited *Rowley* v. *Rowley* (2), as deciding conclusively that the petitioner had limited her right to sue merely for judicial separation which had been granted.

JESSEL, M.R.—As I pointed out in *Besant* v. *Wood* (3), unless you allow a woman to contract herself out of rights which she might otherwise claim every divorce suit must be fought out to the end, and it is impossible to hold that you can give a married woman a right to sue, without giving her a right also to compromise a suit.

In this case the married woman has entered into a contract for value that she will not bring any suit in respect of the cruelty of her husband before the date of the contract. That is a valid contract, not only because it is not against any principle of public policy, but because it is an incident of her right to sue.

According to the old system that prevailed in the Ecclesiastical Courts—and I am afraid a good deal of the old monkish doctrine that infected those Courts still prevails in the Probate, Divorce and Admiralty Division—the idea was that condonation was never final, but only conditional, and that by subsequent conduct the condoned offence could be revived; but we have decided that point the other way in the case of *Gandy* v. *Gandy* (1). Independently of that decision I think that the notion of bygones being bygones is as important between husband and wife as between any other persons.

* *Coram* Jessel, M.R.; Baggallay, L.J., and Lindley, L.J.

(1) 51 Law J. Rep. P., D. & A. 41.

(2) 35 Law J. Rep. Prob. & M. 110; Law Rep. 1 H.L. 63.

(3) 48 Law J. Rep. Chanc. 497; Law Rep. 12 Ch. D. 605.

Here we find a final bargain for value on the part of the lady that she will not take any proceeding against her husband in respect of any former conduct. Now she says, that bargain remains—the deed remains and the pecuniary benefit—but I will repudiate one of the most important terms. She is bound by the contract, and has shewn no reason why she should not be so bound. The judgment of the learned President must be affirmed.

I have been referred to another doctrine of the same division. It is said, although in the present case the married woman is bound by her contract, yet if it had been adultery instead of cruelty that had been condoned, that condonation could not be used in the same way. It is said that although the adultery may have been got rid off by a bargain embodied in a deed, it would still remain a fatal objection to any plea of condonation.

The time may come when that doctrine will come to be reviewed by the Court of Appeal. The point does not arise in the present case, and so I will not give any decision upon it, but I only say that I do not consider that that doctrine can be treated as established.

BAGGALLAY, L.J.—Adultery has been committed by the husband since the date of the contract, and that entitles the appellant to judicial separation, and that decree she has obtained. It is alleged that there has been adultery coupled with cruelty, and the appellant on that ground claims a decree of dissolution. It is admitted that no cruelty since the deed of separation has been proved; there was cruelty before the deed.

That deed contains a provision that no antecedent offence shall be pleaded in any subsequent proceeding, and unless we treat the paragraph of the deed which contains the provision as wholly void, that must be a bar to the case put forward by the appellant.

As far as regards this separation deed, if there were any case established that the execution of that deed had been obtained from her in an improper manner, then no doubt this covenant entered into by her would not be allowed to stand in her way; but not only is this not pleaded, but there are not here any circumstances that at all tend to raise any suggestion of the kind, certainly not as regards the mode in which it was prepared and executed. It is suggested that the provisions of the covenant are against public policy; but I cannot so hold them; nor are they unusual, and certainly deeds with terms quite as strong have been upheld.

LINDLEY, L.J.—I also am of opinion that this appeal must be dismissed. The question really is whether the deed is good for anything or nothing. That point has been mooted, discussed and litigated many times. The doctrine was discussed by the Master of the Rolls in *Besant* v. *Wood* (3), and the result of the authorities is stated by him in that case.

Now we have come to this, that separation deeds are binding on the wife as well as on the husband. That principle has been followed in the case of *Gandy* v. *Gandy* (1), and so far as regards this particular case it seems to me to be almost on all fours with *Rowley* v. *Rowley* (2). This covenant is as final and binding on one as on the other. Dr. Tristram says that, even if that be so, this particular clause is void as against public policy; but when you come to see that separation deeds *per se* are not against public policy, I do not see that this contract is against public policy. It is a bargain on both parties, and as such ought to be enforced equally against both.

Middleton submitted that the appeal was vexatious, and that either the wife should be ordered to pay the costs, or that the husband should be allowed to set off the costs of the appeal against the costs of the original hearing which he had been ordered to pay.

Dr. Tristram opposed.

JESSEL, M.R.—We must not be supposed to decide that in no case can we condemn a wife in costs, or in no case set off the costs of appeal against the costs ordered to be paid by the husband in the original hearing, when the appeal has been frivolous and vexatious. But I cannot say that the present appeal was vexatious. The point raised by it has been raised for

the first time, and I think it a proper one to have been brought before us. We think it proper here to dismiss the appeal without costs.

Solicitors—Hicklin & Washington, for appellant; William H. Lane, for the husband.

[IN THE COURT OF APPEAL.]

DIVORCE. 1883. Feb. 13. } MASON *v.* MASON AND MACLUNE.*

Delay — Judicial Separation — Subsequent Dissolution of Marriage.

A husband, who in 1878 *obtained a decree for judicial separation with damages against the co-respondent under circumstances which entitled him to a dissolution of marriage, was held entitled in a suit instituted more than three years afterwards to a decree for dissolution of marriage on the ground of his wife's continued adultery with the co-respondent, the Court being satisfied upon the evidence that the delay in bringing his suit had arisen from want of means and also from an expectation entertained by him that his wife would return to him.*

Decision of SIR J. HANNEN *reversed.*

This was an appeal from a decision of Sir J. Hannen dismissing a petition of the appellant for a decree of dissolution of his marriage. The case is reported below 51 Law J. Rep. P., D. & A. 88.

The petitioner had in 1878 obtained a decree for judicial separation, and had also in that suit recovered damages against the co-respondent on the ground of the adultery of his wife. The reason he gave in the present suit for asking for a judicial separation instead of dissolution of the marriage in the former suit was that he hoped his wife might return to him. The respondent, however, continued her cohabitation with the co-respondent, and gave birth to a child by him in 1879; and the petitioner, on the 21st of March, 1882, commenced the present suit for a dissolution of his marriage. The President dismissed the petition as above stated, on the ground that the petitioner had been guilty of unreasonable delay. Owing to some mistake, the petitioner had not been asked any questions for the purpose of explaining the delay that had occurred since the decree of judicial separation.

Neither the respondent nor co-respondent appeared on the appeal.

C. A. Middleton, for the appellant, asked leave to read an affidavit, which had been filed since the trial before the President, explaining the delay. The Court, however, refused the leave, but allowed the petitioner to be examined orally in Court.

[The petitioner in his examination stated that ever since the first trial he had been in receipt of weekly wages not exceeding 26*s.* a week, that he had expended 60*l.* or thereabouts in paying the costs of the former suit, and that he had had no other means to enable him to enforce the decree for damages against the co-respondent. He also stated that he had entertained the hope that his wife would return, and that he had only after the lapse of two years given up that expectation.]

In *Green* v. *Green* (1) a wife having obtained a decree for judicial separation when she might have claimed the larger remedy of divorce was allowed to bring up again the old cruelty and subsequent adultery on the part of her husband, and obtained a decree for dissolution. In *Pellew* v. *Pellew* (2) and *Tollemache* v. *Tollemache* (3) a delay as considerable as that which occurred in the present case was held not to be unreasonable.

JESSEL, M.R.—It is not necessary to say what we should have done had we not admitted further evidence. It appears now that counsel in the Court below was ignorant of the difficulty which pressed upon the Judge, and offered no explanation of the delay that intervened between

* *Coram* Jessel, M.R.; Lindley, L.J., and Bowen, L.J.

(1) 43 Law J. Rep. Prob. & M. 6; Law Rep. 3 P. & D. 121.

(2) 1 Sw. & Tr. 553; 29 Law J. Rep. Prob. & M. 44.

(3) 1 Sw. & Tr. 557.

the decree for judicial separation and the petition for dissolution. That explanation has now been given, and it now appears that the petitioner had not the means of prosecuting his suit, and it also appears that the small means he had were exhausted in the payment of the costs of the suit, so that he could not enforce the payment of the damages against the co-respondent.

There has been no doubt delay of over three years, with subsequent adultery. But that delay cannot be considered excessive, because the petitioner, knowing of the adultery, had presented a petition for judicial separation instead of dissolution, hoping as he said that she would return to him. So the delay could not be said to have commenced immediately after the decree. He was asked in the box when this expectation of his came to an end, and he said after two years. That perhaps was rather a long time, but I think some time must be allowed for the expectation.

Looking at all the circumstances of the case, although I differ with great hesitation from anything decided by the learned President, I think, having regard to the explanation and the other circumstances of the case, that the petitioner has not been guilty of such unreasonable delay as to disentitle him to the decree he seeks, and we shall not be doing wrong if we now make a decree for dissolution.

LINDLEY, L.J. — I am of the same opinion. My first difficulty, namely, whether after a decree for separation a petition for dissolution can be presented, has been removed by reference to the case of *Green* v. *Green* (1). It struck me as a question whether the petitioner, having elected in 1878 to obtain a decree for judicial separation under a state of circumstances that would have entitled him to claim a decree for dissolution, could, in the event of subsequent adultery of his wife, present a petition for dissolution. But *Green* v. *Green* (1) is an authority for that proposition.

Having got over that difficulty, it becomes a question of discretion, and, without the additional evidence that has been adduced before us, I should have had great difficulty in coming to a different conclusion from that to which the learned President has arrived; but, having regard to the further evidence, I think we shall not be going too far in now making the decree for dissolution.

BOWEN, L.J. — I am of the same opinion. The further evidence has brought this case within the class of cases which exempt the petitioner from what at first sight appears an unreasonable delay.

Solicitors—Gregory, Rowcliffes & Rawle, agents for G. E. Pickering, Leeds, for petitioner.

ADMIRALTY.
1883.
Feb. 20.

THE SHERBRO.

Practice — Costs — Mortgagee—Material Men.

Where a mortgagee brings an action to realise his security, and material men with a common law possessory lien on the ship intervene, and the ship, by order of the Court, is sold, and the proceeds are only sufficient to satisfy the claim of the material men, the mortgagee is still entitled to be paid his taxed costs, up to the date of the sale, out of the proceeds of the sale of the ship in priority to the material men.

This was an application on behalf of the plaintiff in a mortgage action, the mortgagee of the *Sherbro*, for an order that he should be paid his costs out of a fund in Court, the balance of the proceeds of the sale of the ship. The mortgagor of the ship had not entered any appearance in the action, but Messrs. Sage & Son had intervened on the ground that they were material men in possession of the ship, and had a prior right to her against the plaintiff. Messrs. Sage & Son had, on their application, with the consent of the plaintiff, obtained an order from the Court that the ship should be sold, and she had realised the sum of 3,597*l.*—3,000*l.* had been paid out to Messrs. Sage & Son, and the balance remained in Court to await

The Sherbro, Adm.

the order of the Judge as to costs. It was admitted that the whole sum would not do more than satisfy Messrs. Sage & Son's claim.

Phillimore, for the plaintiff.—A material man can bring no action, he can simply hold the vessel; therefore it was through our action that the material men obtained their money, and though we are not successful in obtaining anything by our action, we ought to receive our costs out of the fund, which through our exertions the material men are enabled to obtain.

Nelson, for the interveners.—We could have commenced a common law action, and, as the plaintiff is practically unsuccessful, he should pay his own costs.

SIR R. J. PHILLIMORE.—I think that the plaintiff is entitled to receive his taxed costs, up to the date of the sale of the ship, out of the balance of the fund in Court, and I shall make the desired order, and at the same time order that whatever remains after the plaintiff's claim for costs has been satisfied shall be paid out to the interveners.

Solicitors—Emmanuel & Simmonds, for plaintiffs; Lowless & Co., for interveners.

PROBATE. 1883. Jan. 23. } STURTON *v.* WHETLOCK AND OTHERS.

Will—Dependent relative Revocation—Alteration after Execution—Restoration of Words in Probate.

The testator by his will bequeathed certain legacies to his children and their issue, and had expressed to the solicitor who prepared the will his desire that his grandchildren should not receive their legacies until they should attain the age of twenty-five years. The solicitor explained to him that such bequests would be void, and the will, when executed, contained a provision that the grandchildren should be entitled to their legacies upon attaining the age of twenty-one years. The testator was of unsound mind during the last six years of his life, and after his death it was discovered that wherever the words "twenty-one years" occurred in the will, the word "one" had been effaced and the word "five" substituted.

The Court granted probate of the will, substituting "one" for "five" wherever the latter word had been inserted.

In the goods of McCabe (42 Law J. Rep. Prob. & M. 79; Law Rep. 3 P. & D. 94) *followed.*

The plaintiff propounded the will, bearing date the 8th of May, 1874, of John Payne, of New Sleaford, Lincolnshire, who died on the 13th of April, 1882, having been of unsound mind since the year 1876.

The case was tried before the President of the Division without a jury.

The attestation and execution of the will were duly proved; but there were several alterations apparent in the instrument.

The solicitor who had prepared the will was examined, and stated that when he received instructions for the will the testator had directed him to insert in it certain bequests to his children and their issue, and expressed a wish that the bequests to the grandchildren should not take effect till they reached the age of twenty-five years. The witness explained to the testator that such bequests would be void as coming into operation more than twenty-one years beyond the lives of persons living at the date of the will; and thereupon the latter directed that twenty-one years should be substituted for twenty-five; and the will was so drawn.

After the testator's death it was discovered that wherever the words "twenty-one years" occurred in the will the word "one" had been effaced, and the word "five" substituted. The alterations and erasures were not attested or otherwise identified.

One of the attesting witnesses was also examined, and stated that the will was free from erasures at the time of its execution.

Inderwick, Q.C. (with him *Bayford*), for the plaintiff.—In the absence of evi-

dence to the contrary it will be presumed that the alterations were made by the testator after the execution of the will. We therefore ask the Court to grant probate of the will with the restoration of the word "one" at every place where it has been erased. He referred to *In the goods of McCabe* (1).

Searle, W. D. Gardiner and *J. W. Evans*, for the defendants and parties cited, consented.

The PRESIDENT (SIR JAMES HANNEN).—I have no doubt upon the evidence that the words originally written in the will were "twenty-one years," as would be expected by any person familiar with instruments of this class. I was at first disposed to think that the person making the alteration had attempted to imitate a lawyer's handwriting, but a further examination has removed that impression from my mind. The first question is, whether the ordinary rule applies that all alterations in a will are, in the absence of evidence to the contrary, presumed to have been made after execution; and I can see no reason why such presumption should not be applicable here. It is possible that the testator, having previously wished to delay the receipt of the legacies till his grandchildren attained the age of twenty-five years, may have determined to alter the will after he had executed it so as to carry out his wishes; but the decision of these questions rests upon a rule of evidence which is found very useful, if not absolutely necessary, to prevent testators from having their wills tampered with, and I shall therefore act upon the ordinary presumption. The second question is, whether I ought to do no more than strike out the word "five" wherever it has been written over an erasure. I think I am not driven to stop short at that, for to take that course would not be in accordance with the interests and wishes of the parties, and might cause confusion and lead to consequences which were never intended by the testator. I think that *In the goods of McCabe* (1) is applicable to the present case. Upon the presumption that the testator made the alterations after execution, he must have done so under the impression that he would thus alter the age for receiving the legacies from twenty-one to twenty-five, and that he had power to do so; and it cannot be supposed that he would have made the alteration if he had known that effect could not be given to it. The principle of dependent relative revocation is applicable; and, as I am satisfied from the evidence that the words originally inserted were "twenty-one," the will must be restored to that form. I shall allow probate to issue with "twenty-one" substituted for "twenty-five" wherever the latter words occur.

(1) 42 Law J. Rep. Prob. & M. 79; Law Rep. 3 P. & D. 94

Solicitors — Miller, Wiggins & Naylor, for plaintiff; Greenop & Sons, for defendants.

ADMIRALTY. 1883. Feb. 6. THE PESHAWUR.

Practice — Stay of Proceedings — Lis alibi pendens.

Where an action was pending in a Vice-Admiralty Court and another in the High Court between the same parties in respect of the same collision, but the plaintiffs in the action in the High Court were the defendants in the Vice-Admiralty action, the Court, deeming it convenient, ordered a stay of the proceedings in the action in the High Court.

This was a summons adjourned into Court, and was an application by the defendants, the Peninsular and Oriental Steam Navigation Company, the owners of the Peshawur, for an order to stay the proceedings in this action. The plaintiffs were the owners of the barque *Glenroy*, and the action was to recover damages in respect of a collision which occurred on the 15th of October, 1882, in the Indian Ocean. On the 27th of October, the owners of the *Peshawur* had ordered proceedings to be

commenced against the *Glenroy* in the Vice-Admiralty Court of Ceylon, and that action was now pending; the protest of the owners of the *Glenroy* against the continuation of the action in Ceylon having been overruled in the Vice-Admiralty Court. The owners of the *Glenroy* had, on the 6th of December, 1882, commenced this action in the Admiralty Division of the High Court against the *Peshawur* in respect of the same collision, and the Preliminary Acts had been filed therein. It was admitted that the *Glenroy* never came to this country, and that if the action proceeded in this country the evidence of the plaintiffs must be taken on commission. The *Peshawur* at the time of the application was on her voyage to Calcutta, and would shortly call at Colombo.

Roscoe, for the defendants in the English action, in support of the application, argued that the Court had jurisdiction to make such an order, and that if the circstances shewed that such a course would be proper the order should be made—*The Catterina Chiazzare* (1) and *The Mali Ivo* (2).

Phillimore, contra.—The Court has never made such an order unless the plaintiff in the action abroad is likewise the plaintiff in this country. The plaintiff has a right to choose his own forum, and the owners of the *Glenroy* have chosen to bring their action here, and have a right to have it heard here.

SIR R. J. PHILLIMORE.—This case is one of some importance as regards the practice of the Court, and I should not be sorry to see the question finally set at rest by a decision of the Court of Appeal. Two points have been pressed upon me—by one side that I have jurisdiction to make the order, by the other that I have not; by one, that if I have jurisdiction I should make the order—by the other, that under the circumstances it is not a case for a stay of proceedings. I hold that I have jurisdiction to make the order; and I shall exercise it by ordering a stay of the proceedings in the English action until the action in Ceylon has been decided. I think it would be most inconvenient that these two actions should go on contemporaneously, and I therefore accede to the application; but I shall make no order as to costs.

(1) 45 Law J. Rep. P., D. & A. 105; Law Rep. 1 P. & D. 368.

(2) 38 Law J. Rep. Adm. 34; Law Rep. 2 Ad. & Ecc. 356.

Solicitors—Gregory & Co., agents for Hill, Dickinson & Co., Liverpool, for plaintiffs; Freshfields & Co., for defendants.

ADMIRALTY.
1883.
Feb. 10, 12, 13.

THE KIRBY HALL.

Collision—Fog—Regulations for Preventing Collisions at Sea, Article 18.

Where, in a dense fog, a steamer heard the whistle of another steamer in close proximity, and thereupon the engines were slowed, but not stopped and reversed, and a collision ensued,—Held, *an infringement of Article* 18 *of the Regulations for Preventing Collisions at Sea.*

This was an action brought by the owners of the *City of Brussels* against the steamer *Kirby Hall* for damage by a collision which occurred on the 7th of January, 1883. The *City of Brussels* was bound for Liverpool, and about 6 a.m. arrived off the North West Lightship at the entrance to the sea channels of the river Mersey. There was a dense fog at the time, and the *City of Brussels* was therefore rounded to and her head brought to WNW., her engines were stopped, and she was then allowed to drift up with the flood-tide, stern foremost, towards the Bar Lightship. The whistles were continually sounded, and the master of the *City of Brussels* stated that thus to lie head to tide and drift was a prudent and seamanlike practice in a fog. About ten minutes to seven the whistle of another steamship was heard and repeated for several times on the starboard bow of the

City of Brussels. Soon after, the masthead light of the *Kirby Hall* appeared about a ship's length off, about two points forward of the starboard beam, and the collision occurred immediately afterwards. The case of the *Kirby Hall* was that she also was bound for Liverpool on a voyage from Glasgow, and that she got into the fog about ten minutes past five; her engines were then slowed, the steam whistles sounded, and the third officer was placed on the watch. When the fog was becoming denser, the master of the *Kirby Hall* made up his mind to anchor, and was about to give the order to do so when a steam whistle was heard on board on the port bow. The whistle of the *Kirby Hall* was sounded in reply, and the captain ordered the engines to go as slow as possible: he conjectured it was a vessel bound for the eastward, and would thus pass ahead of him. The whistle was heard a second time, about one minute after the first, nearer the port bow, and immediately afterwards the masthead light of the *City of Brussels* came in sight about a ship's length distant. The engines of the *Kirby Hall* were at once reversed full speed and the helm put hard aport; but it was too late to avoid the collision, which occurred in a few seconds.

Butt, Q.C., Webster, Q.C., and *Phillimore*, appeared for the *City of Brussels.*

The Solicitor-General (*Sir Farrer Herschell, Q.C.*), *Myburgh, Q.C.*, and *Bucknill*, appeared for the *Kirby Hall.*

At the conclusion of the evidence, the counsel for the *City of Brussels* argued that the *Kirby Hall* was alone to blame for the collision, because (among other reasons) she had not stopped and reversed when the whistle of the *City of Brussels* was first heard, and had thus infringed Article 18 of the Regulations for Preventing Collisions at Sea. They referred to *The Frankland* (1) and to *The Calvilla* (2).

Counsel for the *Kirby Hall* distinguished the above cases, and argued that to lay it down as a fixed rule that a vessel was to stop and reverse under such circumstances would be to carry the regulation further than had ever yet been done.

(1) Law Rep. 4 P.C. 529.
(2) Unreported.

Sir R. J. Phillimore, after stating the leading circumstances of the case, proceeded:—I think that the doctrine laid down in the case of *The Frankland* (1) and also in *The Calvilla* (2) covers the present case. In the former of these cases my decision, as given in the judgment of the Privy Council, was to this effect: "Both vessels were going, in truth, in the most absolute uncertainty as to the proceedings of the other; and in such a state of circumstances I have had to ask myself this question: Could anything have been done to avoid this collision which was not done? And the opinion of the Court, fortified by that of its nautical assessors, is, that upon hearing the whistles of each other so near and approaching each other, each vessel ought not only to have stopped, but to have reversed until its way was stopped, when it could have hailed and ascertained with certainty which way the head of the other vessel was, and which way she was proceeding, and by that means the collision would or might have been avoided."

Taking the rule here expressed into consideration and applying it to the facts of the present case, I hold that the *Kirby Hall* is solely to blame for not stopping when she heard the first whistle. Those who are in charge of a vessel in a dense fog, when they hear a whistle at no great distance, should not conjecture what the course of the vessel from which it may proceed may be, they are bound to come to a standstill. On this simple principle I decide in favour of the *City of Brussels.*

Solicitors—Gregory & Co., agents for Hill, Dickinson & Co., Liverpool, for plaintiffs; Pritchard & Sons, agents for Bateson & Co., Liverpool, for defendants.

[IN THE HOUSE OF LORDS.]

DIVORCE. 1882. Nov. 29, 30. } HARVEY (*otherwise* FARNIE) *v.* FARNIE.

Divorce—Domicil—Marriage in England of domiciled Englishwoman to domiciled Scotchman—Scotch Divorce for Husband's Adultery only—Validity in England.

On marriage a wife acquires the domicil of her husband.

Where a husband is domiciled in a foreign country at the time of the marriage, and, while his domicil continues unchanged, the marriage is dissolved by the Courts of such foreign country for a matrimonial offence committed there, the dissolution will be recognised by the English Courts as valid, though the wife till the marriage was domiciled in England, and the marriage was solemnised there, and the matrimonial offence was not one for which the English Court could grant a divorce.

McCarthy *v.* Decaix (2 Russ. & M. 614; 2 Cl. & F. 568) *overruled.*

Lolley's Case (Russ. & R. 237; 2 Cl. & F. 567) *explained.*

In the above circumstances the domicil is that which was in contemplation at the time of the marriage, and the law applied is that both of the domicil and of the forum within whose jurisdiction the matrimonial offence was committed.

Quære, *whether if the domicil were changed after the marriage the case would be altered, and whether* Niboyet *v.* Niboyet (48 Law J. Rep. P., D. & A. 1; Law Rep. 4 P. D. 1), *where the forum granting the divorce was not that of the domicil of the parties, but that of the country in which both were bona fide residing, and in which the matrimonial offence was committed, was well decided according to English law; and, if so, whether it was internationally binding.*

This was an appeal from a judgment of the Court of Appeal which affirmed one of Sir James Hannen. The proceedings in the Courts below are reported 49 Law J. Rep. P., D. & A. 33; 50 ibid. 17; Law Rep. 5 P. D. 153; ibid. 6 P.D. 35.

The respondent being on the 13th of August, 1861, domiciled in Scotland, married on that day, in England, an Englishwoman, who up to the time of the marriage was domiciled in England. He then returned with his wife to Scotland, and remained domiciled there till after 1863, in which year his wife obtained a divorce in the Scotch Court, on the ground of his adultery alone, such adultery having been committed in Scotland. In 1865, his former wife being still alive, the respondent married the appellant in England.

This action was brought by the appellant to have her marriage declared null, on the ground that the Scotch divorce was invalid.

The Courts below held the divorce and second marriage good.

Benjamin, Q.C. (*Webster, Q.C.*, and *W. Fooks* with him), for the appellant.—It was decided in *Lolley's Case* (1) that an "English marriage" cannot be dissolved in any country for grounds which would not be sufficient to dissolve it in this country. The question is, what is an English marriage? In *Tovey* v. *Lindsay* (2) it was taken to mean a marriage celebrated in England, and in *McCarthy* v. *Decaix* (3) Lord Brougham states in the clearest terms that a marriage celebrated in England between a domiciled Dane and an Englishwoman could not, on the principle of *Lolley's Case* (1), be dissolved by the Danish Courts. Sir J. Hannen, in deciding the present case, expressly overruled *McCarthy* v. *Decaix* (3). The Court of Appeal examined the record of the case, and said that it did not apply, as it was not necessary to decide the point. But in Lord Brougham's view it was necessary, and he did base his judgment upon it. In *Warrender* v. *Warrender* (4), *Lolley's Case* (1) was treated as applying to a marriage solemnised in England, and its authority was recognised. Any seeming inconsistency between the two cases is got rid of by the fact that *Warrender* v. *Warrender* (4) was a decision on Scotch law not governed by English authorities and itself no authority for English law. Both

(1) Russ. & R. 237; 2 Cl. & F. 567.
(2) 1 Dow, 117, 124.
(3) 2 Russ. & M. 614; 2 Cl. & F. 568.
(4) 2 Cl. & F. 488.

Lord Brougham and Lord Lyndhurst agreed that that was so, and Lord Lyndhurst said that Parliament alone could reconcile the laws of the two countries.

There is a similar conflict between the laws of England and those of Scotland in regard to children born before the marriage of their parents—*Birtwhistle* v. *Vardill* (5) and *Munro* v. *Munro* (6).

In *Geils* v. *Geils* (7) Lord St. Leonards expressly recognised the existence of this conflict of laws. In *Dolphin* v. *Robins* (8) and *Pitt* v. *Pitt* (9) it was laid down that Scotch Courts could not grant a divorce where there was no *bona fide* domicil in Scotland; but those cases did not decide that where there was a *bona fide* domicil the divorce in Scotland would in all cases be recognised in England. In *Maghee* v. *M'Allister* (10) a marriage in England between a domiciled Scotchman and an Irishwoman was dissolved in Scotland, and the divorce was held good in Ireland. This, so far as it goes, is an authority against the appellant, but is not so strong a case as the present. In *Shaw* v. *Gould* (11) Lord Westbury says that Lord Brougham in *Warrender* v. *Warrender* (4) tried to escape from *Lolley's Case* (1) by treating the marriage in England between a domiciled Scotchman and an Englishwoman as a Scotch contract, which it was not.

Niboyet v. *Niboyet* (12) decided that domicil was not necessary to found the jurisdiction to dissolve a marriage. The principle contended for is that an English marriage is a contract which cannot be dissolved except for certain causes provided for by English law; and that if a foreign Court decrees a divorce for any other cause, such divorce, though it may be good according to the laws of the foreign country, will not be recognised in England.

(5) 7 Cl. & F. 895.
(6) 7 Cl. & F. 842.
(7) 1 Macq. H.L. 255.
(8) 7 H.L. Cas. 390; 29 Law J. Rep. Prob. & M. 11.
(9) 4 Macq. Sc. App. 627.
(10) 3 Ir. Ch. Rep. 604.
(11) 37 Law J. Rep. Chanc. 433; Law Rep. 3 H. L. Cas. 55, 94.
(12) 48 Law J. Rep. P., D. & A. 1; Law Rep. 4 P.D. 1.

The following cases were also cited—*Brook* v. *Brook* (13), *Ringer* v. *Churchill* (14) and *Sotomayer* v. *De Barros* (15).

Winch and *Alexander Ward*, for the respondent, were not called upon.

THE LORD CHANCELLOR (LORD SELBORNE)—This case has been argued by the learned counsel for the appellant at considerable length, and the legal principle involved in it is not new to your Lordships. If it were not that there has been much consideration and discussion, if not in cases exactly resembling the present, yet in cases involving principles bearing upon the present, I have no doubt that your Lordships would have desired to hear a full argument on both sides; but looking to the nature of this particular case, and to the state of authority upon the subject, I believe your Lordships are all of opinion that it is not necessary to call upon the counsel for the respondent here.

The ground upon which this Scotch divorce is impeached appears to be this, and this alone, that by the law of England a divorce for such a cause (adultery) as was alleged here is only granted at the suit of the husband, except under particular circumstances, which in this case do not appear to have existed. The husband's adultery without anything more would not in England be a ground of divorce. It is a ground of divorce in Scotland, and this divorce was upon that ground at the suit of the wife.

The circumstances under which this divorce was obtained were these. The marriage had been solemnised in England, but at the time of the marriage the husband was domiciled in Scotland. That matrimonial domicil was never changed. The husband and wife lived in Scotland; the adultery was committed in Scotland; and when both parties were resident there the suit for divorce was instituted in Scotland, and a decree was regularly pronounced by the Scottish Courts. The Judge of the Divorce Court and the Court

(13) 3 Sm. & G. 481; 9 H.L. Cas. 193; 27 Law J. Rep. Chanc. 401.
(14) 2 Sess. Cas. 2nd ser. 307.
(15) 49 Law J. Rep. P., D. & A. 1; Law Rep. 3 P.D. 1.

of Appeal have both held that under those circumstances the sentence of divorce, not being impeached for any species of collusion or fraud, was the sentence of a Court of competent jurisdiction, not only effectual within that jurisdiction, but entitled to recognition in the Courts of this country also. On the other side it has been contended that there is a general rule of English law, supposed to have been established in *Lolley's Case* (1), and not to have been since departed from, to the effect that if an Englishwoman is married within the English jurisdiction to a foreigner (a Scotchman being for this purpose in the same position with a foreigner), that is a marriage which the English Courts must regard as indissoluble by any other than an English jurisdiction; or at all events only dissoluble in the view of an English Court if dissolved by some other competent jurisdiction for a cause for which it might have been dissolved in England.

Now, I must take the liberty of saying that, if this question is to be tested upon principle apart from authority, although it cannot be denied that the varying jurisprudence, and perhaps legislation also, of different countries may and do introduce some undesirable cases of conflict between the laws of those different countries on questions of matrimonial status, yet I should certainly say that in such circumstances as those which exist in the present case the principles of private international law point in the direction of the validity of such a sentence, and of its recognition by the Courts of other countries. Of course I assume that in the way of that recognition there would not be interposed any positive legislation bearing upon the point, or any positive prohibition of its own law binding upon the Court in which the question arises. Upon this point of principle how does the matter stand? Let it be granted (and I think it is well settled) that the general rule, internationally recognised, as to the constitution of marriage is that when there is no personal incapacity attaching upon either party, or upon the particular party who is to be regarded, by the law to which he is personally subject, that is, the law of his own country, then marriage is held to be constituted everywhere if it is well constituted *secundum legem loci contractus*. But that merely determines what in all these cases is the point you start from. When a marriage has been duly solemnised according to the law of the place of solemnisation, the parties become husband and wife. But when they become husband and wife, what is the character which the wife assumes? She becomes the wife of the foreign husband in a case where the husband is a foreigner in the country in which the marriage is contracted. She no longer retains any other domicil than his, which she acquires. The marriage is contracted with a view to that matrimonial domicil which results from her placing herself by contract in the relation of wife to the husband whom she marries, knowing him to be a foreigner, domiciled and contemplating permanent and settled residence abroad. Therefore it must be within the meaning of such a contract, if we are to enquire into it, that she is to become subject to her husband's law, subject to it in respect of the consequences of the matrimonial relation, and all other consequences depending upon the law of the husband's domicil. That would appear to be so upon principle, and that followed out would certainly apply in a case like this, where the domicil into which she has married has never undergone a change, where there has been no divergence of cohabitation or residence, and where the crime was committed in the country both of the domicil and of the forum. It would appear, therefore, that if this question is to depend on any principle at all it must be upon the principle of recognising the law of the forum and matrimonial domicil, when, as in this case, they both concur.

Let us now see how the matter really stands upon the authorities. There are a number of different cases which may be mentioned, and which may be distinguished from each other; but as far as I know there are only two or three cases amongst those mentioned at the bar which present concurrently all the circumstances relied upon for the foundation of the jurisdiction in the present case.

It is said that those circumstances existed in the case of *M'Carthy* v. *Decaix* (3), be-

cause there the solemnisation of the marriage was also in England, but the husband was a Dane. As I collect, the parties lived together in Denmark as long as they lived together at all, and in the Courts of Denmark, while they both lived there, a sentence of divorce was pronounced. That sentence was not for a cause which even under our present law would be recognised in England; it was for what abroad is called—or at least that is our English translation of the foreign legal term—incompatibility of temper. But except as to the nature of the cause of divorce, that case would seem in its original facts to have been like the present. It is said that Lord Brougham, in the case of *M'Carthy* v. *Decaix* (3), decided that, because the solemnisation of the marriage with an Englishwoman had taken place in England, therefore the Danish Court could not under those circumstances dissolve the marriage. I have all due respect for the judicial decisions of all who have at any time filled the office of Lord Chancellor—I have great respect for the high reputation of Lord Brougham; but I am compelled to speak without much respect of the decision in *M'Carthy* v. *Decaix* (3), not only because it appears to me to proceed upon a view of *Lolley's Case* (1) which is not really tenable, but also because it is a decision which, upon principles universally recognised, would be incapable of being supported, even if it were true that the English Court ought not to have recognised that Danish divorce, because, beyond all doubt on that supposition, both the husband and the wife lived and died domiciled in Denmark, and the distribution of both their personal estates would, by a law which is beyond controversy, fall to be regulated in England and everywhere by the law of Denmark, and not by the law of England; and therefore, unless it had been ascertained that the law of Denmark under those circumstances would not distribute those estates in the same manner as if there had been a valid divorce, the decision manifestly lost sight of the true question in the cause. I do not, therefore, think it necessary to say more about the case of *M'Carthy* v. *Decaix* (3). It has been commented upon on various occasions in a manner certainly tending to shake its authority; but to my mind nothing more is necessary to destroy its authority than to bear in mind the fact that, even if the English Courts ought to have declined to recognise in that case the Danish divorce, still the English Courts could not with propriety have applied the English law to the case, because the distribution of the movable property in question depended entirely upon Danish law, and the English Courts were bound to treat it as depending upon Danish law.

Therefore, the case of *M'Carthy* v. *Decaix* (3) may be put aside. I am not quite sure, but I think that in the case of *Geils* v. *Geils* (7) the circumstances were also parallel with those of the present case, because there, if I am not mistaken, not only was the Scotch matrimonial domicil unchanged at the time of the divorce, but I think the adultery was committed in Scotland, and at the time of the action brought, the husband, against whom it was brought, was resident in Scotland. In that case the decision of the Scotch Court was upheld upon an appeal from Scotland to this House. No doubt that by itself does not prove that an English Court ought also to have recognised the validity of the decision; but having regard to what has constantly fallen from the Judges who in this House have determined questions of that kind with reference to general principles, I think the presumption is that an English Court ought, unless some reason, which at present I am unable to perceive, be shewn to the contrary, to recognise the decision of a Scotch Court in a case in which this House has held that the Scotch Court had proper jurisdiction to pass such a sentence.

The third case is *Maghee* v. *McAllister* (10), a case in Ireland before Lord Chancellor Blackburne. There, as in the Danish case, the cause of divorce was one which would not be sufficient in England (desertion and non-adherence), but the parties there also had been, from the first, matrimonially and actually domiciled in Scotland. They were not both in Scotland when the action was brought, and that makes it stronger. I rather think that the cause of action arose out of the fact that the wife, against whom the action was brought, had withdrawn her-

self, and she was living elsewhere. Nevertheless, the jurisdiction was upheld on the same principles on which this House upheld the Scotch jurisdiction in *Warrender* v. *Warrender* (4), where the matrimonial domicil had all along been Scotch, but the crime was alleged to have been committed out of Scotland, and the wife was resident out of Scotland. Still this House held, in a Scotch appeal undoubtedly, that the Scotch Court had proper jurisdiction; and the Lord Chancellor of Ireland, under circumstances similar in principle, held that an Irish Court ought, upon principle, according to the comity of nations, to recognise the competency of the Scotch jurisdiction to pronounce the divorce which had been pronounced in *Maghee* v. *McAllister* (10).

I believe that those are the only cases which are, in their material circumstances, exactly like the present. Much of illustration and of valuable and important doctrine is undoubtedly to be found in other authorities. I will just glance at some of those authorities in order to see precisely what they do and what they do not determine. I will begin with *Lolley's Case* (1).

Now what was *Lolley's Case* (1)? It was a case of this class, that persons who had married, and had always been and always continued to be matrimonially and actually domiciled in England, had recourse to Scotland for the purpose of constituting a merely forensic domicil, and there obtained a divorce for a crime, I take it, committed in Scotland. That was held by the English Courts not to be a valid sentence. I do not myself think that there was any very great hardship upon Mr. Lolley, the husband, because, whether there was collusion on the part of his wife or not, it is quite certain that he went through the whole proceeding in order to get rid of his wife and marry another woman with whom he had already entered into a conditional engagement. But there was a total absence of matrimonial or actual domicil. We need not consider whether a change of domicil would or would not have been sufficient—the domicil was throughout English, and the recourse to Scotland was merely for the purpose of getting rid of the marriage. That case decided, and every subsequent case is consistent with the decision, that in those circumstances the Scotch Court had no proper jurisdiction, or, at all events, not such a jurisdiction as could be recognised for the purpose of giving any effect to its sentence in England.

There arose a somewhat similar question in the case of *Tovey* v. *Lindsay* (2), and it is remarkable that there Lord Eldon did in the course of the argument, according to the report which I hold in my hand, once or twice, before he came to deliver judgment, express himself in terms not different from those used at your Lordships' bar by the learned counsel for the appellant, as to the point decided in *Lolley's Case* (1). He is reported to have said, on page 124 of the report, that the "twelve Judges had lately decided that as by the English law marriage was indissoluble, a marriage contracted in England could not be dissolved in any way except by an Act of the Legislature," which is very much the way in which Mr. Benjamin put it. And again, on the top of the next page, "You say that the marriage ought to be dissolved; her answer to that is, that being contracted within the pale of the English law it is indissoluble." So that Lord Eldon, during the argument, once or twice expressed himself, with regard to *Lolley's Case* (1), in the terms of the appellant's argument in this case; but when he came to deliver his judgment it is quite plain that upon mature consideration he saw reason to take a different view. The material facts there were these. The original domicil of the husband was Scotch; he had afterwards lived a good deal in England, particularly at Durham; he had separated from his wife, his wife remained in Durham, and he afterwards sued her for a divorce in Scotland, she being out of the jurisdiction. The Scotch Courts had treated it as a confessedly Scotch domicil. Lord Eldon, in the whole of his judgment, treats domicil as the point upon which the question ought properly to depend, not, however, ultimately deciding anything, and certainly not deciding the very important question which might have arisen if the change to an English domicil had been established—namely, how far a sub-

sequent change of domicil would affect the jurisdiction to dissolve the marriage; but he considered the fact of domicil to be necessary to be ascertained, which, according to the view of *Lolley's Case* (1) taken by the appellant's counsel at your Lordships' bar, could not have been necessary at all. Therefore I think we may infer very clearly that in Lord Eldon's mind it could not be determined off-hand that the Scotch Court had no jurisdiction, merely on the ground that the marriage had taken place in England.

Then I come to observe upon two other classes of cases, or rather one other class, because *Dolphin* v. *Robins* (8) and *Shaw* v. *Gould* (11) seem to me to be very nearly the same in their circumstances as *Lolley's Case* (1); and I therefore will not dwell upon those cases. The other class of cases is that which was last mentioned—namely, *Niboyet* v. *Niboyet* (12), where the forum which dissolved the marriage was not that of the matrimonial domicil, but was that of the *bona fide* residence of both parties, both being within the jurisdiction, and the crime having been committed there. Now, if that case was well decided, it is certainly not an authority in the appellant's favour; because it goes to this length, that at all events, under the English statute, if those circumstances are found concurring, even domicil is not necessary to give jurisdiction to dissolve a marriage. Whether another country, the country of those parties (France, I think), would have recognised that decision, we need not at present enquire, because either it is applicable on the present occasion, or it is not: if it is applicable it is certainly an authority against the appellant; if it is not applicable it does not help her.

The case of *Pitt* v. *Pitt* (9), no doubt, was one which did not present the same circumstances which your Lordships have to consider here; because in *Pitt* v. *Pitt* (9), in which this House, on an appeal from Scotland, reversed an order which had affirmed the jurisdiction of the Scotch Court, and therefore determined that the Scotch Court had no jurisdiction, the circumstances were these. The matrimonial domicil was English; the solemnisation of the marriage was in England. Colonel Pitt, the husband, had gone to Scotland; it was in controversy whether he had there acquired an actual domicil or not; but it was decided that he had not. He therefore retained his English domicil. The wife was not in Scotland, and the alleged adultery was not committed in Scotland. In those circumstances the House came to the opposite decision from that which it had arrived at in *Warrender* v. *Warrender* (4), the circumstances being very parallel, except that in the one case there was, and in the other case there was not, a Scotch domicil. In *Warrender* v. *Warrender* (4), where there was under those circumstances a Scotch domicil, the jurisdiction was upheld, though the crime had not been committed in Scotland, and though the wife, who was the defender, was not resident in Scotland. In *Pitt* v. *Pitt* (9) the jurisdiction was denied, because there was not a Scotch domicil, the other circumstances being the same.

Now, I do not say that the case of *Pitt* v. *Pitt* (9) would of necessity govern cases like *Niboyet* v. *Niboyet* (12), for example, if they were to arise in Scotland. That is not a question which your Lordships have now to determine, and it is not desirable that you should go beyond the case which you have to determine; but this I will say, without going through the authorities or all the cases which have been cited, that when they are carefully examined you find that the current of judicial opinion which pervades them is in favour of regarding and not disregarding international principles upon this subject, when you do not find the positive law of the country of the forum in conflict with those principles, unless *M'Carthy* v. *Decaix* (3) may be considered to be an exception. The present decision in the Court of Appeal is in accordance with international law, and with the whole stream of sound authority, including Lord Lyndhurst, Lord Brougham himself (though no doubt, from the view which he took of *Lolley's Case* (1), he not unfrequently contended against it in terms which your Lordships probably would not adopt), Lord St. Leonards, Lord Westbury, Lord Cranworth, Lord Chelmsford and Lord Kingsdown, all of whom concur. I have no hesitation in saying that, from the

passages which have been read from the judgments of each and every one of those noble and learned Lords, I should confidently infer that, if the present case had been argued before all or any one of them, they would have concurred in the judgment which I now move your Lordships to pronounce, which is that the present appeal be dismissed with costs.

LORD BLACKBURN.—I am entirely of the same opinion. I agree in almost everything that has been said, and I should hardly consider it necessary to add anything if it were not that I wish to point out that the only question that we have to decide at present is that in this case the divorce was good, that the Court in Scotland had under the circumstances of this case the proper power to divorce, and that that divorce put an end to the marriage. Several cases were cited and arguments used for the purpose of shewing that in some cases a divorce might not have been good where there was not so much ground for it as there is here. That, I apprehend, we have not to consider. It is no objection to this being a good divorce and putting an end to the marriage in this case to say that there might be cases in which the facts did not go so far and in which a divorce might not be good according to some of the decisions. That would not at all affect the present decision, which is that in the present case there is enough to do it.

Let us now see what the present case is. A Scotchman domiciled in Scotland, and being to all intents and purposes a Scotchman, comes to England and there marries an English wife. She was an Englishwoman up to the moment of her marriage. The marriage took place in England according to the forms of English law, and from the moment of her marriage she became a domiciled Scotchwoman just as her husband was a domiciled Scotchman. There was nothing whatever to change that domicil; and whilst they were both in Scotland there was a divorce by a Scotch Court from the marriage, a dissolution *a vinculo matrimonii* on the particular ground of an offence committed in Scotland. Now the question is, Is that divorce good in England? Is it according to English law that a dissolution of marriage by a Scotch Court under those circumstances is a good dissolution of marriage in England? Whether it would have been good in Scotland or not would not have been the same question. I can easily suppose that there might be good divorces in Scotland that would not be good in England. The question is whether this is good in England.

Seeing that there was this complete domicil, which almost every writer and speaker upon the subject has regarded as certainly the most important element in considering what the *status* of married people is, and the *status* of those divorced from a marriage (this was in its origin a Scotch domicil from the very beginning), the only ground upon which it has been said that a Scotch Court could not divorce the parties was that the actual marriage, the contract, was made in England. I do not myself see why upon any principle that should make any difference. What was urged was that there was authority for that proposition, and for that purpose *Lolley's Case* (1) was cited.

Now Lord Brougham did more than once cite and act upon *Lolley's Case* (1), as though he had understood it as going to the full extent of what I have just said, that the fact that a marriage was contracted locally in England made it an English marriage, and therefore indissoluble by any foreign Court on the ground of adultery or anything else. Lord Brougham appears to have thought that that was the decision in *Lolley's Case* (1), but I think that that was not the decision. When you look at the facts in *Lolley's Case* (1) they are clear. An English husband married an English wife in England; he was a domiciled Englishman, she was a domiciled Englishwoman. They continued to be domiciled Englishman and Englishwoman down to the moment when, going into Scotland for a temporary purpose, he there committed adultery, and she, therefore, caused him to be divorced in a Scotch Court. Now in that state of facts the point which was decided by the twelve Judges, upon the point being brought forward, was this. They said they could not and would not enquire into whether there was fraud or not, because

if there had been any fraud it ought to have been left to a jury to find it, and that the fraud was not left to a jury; but they did find upon the very point that was brought before them, and which they had before them, that there was an English domicil throughout the whole period of the case, and when they decided that an "English marriage," which, I think, is the phrase that was used, was indissoluble by a foreign Court, I think they meant an English marriage under the circumstances, and in this way—namely, one where the domicil was English from the beginning to the end of the transaction. Lord Brougham certainly did not understand it so, and more than once in his anger against *Lolley's Case* (1) he was inclined to maintain that *Lolley's Case* (1) was decided upon the ground of the contract being English, and to drive it to absurd results, a *reductio ad absurdum*, to shew that *Lolley's Case* (1), as he understood it, was wrong and could not possibly be right; but there is no case that I am aware of which says that *Lolley's Case* (1), as I have just put it, was not right. There is no case which either in Scotland or in this country decides finally that even in Scotland a divorce under such circumstances as those of *Lolley's Case* (1) would be good. Whether upon the authorities it might not be decided hereafter (it has not yet been decided) that a divorce in Scotland in such circumstances as those of *Lolley's Case* (1) would not be valid even by Scotch law is a point which does not arise in the present case, and upon which I wish to express no opinion either one way or the other.

Assuming that in *Lolley's Case* (1) the divorce would be good in Scotland, it would be to my mind a very uncomfortable result that it should be good in Scotland and bad in England; but it does not, to my mind, prove at all that this case was not rightly decided. We have not even to consider whether or not a divorce under the circumstances of *Lolley's Case* (1) would in England be bad, but whether a divorce under the circumstances of this case would be bad because it might have been shewn to have been void in *Lolley's Case* (1) under the circumstances of that case. The validity of the divorce in *Lolley's Case* (1) is not the question which is now at all before your Lordships.

Several of the other cases which were cited, such as the case of *Niboyet* v. *Niboyet* (12), would only, I think, at the utmost go to this, that there may be grounds (I do not enquire whether they would be good or bad grounds) for saying that a divorce may be good and valid (and ought of course to be valid in every country if it is valid in the country where it is pronounced) under circumstances which go the length of these. There was a difference of opinion in that case, and I wish to express no opinion upon it one way or the other; but supposing it were valid, going even further than this case, how can that be an authority for saying that it is not valid when the circumstances only go as far as they do here?

Now, I need not repeat what has been said with regard to Lord Brougham's expressions. I can only say that, weighing them, not as authorities binding upon me, but merely as expressions of Lord Brougham's opinion, his reasoning in the cases which have been cited does not carry much weight or influence in my mind. And the authority of the Lord Chancellor Blackburne certainly seems to me to decide exactly the contrary. It appears to me that he was quite right in his decision upon the facts before him, and he gives very good grounds for it. I think his decision is in conformity with all that has been thrown out by various Judges at different times. Without going further than that, and without entering into the question, and saying whether a *bona fide* change of a domicil which was originally English would affect the question or not—I say that it seems to me that there is no authority, except Lord Brougham's, against the proper doctrine which is now laid down by the Court below in the present case, but that there is every authority, except Lord Brougham's, going the other way.

I must observe one thing further. I should have said it, perhaps, a little earlier. I think when you come to look at the expressions which, in a case decided immediately after *Lolley's Case* (1), namely, *Tovey* v. *Lindsay* (2), Lord Eldon used with reference to *Lolley's Case* (1), you

find that although Lord Brougham had given a report of that case, in which he said that it was held that a marriage was indissoluble in Scotland when contracted in England, Lord Eldon, before he came to deliver judgment, saw that the decision in *Lolley's Case* (1) was that it was indissoluble when it was an English domiciled marriage *ab initio* down to the time of the divorce. All that was done in that case was to send the cause back again to Scotland, in order that the Scotch Courts might consider with great care before they decided that they had the power to divorce under circumstances which raised such questions as those involved in that case—namely, the effect of the domicil of origin having been Scotch, and apparently continuing such when the marriage was contracted locally in an English colony; and then the domicil being changed to England, and then after a separation the husband renewing his original domicil. It appears that the party died shortly afterwards, and it was not decided then, and I do not think it was ever finally decided by the Scotch Courts; at all events, I do not think it would be proper now for your Lordships to form the opinion that that question was decided. I think that all that should be decided here is this, that upon such facts as are here stated the Scotch Court had power to direct a divorce which should be valid everywhere.

LORD WATSON.—I am of the same opinion. In this case it has not been disputed by the appellant that, according to the decisions of this House in Scotch appeals, the Court of Session had, by the law of Scotland, jurisdiction to pronounce a sentence of divorce between these parties in December, 1863. But the question which is raised for determination is this: whether that decree must be respected by the Courts of England, or whether it must be set aside as an invalid decree because it dissolves an English marriage.

Now, I must say that to my mind it would be contrary to the plainest principles of international private law, as expounded by noble and learned lords of the highest judicial eminence in a series of decisions in this House, beginning with the case of *Warrender* v. *Warrender* (4), in 1835, and ending with the case of *Shaw* v. *Gould* (11), in 1868, to give effect to the contention which has been addressed to your Lordships on behalf of the appellant.

But then it is said that those decisions, which establish the rule that questions affecting the status of married persons must be determined according to the law of the husband's domicil, have no application here, and that the present case falls to be decided, not upon general principles of international law, but upon a certain principle which is peculiar to the law of England. That principle, as explained by the learned counsel for the appellant, is neither more nor less than this: that whenever a marriage takes place in England between a foreigner and an English lady the law of England regards the place of celebration as determining the status of the spouses, as fixing within England the jurisdiction, and the only jurisdiction, to dissolve the marriage and alter the status of the parties from that of married to that of single persons. For that proposition no authority has been cited either concurrent with or subsequent to the long series of decisions to which I have already adverted. But it is said that it was so settled in *Lolley's Case* (1), approved of in *Tovey* v. *Lindsay* (2), and followed in *M'Carthy* v. *De Caix* (3). I agree with every word that has fallen from your Lordships in regard to what was decided in *Lolley's Case* (1). I think that it is by a mere play upon the words "English marriage" that the appellant's counsel has given a shew of plausibility to his argument. These words "English marriage" are capable of two very different meanings, and may be understood either as signifying the substance of the contract or union between the parties out of which their rights as spouses arise, or as signifying the mere place of celebration. I cannot think that in remitting the case of *Tovey* v. *Lindsay* (2) Lord Eldon had in view that they meant merely the place of celebration of the marriage. It is very remarkable, if that opinion was in his Lordship's mind, that he should have remitted the case to the Court of Session to consider, not whether the Court in Scotland had power to dissolve a marriage celebrated in

England, but to consider whether their judgment was well founded in respect to the domicil of the parties. The only difficulty or doubt upon which the case was remitted was this, that it appeared to the noble and learned Lord that there was great room for difference of opinion as to the fact of the pursuer being domiciled in Scotland at the time. He asked the Judges in Scotland to consider that matter, whether he was not really domiciled in Durham and not in Scotland, as they had assumed in their judgment, and in the event of their coming to the conclusion that the pursuer's domicil was English, he directed them carefully to consider the law bearing upon the point.

Then, so far as regards the case of *M'Carthy* v. *De Caix* (3), I think that there are considerations arising upon the face of that judgment which render it of very little value as an authority; and even if it had been a decision more in point than it seems to me to be, I should not have been inclined to follow it in the face of those very weighty observations which have been made by Judges, as I have already said, entitled to the highest respect, in subsequent cases.

I shall only say, farther, that throughout the argument in this case I have felt very little doubt as to the result at which your Lordships ought to arrive, because from beginning to end that argument has been a hopeless endeavour to shew that the words "English marriage" were intended throughout these cases, by the Judges who used the expression, to designate mere celebration.

Fooks, for the appellant, asked that the appeal might be dismissed without costs.

THE LORD CHANCELLOR.—That will probably depend upon whether security has been given or not. If it has been given, the persons who gave the security will have to pay the costs, and they must get them in the best way they can.

I find that there was a petition presented by the appellant in this case praying that the usual security for costs might be dispensed with, and the agent for the respondent consenting thereto, the order was made as prayed. I think that, under those circumstances, our order ought to be without costs.

Order appealed from affirmed; and appeal dismissed without costs.

Solicitors—Savile A. Tucker, for appellant; J. S. Ward, for respondent.

PROBATE. 1883. Feb. 23. March 6.

BLOXAM AND ANOTHER v. FAVRE AND OTHERS.

Will—Alien—Foreign Domicil—Domicil of Origin in England—Execution abroad according to English Law—Probate in England—Lord Kingsdown's Act (24 & 25 *Vict. c.* 114), *s.* 1—*Naturalisation Act*, 1870 (33 & 34 *Vict. c.* 14), *ss.* 2 *and* 10.

The testatrix, whose domicil of origin was English, married a German subject, and resided in Germany until her death, which happened after the 12*th of May*, 1870. *After the death of her husband, she executed in Germany a will, which was valid according to the requirements of the English law, but not according to the requirements of the law of Germany*:—Held, *that the will was not entitled to probate in England.*

This case was argued upon demurrer to a statement of defence.

The statement of claim alleged that the deceased, Caroline, Dowager Countess Von Buseck, who died at Homburg, in Germany, on the 28th of July, 1880, was by birth a British subject; that her domicil of origin was English; that she was married in 1857 to Baron John Charles Frederick William Von Buseck, a German subject; that after her marriage she resided in Germany with her husband until his death in 1873; and that in the month of September, 1876, the deceased, being then resident in Germany, executed a will in accordance with the requisites of English law, by which she appointed the plaintiffs as her executors. The plaintiffs asked that the will should be admitted to probate.

Appearances had been entered by various

persons interested in the estate of the deceased, and the defendants, John Frederick Blake and Louisa Blake, had filed a statement of defence alleging that the deceased, on her marriage, became a German subject, and so remained until her death; and that the will was not executed in the form required by German law.

To this statement of defence the plaintiffs demurred. The case had previously come before the Court on motion, when the President of the Division refused to admit the will to probate (1). Against this decision the executors had appealed, when the Court of Appeal expressed an opinion that the will ought to be propounded. The present action was then commenced.

Jeune, in support of the demurrer.—The fact that the deceased was a German subject at the time of her death is immaterial, since her domicil of origin was English. No doubt before the passing of Lord Kingsdown's Act (2) the validity of a will depended, not upon the nationality of the deceased, but upon his domicil; but section 1 of that statute enacted that the will of a British subject made out of the United Kingdom (whatever his domicil) should be held to be well executed for the purpose of being admitted to probate in England, if made under one of three conditions—namely, "according to the form required, either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicil of origin." The last of these conditions has been fulfilled in the present case, since the will is valid according to the law of England, in which country the testatrix had her domicil of origin; and her marriage with a foreign subject and consequent acquisition of a foreign domicil cannot affect the operation of the statute. The effect of the Naturalisation Act, 1870 (3), is also favourable to the plaintiffs' contention; for, although section 10, subsection 2, undoubtedly placed her in the position of a "statutory alien," and would thus, if it stood alone, deprive her of the benefit of Lord Kingsdown's Act (2), section 2 provides that "real and personal property may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject"; and the words "disposed of . . . . in the same manner in all respects," must necessarily be taken to include the right of disposition by will, as conferred by section 1 of Lord Kingsdown's Act (2). If that is so, the words must relate to the form of the will rather than to its contents.

[THE PRESIDENT.—Suppose the testatrix had been domiciled in a country where no testamentary power of any kind is recognised by the law, would the Court still be bound to admit the will to probate?]

In such an exceptional case the Legislature may have contemplated a right to dispose of property in England. It is submitted that the will is at least entitled to probate in this country, whatever questions may afterwards arise.

Inderwick, Q.C., and *A. Gordon, contra.*—The plaintiffs' argument would have the effect of striking out the words "of a British subject" from Lord Kingsdown's Act (2). Section 10, sub-section 2, of the Naturalisation Act, 1870 (3), expressly provides that "a widow, being a natural-born British subject, who has become an alien by, or in consequence of, her marriage, shall be deemed to be a statutory alien." The latter Act was passed in order to get rid of double allegiance. It is laid down in *Maxwell on the Interpretation of Statutes* (4), that a statute ought not to be interpreted in a manner inconsistent with the comity of nations or with the recognised rules of international law; but the Court is now asked to place itself in conflict with the law of the domicil of the testatrix. In *The Attorney-General* v. *Campbell* (5), it was held that personal property in this country bequeathed by a person dying abroad is not liable to succession duty, unless a trust was created, in which case the duty will become payable on a subsequent devolution of the property; and

(1) *In the Goods of Von Buseck*, 51 Law J. Rep. P., D. & A. 79; Law Rep. 6 P. D. 94.
(2) 24 & 25 Vict. c. 114.
(3) 33 & 34 Vict. c. 14.
(4) P. 122.
(5) 42 Law J. Rep. Exch. 195; Law Rep. 5 H.L. 524.

that case was followed by Jessel, M.R., in *In re Cigala's Settlement* (6).

[THE PRESIDENT referred to *Enohin* v. *Wylie* (7).]

The law of the domicil must always determine the testator's power of disposing. He also referred to *The Le Louis* (8).

Jeune, in reply.—*The Attorney-General* v. *Campbell* (5) is an authority rather favourable to the plaintiffs' contention, for the House of Lords there recognised the effect of a disposition of property by an English testator who had acquired a foreign domicil.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN), (on March 6th).—The plaintiffs propound, as executors, the will of Baroness Von Buseck. The statement of claim alleges that the deceased was by birth a British subject, and had her domicil of origin in England; that she married a German subject, and on her marriage went to reside in Germany; that her husband died in 1873, and that in 1876 the deceased, being still resident in Germany, made her will there in the form required by English law. It is not alleged in the pleadings, but it was admitted upon the argument, that the deceased was, from the time of her marriage until her death, continuously domiciled in Germany. The defendants, John Frederick Blake and Louisa his wife, allege in their statement of defence, that the deceased, on her marriage, became a German subject, and so remained till her death, and that the will propounded was not executed in the form required by German law. To this defence the plaintiffs have demurred.

These pleadings do not accurately raise the question which was argued before me and which I was called upon to determine—namely, whether the will of an alien whose domicil of origin was English, but who was domiciled abroad at the time of making the will and until death, is entitled to probate in England (although invalid by the law of the alien's domicil) if it be made in the form required by English law. The principle which underlies the whole subject is thus stated in *Williams on Executors* (9): "It is now a clearly established rule that the law of the country in which the deceased was domiciled at the time of the death not only decides the course of distribution of succession as to personalty, but regulates the decision as to what constitutes the last will, without regard to the place either of birth or death, or the situation of the property at that time." This was decided by the Privy Council in the case of *Bremer* v. *Freeman* (10), where Lord Wensleydale said—"That the law of the testator's domicil at the time of making the will and of the death of the testator, where there is no intermediate change of domicil, must govern the form and solemnities of the instrument, can no longer be questioned. The maxim '*Mobilia sequuntur personam*' has long prevailed, and, whatever the origin of that doctrine may be, whether it was derived from a fictitious annexation of moveables to the person or from an enlarged policy growing out of their transitory nature, it has, as Mr. Justice Storey observes (11), so general a sanction among all civilised nations that it may now be treated as a part of the *jus gentium*. It follows from this maxim that the post-mortuary distribution of the effects of a deceased person at the time of his death if he dies without a will, and it equally seems to follow that, if the law of that country allowed him to make a will, the will, must be in the form and with the solemnities which that law requires. It was so decided in the case of *Stanley* v. *Bernes* (12), which we believe has been generally approved" (13). He also cites a passage (14) where Mr. Justice Storey states that a will, if void by the law of the domicil, is a nullity everywhere, although it is executed with the formalities required by the law of the place where the personal property is locally situated. The same doctrine was laid down by the House of Lords in *Enohin* v. *Wylie* (7).

(6) 47 Law J. Rep. Chanc. 166; Law Rep. 7 Ch. D. 351.
(7) 31 Law J. Rep. Chanc. 402; 10 H.L. Cas. 1.
(8) 2 Dods. 239.
(9) (8th ed.), p. 371.
(10) 10 Moo. P.C. 306.
(11) Conflict of Laws, s. 380.
(12) 3 Hag. Ec. 373.
(13) 10 Moo. P.C. 357.
(14) Conflict of Laws, s. 463.

If this will is admitted to probate, it will be in opposition to the rule thus emphatically laid down by the highest Court of appeal in this country to be no longer open to question; but it is contended that I am bound to admit it to probate under the provisions of one or other of two Acts of Parliament. The first of these is Lord Kingsdown's Act (2), section 1 of which says, "Every will made out of the United Kingdom by a British subject, whatever may be the domicil of such person at the time of making the same, or at the time of his or her death, shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England to probate, if the same be made according to the form required either by the law of the place where the same was made, or by the law of the place where such person was domiciled, or by the laws then in force in that part of Her Majesty's dominions where he had his domicil of origin." It is argued that this will must be admitted to probate because it was made according to the forms required by the law of England where the testatrix had her domicil of origin; but the answer to this argument is, that the Act only applies to British subjects. No doubt the principle which was considered to justify the passing of that Act was this, that every country has a right to legislate with regard to its own subjects, wherever they may be. When the Act was passed, the law of England was, or was supposed to be, at variance with that of every European country on the subject of the *status* of a woman marrying an alien. "In every country," says the late Lord Chief Justice of England (15), "except where the English law prevails, the nationality of a woman merges in that of her husband: she loses her own nationality and acquires his; whereas by the law of England an Englishwoman marrying an alien still remains a British subject. This state of the law, though not often of practical importance, might have led to the singular results pointed out by Sir Alexander Cockburn. His treatise was written "with a view to future legislation," and in the year following its publication the Naturalisation Act, 1870 (3), was passed, by the 10th section of which it is enacted—first, that a married woman shall be deemed to be a subject of the country of which her husband is a subject; and, secondly, that a widow, being a natural-born British subject, who has become an alien in consequence of her marriage, "shall be deemed to be a statutory alien." Having regard to this enactment, it appears to me to be clear that Lord Kingsdown's Act (2) cannot apply to the present case, since its operation is confined to the wills of British subjects, and the testatrix was not at the time of making her will a British subject, but was an alien.

Reliance has, however, been placed upon section 2 of the Naturalisation Act, 1870 (3), which enacts that "real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject." It is said that the words "in the same manner in all respects" mean "according to the same forms," and that therefore the same effect is to be given to the section as if it contained the words, "notwithstanding any law of the alien's own country to the contrary"; and that this was not an unreasonable construction of the section, having regard to the cases, of which the present is an example, to which it would be applicable. It must, however, be remembered that the Act is not applicable only to aliens who had their domicil of origin in this country, but it applies to any alien, although he may have never had a British domicil. If the plaintiffs' contention is to prevail, the will of such an alien, if made in the English form, must be admitted to probate, although the tribunals of his own country may have pronounced against its validity.

It is further to be observed that the words "in the same manner in all respects" are repeated in the next sentence of the 2nd section. There is nothing in the context to shew that the same words are to receive different interpretations in two consecutive sentences. If in the first sentence the words "in the same manner in all respects" mean (*inter alia*) "disposed of by a will as executed according to the forms of English law," it follows that, where a derivative title to property is traced through, from, or in succession to

(15) Cockburn on Nationality, p. 24.

an alien, that title or succession may be established according to the same forms as in the case of a British subject; and that a marriage solemnised in a form valid by English or Scotch law, though invalid by the law of the alien's country, might form a link in the chain of title to property. It was held by the Court of Appeal in *Sottomayor* v. *De Barras* (16), that the marriage in England of first-cousins, being aliens not domiciled in England, if forbidden by the law of their own country, is invalid here; but, according to the plaintiffs' construction of this section, a claim to property might be established through such a marriage, because the title may be derived "in the same manner in all respects" as through, from, or in succession to a natural-born British subject. These results appear to me so unreasonable that I must reject the interpretation which leads to them, unless the words are incapable of receiving a construction more in harmony with well-established principles.

It is laid down in *Maxwell on the Interpretation of Statutes* (4), that "every statute is to be so interpreted and applied, as far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of international law." This passage expresses the rule of construction which is applicable to the present case. It appears to me that another very clear and satisfactory meaning may be found for the language used. Formerly aliens were subject to great restrictions as to the enjoyment of property in this country, but the 7 & 8 Vict. c. 66, enabled an alien to take and hold every species of personal property, except chattels real, as fully and effectually as if he were a natural-born subject. Thus an alien still remained incapable of holding real property or chattels real. The object of section 2 of the Naturalisation Act, 1870 (3), was to do away with these remaining restrictions, and for this purpose the section is worded as it is, and is made to extend to real and personal property of every description. The intention of the Legislature was to remove the disabilities of aliens and to place them on the same footing as British subjects, so far as English laws were concerned, but leaving them still subject to the laws of their own country and the general principles of private international law on the subject of domicil which are recognised by our tribunals. Domicil is in no way dealt with or referred to throughout the Act.

Under these circumstances I am of opinion that the words "disposed of . . . . in the same manner in all respects as by a natural-born British subject" do not include a disposition by will; but that, in determining what is the valid will of an alien, the general principles of law laid down by the Privy Council and the House of Lords must still be applied. I therefore hold that the will is invalid, and the demurrer must be overruled.

(16) 49 Law J. Rep. P., D. & A. 1; Law Rep. 5 P. D. 1.

Solicitors—Paterson, Snow & Bloxam, for plaintiffs; G. E. Carpenter, for defendants.

ADMIRALTY. 1883. March 6. } THE RISOLUTO.

Collision — Fishing-boat — Measure of Damages.

A fishing-boat was run down by a vessel, and was in consequence prevented for some time from continuing her fishing operations, and she obtained judgment against the vessel. The Registrar estimated part of the damage sustained by the fishing-boat at a sum which he arrived at by considering the value of the fish caught by other boats during the absence of the plaintiff's vessel, —Held, *a proper mode of estimating these damages.*

This was an appeal from the report of the Registrar and merchants.

A collision took place, on the 5th of July, on the banks near Newfoundland, between the *Emma*, one of a fleet of cod-fishing vessels, and the *Risoluto*, and at the trial of the action the *Risoluto* was found to be alone to blame. Among the items of damages claimed on the reference was one for the loss sustained by the owners of the *Emma*, owing to the enforced absence of the *Emma* from the fishing ground from the 5th of July to the

The Risoluto, Adm.

26th of August. The Registrar and merchants awarded a sum of 22,000 francs out of 30,000 claimed on this head, and they arrived at this conclusion from evidence as to the value of the takes of ten vessels on the fishing ground from the 5th of July to the 26th of August.

Bucknill, on behalf of the defendants, moved that the report of the Registrar be referred back to him, with directions that he had acted on an erroneous principle. He argued that the proper measure of damages, under such circumstances, was to take the average value of the take of the *Emma* in previous seasons. He referred to the *Gleaner* (1), and urged that the point had not been previously decided.

Phillimore, contra.—He referred to the *Clarence* (2), and argued that the Registrar and merchants had adopted the best course to ascertain the actual loss sustained by the *Emma*.

SIR R. J. PHILLIMORE.—The Registrar was assisted by gentlemen of great experience in the investigation, and I am of opinion that I ought not to interfere with his decision. I therefore confirm the report and reject this motion with costs.

Solicitors—Stokes, Saunders & Stokes, for plaintiffs; T. Cooper & Co., for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. March 10. } THE HECTOR.*

Practice—Costs—Appeal—Judgment of Admiralty Division varied—Collision—Both Vessels found to blame.

Where the Court of Appeal vary a judgment of the Admiralty Division that one of two vessels only is to blame for a collision by finding both to blame, no order will be made as to costs either in the Court of Appeal or in the Court below, but each party will pay his own costs of the whole litigation.

Appeal by the defendants, the owners of the *Hector*, from a judgment of Sir Robert Phillimore. The action arose out of a collision which occurred between the *Augustus* and the *Hector*. At the trial, the Judge of the Admiralty Division, with assessors, held that the defendants were solely to blame for the collision. The defendants now appealed from that judgment, and in the result the Court of Appeal, with assessors, varied the judgment by finding that both the ships were to blame for the collision.

Myburgh, Q.C. (with him *Butt, Q.C.*), for the defendants, applied to the Court for directions as to the costs.—It is the practice in the Privy Council to give no costs in such a case as this, where the judgment of the Court below was to the effect that one ship was to blame for the collision, and that judgment on appeal was varied and both ships found to blame. But James, L.J., in the case of *The Condor* (1), stated that there was a general impression that the old rule of the Court of Privy Council should be followed, and that it appeared that the Court of Appeal had in a particular case (2) decided that way; but his Lordship said the rule in the future would be that the costs in every case would follow the result, and declined to apply the rule for the first time in that case. The judgment there was not quite the same as here, for although the *Condor* alone was found to blame in the Court below, the Court of Appeal held that she was not to blame at all. Here the Court of Appeal has held that both ships are to blame. The defendants, although only partially successful upon the appeal, have recovered something, whereas the plaintiffs have not recovered anything.

Phillimore (with him *Webster, Q.C.*, and *Stubbs*), for the plaintiffs.—The present question arose in the case of *The Milanese* (3), a decision subsequent to that of *The*

(1) 38 Law Times, N.S. 650.
(2) 3 W. Rob. 283.
* *Coram* Brett, L.J.; Cotton, L.J., and Bowen, L.J.

(1) 48 Law J. Rep. P., D. & A. 33; Law Rep. 4 P.D. 115.
(2) See *The Daisy*, 47 Law J. Rep. P., D. & A. 1.
(3) 4 Aspinall's Mar. Law Cas. 318; 43 Law Times (N.S.) 107.

Condor (1). There the Judge of the Admiralty Division found the *Milanese* alone to blame for the collision; but the Court of Appeal varied the judgment, holding both vessels were to blame. James, L.J., there said that wherever the Court of Appeal varied the decision of the Court below by finding both vessels to blame, the rule should be to make no order as to the costs either below or on appeal, and that each party should bear their own costs of the whole litigation. The House of Lords affirmed the judgment of the Court of Appeal, and dismissed the appeal with costs (4). The latter appeal, however, was the case of a wholly unsuccessful appeal.

Myburgh, Q.C., referred to *Roscoe on Admiralty Law* (5) as to the practice.

BRETT, L.J.—In this case the Admiralty Court has found one only of two vessels to blame. Upon appeal, this Court, differing from the Admiralty Court, has decided that both vessels were to blame. The judgment in the Court below ought, therefore, in our view, to have been that both vessels were to blame. It is true that the appellants were forced to bring this appeal because they were made solely liable to pay all the costs of the action. Now two modes of appealing might arise. The appellants might state as the sole ground of the appeal that both vessels ought to be held liable; and even if that appeal succeeded, I am not prepared to say that the Court would give an appellant the costs of the appeal. That question, however, does not arise. Another mode of appeal might be upon the ground that the judgment of the Court below ought to have been entirely in favour of the appellants. Here the appellants fail to support all the grounds of their appeal, but succeed in altering the judgment. A difficulty then arises by reason of the appellants claiming more than they get; they were forced to appeal, and although they have succeeded in altering the judgment of the Court below, no harm has been done to the other party by the claim for more than they ultimately got.

The Admiralty Court laid down as a matter of discipline the rule that if both vessels are to blame there should be no costs, except under exceptional circumstances. I think it is an exception where the judgment of the Court below is that one vessel is to blame, but the Court of Appeal hold that both vessels are to blame; and perhaps that is the only exception. The Privy Council have laid down the rule that where both parties are to blame neither of them shall gain anything by the litigation.

It was suggested that Lord Justice James, in the case of *The Condor* (1), was derogating from that rule; but I do not think so, because afterwards, in the case of *The Milanese* (2), it was held that the rule should be to give no costs either in the Court below or on appeal, where the Court of Appeal varied the judgment of the Court below by finding both vessels to blame. The Court of Admiralty laid down that rule as a matter of discipline in order that care should be exercised at sea, where it is so important that it should be exercised. The Court of Appeal will therefore adopt that rule.

COTTON, L.J.—I agree with that rule. I do not know whether I should have agreed with it when it was originally made. I think that a party who succeeds upon an appeal should be entitled to costs.

BOWEN, L.J.—I am of the same opinion. I would add that the rule is based upon common sense. If the appeal is brought to set the Court below right, the party, if he succeeds, ought to have his costs; the appeal is a natural step in the proceedings. If the only object for which the appeal is brought is to set the Court below wrong where that Court is right, the appellant ought to pay the costs. In this case the appellants have brought an appeal to set the Court below right; but the Court below has only been set right to a certain extent, so that it does not fall within the class of case I have mentioned where the appeal is brought to set the Court below wrong.

Solicitors — Stokes, Saunders & Stokes, for plaintiffs; Pritchard & Sons, agents for Thornley & Cameron, Liverpool, for defendants.

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(4) 4 Aspinall's Mar. Law Cas. at p. 438.
(5) 2nd ed. p. 260.

[IN THE COURT OF APPEAL.]

ADMIRALTY.
1883.
April 16, 20.

THE RENPOR.*

Salvage—Life Salvage—Ship Lost—Special Contract — Non-performance of Condition.

The R. having been damaged in a collision with ice and being in distress signalled to the M. L. for assistance. The master of the M. L., at the request of the master of the R., signed the following agreement:—"It is hereby agreed between the master of the M. L. and the master of the R., that the above-mentioned steamer M. L. agrees to stay by me until I am in a safe position to get to port, for the sum of 1,200*l.*" *The master of the R. signed the agreement on behalf of himself and the owners of the R. The M. L. remained by the R. for some hours, and ultimately took her master and crew on board. Shortly afterwards the R. sank:*—Held, *that as the R. was lost, and there was no fund out of which salvage could be paid, the owners of the M. L. were not entitled, according to the law of the Admiralty Division, to recover salvage for saving the lives of the master and crew of the R.* Held *also, that neither the owners nor the master of the R. were liable under the agreement, as the condition to stay by the R. until she was in a safe position to get to port had not been performed.* Held *also, that the meaning of the words "until I am in a safe position" was that the M. L. should stay by the R. until she was in a safe position to get to port.*

The E. U. (1 Spink. 63) *and* The Undaunted (Lush. 90) *considered.*

Appeal from a judgment of Sir R. Phillimore, allowing a demurrer to a statement of claim.

The action was brought against the owners and master of the steamer *Renpor*, to recover salvage for services rendered by the master and crew of the steamer *Mary Louisa*.

The *Mary Louisa*, while in the course of her voyage from Newcastle-upon-Tyne to New York, encountered a vast field of ice, which extended for many hundred miles, and consisted of large floes and hummocks, with frequent icebergs of large size. While in the ice-field, and when about 1,000 miles from land, the *Mary Louisa* observed the steamer *Renpor* in the ice, making signals for assistance; and upon approaching her it was found that she had been in collision with the ice, and had her starboard bow stove in below the water-line, and that she was making a great deal of water, which was gaining on her in spite of the efforts of the crew. The cargo had been jettisoned from the forepart of the vessel, but notwithstanding she was in imminent danger of sinking, and the lives of all on board of her were in peril. The master of the *Renpor* requested the master of the *Mary Louisa* to remain by him so long as the *Renpor* and the lives of those on board that ship continued exposed to danger. The master of the *Mary Louisa* informed him that he was under orders not to delay his voyage to render salvage services except in order to save life, but, having regard to the danger in which the lives of the master and crew were placed, he would accede to the request of the master of the *Renpor* if he would enter into the following written agreement:—

"*Mary Louisa*, April 13, 1882. It is hereby agreed between Thomas Gibb, master of the above steamer, and Robert Osborn, master of the steamship *Renpor*, that the above steamer *Mary Louisa* agrees to stay by me until I am in a safe position to get to port, for the sum of 1,200*l.*, my vessel being badly holed in starboard bow, near collision bulk-head."

The agreement was signed by the master of the *Renpor* on behalf of himself and the owners of that vessel.

The *Mary Louisa* remained by the *Renpor* during the night, and in the morning of the 24th took the master and crew of the *Renpor* on board; shortly afterwards that vessel sank.

The defendants demurred to the statement of claim, upon the grounds that the agreement was not alleged to have been performed, and that no cause of action arose until its performance; that no property of any of the defendants was therein alleged to have been saved; and as to the master of the *Renpor*, that he was

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

not shewn to be under any personal liability on the agreement.

Sir R. Phillimore allowed the demurrer.

The plaintiffs appealed.

A. Charles, Q.C., and *Gainsford Bruce*, for the plaintiffs.—Even if there had been no agreement here the plaintiffs would be entitled to be paid for the services rendered. There is a difference in principle between salvage services rendered by volunteers and those rendered upon request. In the latter case success is not necessary to entitle the salvors to remuneration, whereas it is in the former—*The Undaunted* (1). The principle is so laid down in the case of *The E. U.* (2), which was followed in *The Undaunted* (1). It is not necessary that the ship should be saved; in some instances the Court of Admiralty has awarded salvage for services rendered notwithstanding that the ship was lost—*The Medina* (3). There must be a saving of the *res* to entitle the salvors to salvage proper; but there is a difference where the services are rendered upon request; and where the salvors were prevented from fulfilling the conditions of their agreement by a change in the weather, the Court of Admiralty held that they were entitled to some remuneration for their exertions—*The Aztecs* (4) and *The Cargo ex Schiller* (5).

[BRETT, M.R., referred to *The Johannes* (6).]

Next, the plaintiffs are entitled to recover on this agreement, if the action be treated as a common law and not an Admiralty action. The meaning of the agreement is, that the master of the *Mary Louisa* was to stay by the *Renpor* as long as her services might be required. In the events which happened the plaintiffs are entitled to recover.

Cutter v. *Powell* (7), *The Fusilier* (8) and *Clerke's Praxis Supremæ Curiæ Admiralitatis* (9) were also referred to.

W. Phillimore, for the defendants, was not called upon.

BRETT, L.J.—It was said that this suit could be maintained irrespective of the agreement. There are many circumstances which would entitle salvors to recover; but one necessary condition which was wanting here is that by the law of the Admiralty Court in order to entitle salvors to life salvage something more than life must be saved. The saving of life alone without saving something more, such as ship or cargo, which will realise a fund out of which salvage may be paid, is not sufficient. It is said that there are cases to the contrary, and that the condition that something more than life must be saved is got rid of where life alone is saved by the exertions of the salvors at the request of the captain, and that in such a case the owner is bound to pay for the services so rendered. In support of this, the case of *The Undaunted* (1) was cited, and it was said that *The E. U.* (2), the authority upon which that case was decided, was in favour of the plaintiffs' contention; and more particularly something which was said by Dr. Lushington in the latter case. But the case of *The Undaunted* (1) does not carry the present case sufficiently far; for the ship was there saved by the salvors, so that there was a fund out of which some salvage could be paid. The question there was whether the plaintiffs could be paid out of that fund, and the answer was that, inasmuch as they had exerted themselves at the request of the captain towards salvage, they could claim something out of the fund which existed by reason of other people having saved the ship. I will not say whether I agree with that decision or not, but it differs from this, and does not conflict with the fundamental law of the Admiralty Court, which is that no salvage is due unless something is saved. *The E.U.* (2) is a similar case; but one of the suppositious cases there put by Dr. Lushington, as to an anchor being put on board a ship which is afterwards lost, is supposed to carry this case. But if that case was

(1) Lush. 90, 92, per Dr. Lushington.
(2) 1 Spink, 63.
(3) 45 Law J. Rep. P., D. & A. 81; Law Rep. 1 P. D. 272; affirmed, Law Rep. 2 P. D. 5.
(4) 3 Asp. Mar. L. Cas. 326.
(5) 46 Law J. Rep. P., D. & A. 9; Law Rep. 2 P. D. 145.
(6) Lush. 182.
(7) 2 Sm. L.C. 19 (8th ed.)
(8) Br. & Lush. 341; 34 Law J. Rep. P., M. & A. 25.
(9) Tit. 24.

put, it is contrary to what has been said in other cases, and it is remarkable that the words "at the request of the captain" are omitted. I doubt whether the suppositious case would have been decided in favour of the unsuccessful salvors. Neither *The E. U.* (2) nor *The Undaunted* (1) therefore carry the plaintiffs on the argument here. It seems to me that *The Fusilier* (8), *The Zephyrus* (10) and *The Cargo ex Schiller* (5) are directly contrary to the proposition of the plaintiffs, which would get rid of the fundamental law of the Court of Admiralty that something must be saved. Then the case is put as one brought at common law upon the agreement. But in that case the contract must be one which is binding on the shipowners. The contract, in order to bind the owners, must be made by the master in a case of necessity and for their benefit. If it were to be considered as a contract made merely to save the lives of the master and crew, without regard to the saving of the property of the shipowners, yet, inasmuch as the subject-matter of the contract would have been without any benefit to the shipowners in contemplation of law, the master would have no authority to bind them. The contract must be construed subject to the existing circumstances at the time when it was made. It is idle to suppose that the master had given up all hopes and thought that the ship would sink at once. The words of the contract, "until I am in a safe position," mean "until the ship is in a safe position" to get to port. But in order to make this sum of money payable under the contract, it would be necessary to read into it the words "or sink."

The condition of this contract, therefore, taking it to be one which related to the ship as well as to lives, was not fulfilled. Then it was said that the plaintiffs were entitled to recover on a *quantum meruit*. But that cannot be maintained, for nothing was done outside the contract so as to make anything payable. In my opinion, this agreement, which the master had a right to make, is a salvage agreement which fixes the amount of both life and property salvage, but it leaves all other conditions as to salvage award untouched. The agreement is therefore subject to the condition which attaches to all salvage services, that something must be saved. Here there was nothing saved except life; therefore neither the owners nor the master of the *Renpor* are liable. The decision of the Admiralty Court must therefore be affirmed.

COTTON, L.J., and BOWEN, L.J., concurred.

Appeal dismissed.

(10) 1 W. Rob. 329.

Solicitors — Pritchard & Sons, for plaintiffs; Ingledew & Ince, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. May 2.

THE HECTOR.*

Ship—Collision—Both Ships to blame—Compulsory Pilot—Limitation of Liability of Shipowner—Apportionment of Damages—17 & 18 *Vict. c.* 104. *s.* 388—25 & 26 *Vict. c.* 63. *s.* 54.

Section 54 *of the Merchant Shipping Amendment Act*, 1862, *which limits the liability of a shipowner to a certain amount per ton, does not apply to a case where two ships are to blame for a collision, and where the owners of one ship are relieved from all liability to the owners of the other, under section* 388 *of the Merchant Shipping Act*, 1854, *on the ground that the damage done to the other ship was caused by the fault of a compulsory pilot; but under the Admiralty rules, inasmuch as both ships are to blame, the owners of the ship so relieved from liability are only entitled to be paid by the owners of the other ship a moiety of the damage caused to their ship.*

This was an application to the Court of Appeal, made on behalf of the owners of the *Augustus*, as to the form of order

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

with respect to the apportionment of the damages.

On the 9th of March the Court of Appeal had varied the judgment of the Court below by finding that the *Augustus* was to blame for the collision, and that the navigation of the *Hector* was wrong; yet, inasmuch as that arose through the fault of the compulsory pilot, in whose charge the latter ship was when the collision occurred, the owners of the *Hector* were relieved from all liability, by section 388 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104) (1).

The present application raised the question, whether the judgment, "that the *Hector* recover half her damages and the *Augustus* nothing at all," should stand, or whether it should not be, following the case of *The Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Company* (2), "that the *Hector* should recover a moiety of the excess of her damage over that of a moiety of the damage done to the *Augustus*."

Webster, Q.C., and *Phillimore* (with them *Stubbs*), for the owners of the *Augustus*.—The judgment here should be drawn up in accordance with the decision of the House of Lords in *The Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Company* (2). So that the *Hector* would only be entitled to recover a moiety of the excess of the aggregate loss beyond the point of equality; and there is no liability in damages, except for that balance. There is no difference between the expression "answerable to any person" contained in section 388 of the Act of 1854, and "answerable in damages" in section 54 of the Merchant Shipping Act, 1862 (3). The expressions in both the statutes mean answerable for that sum which, according to the ordinary working out of the judgment in the Admiralty Court, the owner or master of the ship would be called upon to pay; and where both ships are to blame, the sum payable is half the balance, after deducting from each other the loss sustained by each ship.

The Demetrius (4) was also referred to.

Charles, Q.C. (with him *Myburgh, Q.C.*), for the owners of the *Hector*.—The rule laid down in the House of Lords case does not apply here. The first question to be determined is, whether the shipowner is liable at all. When that has been ascertained, then section 54 of the Act of 1862 is applicable, in order to fix the limit of the amount to be paid. The House of Lords case is applicable where both ships are to blame, and where each has a claim against the other. But section 388 of the Act of 1854 relieves the shipowner from all liability where a compulsory pilot is employed. Here the navigation of the *Hector* was found to be wrong by reason of the act of the compulsory pilot. The owners of the *Hector* were therefore relieved from all liability by section 388.

Webster, Q.C., replied.

BRETT, M.R.—It seems to me that this case is not governed by the decision in the House of Lords—*The Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Company* (2). Section 388 of the Merchant Shipping Act, 1854, and section 54 of the Merchant Shipping Amendment Act, 1862, are different, and apply at different periods of the dispute between the parties. The decision in the House of Lords, as I understand it, was that section 54, which limited the liability of the shipowner, was not to be applied until the liability, irrespective of

(1) 17 & 18 Vict. c. 104. s. 388: "No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory by law."

(2) *Ante*, p. 1; Law Rep. 7 App. Cas. 795.

(3) 25 & 26 Vict. c. 63. s. 54: "The owners of any ship, whether British or foreign, shall not in cases where all or any of the following events occur without their actual fault or privity—that is to say, . . . (4) where any loss or damage is, by reason of the improper navigation of such ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise or other things whatsoever on board any other ship or boat, be answerable in damages . . . . in respect of loss or damage to ships, goods, merchandise or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage. . . ."

(4) 41 Law J. Rep. Adm. 69; Law Rep. 3 Ad. & Eccl. 523.

that statute, had been ascertained according to the ordinary rules of the Court of Admiralty.

Where, in the Court of Admiralty, there were counter-charges against two vessels for the same collision, either the two vessels were reciprocally seized by both parties in the Admiralty Court, or both the parties were reciprocally brought before the Court. There were, therefore, two actions, and each party was the plaintiff in an action. But by the practice of the Admiralty Court, which has been stated by Dr. Lushington and by all the Judges of that Court before him, the Admiralty Court always exercised a power which the common law Courts could not exercise. Where there were counter-claims in respect of the same transaction, although the actions were brought by the parties as separate actions—which they were at the commencement by reason of the seizure of the ships at different times and irrespective of each other—the Admiralty Court consolidated the two actions for the purposes of the trial, and, if convenient, tried the cross suits at the same time. But, if it was inconvenient to do so, the Court had power to try them separately. But where there were cross actions in respect of the same transaction, the Admiralty Court exercised this further power, which power the common law Courts also exercised; for having determined the liability of the two parties in the cross actions, the Admiralty Court would not issue what was equivalent to execution for each party, leaving them to settle what that should be, but issued a monition for the balance. There was, therefore, only one party who eventually was liable to pay. In construing, therefore, section 54 of the Act of 1862, which limits the liability of the shipowner to a certain amount for each ton of the ship's tonnage, it is to be borne in mind that the section was founded upon the assumption that the ship is the thing out of which the damages are to be paid, because, where a ship is seized in the Admiralty, and a decree given against the owner, all that the Court can do is to order her to be sold, and if she does not fetch the amount of the damage done to his ship, the owner only gets what the ship is worth. But where the ship would fetch more than the amount of damage done, then the section limits the liability of the ship liable to be sold to 8*l.* per ton. The House of Lords, therefore, held that that section was not to apply until after the monition, which but for that section would have gone for the whole amount, had been issued. It seems to me that that kind of reasoning is not applicable to section 388 of the Act of 1854, which is to be applied, not at the end, but at the beginning of the trial.

In my judgment the section was not wanted, but it was put into the Act of Parliament in order that there might be no doubt. Before the passing of the Act, where a pilot was put on board by compulsion, the owners were liable at common law only for their own negligence or for the negligence of their own servants. The Act of Parliament, although it provided that a shipowner was responsible for the negligence of his own servants, also provided that he should not be liable for that of a person who was put on board his ship by compulsion, and over whom he had no control. The shipowner cannot be held liable for the responsible act done by a person put on board by compulsion of law, and he is not, therefore, liable in respect of a collision which is caused solely by the fault of the pilot.

The judgments in the Admiralty, I cannot help thinking, although we have no information as to that, have always been drawn up in the same form as the one under discussion. The judgment in the case of *The Demetrius* (4) was certainly so drawn up; and I cannot see that that was an isolated case; and if the Admiralty Registry were examined, I believe it would be found that this case must have arisen over and over again.

But what happens if the statute be taken as applicable to the liability of the owners of the *Hector*? There is a collision between these two ships. Each ship, if the action was brought in the ordinary way, would seize the other into the Admiralty Court, so that there would be a cross-action. The *Augustus* has been found to blame for the collision, so that she must pay, if nothing else happens, all the damage which the *Hector* has suffered. With regard to the *Hector*, it has been found that her owners are not to blame, but that her

navigation, through the fault of the pilot, was to blame. The owners are not liable for his default, and therefore are not liable for anything to the owners of the *Augustus*. The result, then, is that the liability of the owners of the *Augustus* is declared, but the liability of the owners of the *Hector* is denied, and they are dismissed from the suit. There is, therefore, no balance to be calculated, and they are not liable for any of the damage done to the *Augustus*, the owners of which ship must proceed against the pilot and get what they can, which will be nothing. The *Hector* is, therefore, enabled to succeed. But she is here suing in the Admiralty Court, which has had a constant practice since the time of compulsory pilotage, that where in these suits for damage done to ships it is found that the navigation of the ship was wrong, although it was the wrongful act of the compulsory pilot, the shipowner can only recover half the damage. That is the way in which the judgment has here been drawn up, and it must be held to be right.

COTTON, L.J.—I must assume that this order has been properly drawn up; but the counsel for the *Augustus* have relied upon this: that section 388 of the Act of 1854 and section 54 of the Act of 1862 are the same, and that there is no difference between the expressions "being answerable to any person" and "being answerable in damages." But that is not so. Section 388 does not limit the amount which an owner is to pay when found liable; it says that he is not to be liable when the ship is under the charge of a compulsory pilot, and a loss is sustained by the act of that pilot.

But section 54, which limits the liability of the owner, is different. It assumes that the owner is liable for damages: it does not relieve him in any way from liability for damage done by the ship; it only says that, although he is liable in damages, yet he shall not be required to pay more than a certain amount in respect of that damage. As the owners of the *Hector* are not responsible for the act of the pilot, there can be no balance between the two claims for the purpose of ascertaining the limit of the amount to be paid.

It was said that the present case was governed by the decision in the House of Lords case. But that is not so; because there both ships were answerable, and it was found that there was negligence on the part of the master and the crew. The reasoning in the judgments applies only to the case where there is an interlocutory judgment for the purpose of ascertaining and fixing the amount for which the owners are answerable. Lord Blackburn there says that the proper form of decree is that followed by the Admiralty Court, and also points out that the judgment of the House of Lords is only to apply to a case where the owners of both ships are liable in consequence of the collision having been occasioned by those for whose acts they are answerable—that is, the master and the crew. If that be so, the damages for which they are liable must be divided, and the balance paid to the party to whom it is due.

But there can be no balance here, because there is not any damage for which the owners of the *Hector* are liable.

BOWEN, L.J.—I am of the same opinion. It appears to me that there is a broad distinction between section 388 of the Act of 1854 and section 54 of the Act of 1862. The latter section seems to me to assume a case in which the liability of the shipowner exists, and then prescribes the measure of damages. But section 388 of the Act of 1854 has nothing at all to do with any measure of damages. It destroys the liability of the owner, and, so far from assuming the existence of any liability of the owner, says that he shall not be liable. If that be true as regards that section, the judgment of the Master of the Rolls and that of Lord Justice Cotton must follow by a necessary chain of logic.

Application refused.

Solicitors—Stokes, Saunders & Stokes, for the owners of the *Augustus*; Pritchard & Sons, agents for Thornely & Cameron, Liverpool, for the owners of the *Hector*.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. May 4. } THE ELIN.*

Liens, Priority of—Damage—Wages earned subsequently to Collision.

The owners of a vessel who have recovered judgment against a foreign ship in an action for damage by collision have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned subsequently to the collision.

Appeal from a judgment of the Admiralty Division upon a Special Case, which raised the question whether the owners of a vessel who have recovered judgment against a foreign ship in an action for damage by collision have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned by them after the collision

The case is reported 51 Law J. Rep. P., D. & A. p. 77.

Sir R. Phillimore gave judgment for the owners of the vessel the *Paria*, which had been damaged in a collision with the *Elin*, holding that the claim of the seamen of the *Elin* for wages earned subsequently to the collision did not take precedence of the maritime lien of the owners of the *Paria* for the damage done to her.

The seamen appealed.

Phillimore, for the appellants.—The rule to be gathered from the authorities taken together is that the last maritime lien takes precedence of earlier liens. A bottomry bond takes precedence of damage done by collision; salvage takes precedence of a bottomry bond; and it is submitted that wages earned subsequently to collision ought to take precedence of all prior liens. He referred to *The Linda Flor* (1), *The Duna* (2), *The Aline* (3), *The Bold Buccleugh* (4), *The W. F. Safford* (5), *The Selina* (6), *The Union* (7), *Cargo ex Galam* (8) and *The Benares* (9).

C. Hall, Q.C., and *Stokes*, for the owners of the *Paria*, were not called upon.

BRETT, M.R.—The sole question here is, whether we are prepared to overrule the case of *The Linda Flor* (1) and that of *The Chimera* (10), and to say that the rule laid down in the case of *The Benares* (9) is wrong. That rule was followed also by the Irish Admiralty Court in the case of *The Duna* (2). It was argued that that rule was wrong, because it was asserted that it breaks through the recognised rules of the Court of Admiralty as to the priority of maritime liens. But it seems to me that those cases were decided upon a principle which is wholly independent of the rules relating to the priority of maritime liens, which have been laid down in a long series of cases in the Admiralty Court by Dr. Lushington, who never intended to break through them in the three cases referred to.

The rule was laid down by him in the case of *The Benares* (9). But the case of *The Chimera* (10) and that of *The Linda Flor* (1) were decided wholly independently of the question of the priority of maritime liens. The rule which Dr. Lushington laid down in the case of *The Benares* (9) was that the liability of the owner of a foreign ship, which has been seized in the Admiralty Court upon the ground that she had wrongly injured another ship by collision, was, subject to the limitations which have been imposed by certain Acts of Parliament, the whole value of the ship and freight. The ship was not always actually seized in the Admiralty Court, but the value of the ship and freight were paid in to be dealt with by the Court. Now that being the measure of the liability of a foreign shipowner upon the given facts in the Court of Admiralty, the question is, whether he can relieve himself from that liability by

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

(1) Swab. 309; 6 W.R. 197.
(2) 5 Law Times, N.S. 217.
(3) 1 W. Rob. 111.
(4) 7 Moore P.C. 267, 284.
(5) Lush, 69.
(6) 2 No. of Cas. 18.
(7) Lush. 128; 30 Law J. Rep. Prob. M. & A. 17.
(8) Br. & Lush. 167, 181; 33 Law J. Rep. Prob. M. & A. 97.
(9) 7 No. of Cas. Suppl. p. 50.
(10) Not reported.

allowing others to recover out of those proceeds payments—particularly wages—for which he would otherwise be liable. If the Court of Admiralty had allowed seamen to recover these wages, it would have allowed them to be recovered in relief of the foreign ship-owner. But Dr. Lushington, exercising great powers in the Court of Admiralty, and not being bound by either common law or equity decisions, came to the conclusion that it would be unjust to the owner of the injured ship if he allowed a claim in favour of the injuring ship to be realised by a payment which could be recovered *aliunde*. That seems to me to be a matter wholly independent of the question of the priority of maritime lien; and the principle upon which it is put is, that it is just to allow the injured owner to seize the ship in the Admiralty Court, but that it would be unjust to give such an indulgence to the owner of the injuring ship. The question is, whether we can see any principle upon which we can hold that those decisions which have existed for so many years are wrong. They do not break any of the rules which relate to the priority of maritime liens; all those rules are left to stand. Is there, therefore, anything unjust in the grounds of the decisions? I am not prepared to say that there is. With regard to the alleged hardship upon the mariners, it merely comes to this, that they are not allowed, in addition to their remedy on their contract, to avail themselves of the fact that the ship has been seized in the Court of Admiralty. There is nothing unjust in that. But I do see that as between the two shipowners an opposite result would be that which seems to me to be an injustice to the injured ship and a wrongful indulgence to the injuring ship. I am not, therefore, prepared to overrule the decisions of Dr. Lushington, which have been followed by the Irish Admiralty Court in the case of *The Duna* (2).

COTTON, L.J.—The case of *The Linda Flor* (1), which was decided in 1857, is exactly in point. There was an earlier decision—*The Chimera* (10)—which was decided in 1852; but that does not appear to have been the earliest case in which Dr. Lushington laid down the principle which he there acted upon, for the principle was laid down in an earlier case—*The Benares* (9). I do not think that, after the time which has elapsed since those cases were decided, we can depart from the rule which has been laid down by Dr. Lushington.

BOWEN, L.J.—I agree.

Appeal dismissed.

Solicitors—Stokes, Saunders & Stokes, for the owners of the *Paria*, plaintiffs; Robert Greening, for the seamen.

ADMIRALTY. 1883. April 3, 5.

THE BIANCA.

Practice — Collision — Third Party — Order XVI. rules 18 *and* 21*—Judicature Act*, 1873.

When a third party has been served by a defendant with a notice claiming indemnity under Order XVI., rule 18, *the Court, in the exercise of its discretion, will decline to give directions under rule* 21, *if it appears that questions will probably arise between the defendants and the third parties totally distinct from those between the plaintiffs and the defendants.*

This was an action, for damage by collision, brought by the owners of the steam-tug *Gamecock* against the owners of the ship *Bianca*. On the 15th of January, 1883, the *Gamecock* was lying at anchor in the river Mersey, above the entrance to the Canning Half-tide Basin, when the *Bianca*, in tow of the steam-tug *Rescue*, came out of the Basin, and proceeded to cross the river to the Alfred Docks, on the Birkenhead side. The tide was flood, and there was a light wind from the southward. As the *Bianca*, in tow of the *Rescue*, was thus crossing the river, she was carried by the tide into collision with the *Gamecock*. The statement of claim

alleged negligence on the part of the *Bianca*.

The defendants, in their statement of defence, alleged that the *Gamecock* was improperly and negligently anchored, so as to be an obstruction and source of danger to vessels proceeding out of the basin on a flood tide; and was so anchored in breach of the rules and regulations prescribed by the Mersey Docks and Harbour Board for vessels anchoring in the neighbourhood of the entrance to the Basin. The statement of defence also contained other allegations of negligence on the part of the *Gamecock*, and the following paragraph:—

"In the alternative, the defendants say that the said collision was due to the negligent and improper navigation of the *Rescue*, and to the disobedience of those on board of her to the orders of those on board of the *Bianca*."

The defendants, having obtained the necessary leave, served the owners of the *Rescue* with a notice under Order XVI. rule 18, claiming indemnity against them.

Roscoe, for the defendants, applied for directions as to the mode of having the question in the action determined under Order XVI. rule 21 — *The Cartsburn* (1).

W. R. Kennedy, for the plaintiffs.—The third parties should be dismissed from the proceedings, as the plaintiffs would otherwise be embarrassed. Questions would arise between the defendants and the third parties entirely distinct from those between the plaintiffs and the defendants. He cited *The Cartsburn* (1), *Treleaven* v. *Bray* (2), *The Swansea Shipping Company* v. *Duncan* (3), *Horwell* v. *The General Omnibus Company* (4), *Schneider* v. *Batt* (5), *Piller* v. *Roberts* (6) and *The Wye Valley Railway Company* v. *Howes* (7).

Phillimore, for the third parties, objected to directions being given.

Roscoe, in reply.

Cur. adv. vult.

BUTT, J. (on April 5).—In this case, which was before me on Tuesday, I have looked through the authorities that were cited, and the conclusion to which I have come is, that there are valid reasons why, in the exercise of my discretion, I should decline to give any directions under Order XVI. rule 21. Assuming that I have power to give such directions, I see no sufficient reason in this case why, in the face of the plaintiffs' opposition, I should embarrass the issue between them and the defendants with any further question as to the rights and liabilities of the defendants and the third parties *inter se*.

It is at least probable that there will arise in the case (for I have read the pleadings) questions between the defendants and the third parties, totally different and distinct from those between the plaintiffs and the defendants.

Under these circumstances the third parties, the owners of the steam-tug *Rescue*, must be dismissed from these proceedings.

Solicitors—Williamson, Hill & Co., agents for Thompson & Shatwell, Liverpool, for plaintiffs; W. W. Wynne & Son, agents for H. Forshaw & Hawkins, Liverpool, for defendants; Toller & Sons, agents for Stone, Fletcher & Hull, Liverpool, for third parties.

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(1) 49 Law J. Rep. P., D. & A. 48; Law Rep. 5 P. D. 35.

(2) 45 Law J. Rep. Chanc. 113; Law Rep. 1 Ch. D. 176.

(3) 45 Law J. Rep. Q.B. 638; Law Rep. 1 Q.B. D. 644.

(4) 46 Law J. Rep. Exch. 700; Law Rep. 2 Ex. D. 365.

(5) 50 Law J. Rep. Q.B. 525; Law Rep. 8 Q.B. D. 700.

(6) Law Rep. 21 Ch. D. 199.

(7) 50 Law J. Rep. Chanc. 225; Law Rep. 16 Ch. D. 489.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. April 25. } WARDROP AND OTHERS *v.* THE OWNERS OF THE LEON XIII.*

Foreign Ship—Action for Wages and Wrongful Discharge—Admiralty Jurisdiction—Stay of Proceedings—Protest by Foreign Consul—Discretion of Admiralty Court to entertain Action.

The plaintiffs, who were British subjects, shipped as engineers in a Spanish ship on a voyage from Liverpool to Manilla and back. The owners and master of the ship were Spanish. The articles, which were signed by the plaintiffs, were in the Spanish language and form, but did not contain any provisions as to the tribunal before which disputes were to be settled. During part of the voyage the plaintiffs were imprisoned and kept in confinement by the master, for alleged insubordination, until the ship arrived at Manilla, where they were discharged, and ultimately returned to Liverpool.

The plaintiffs then brought an action in the Admiralty Court against the owners of the ship to recover wages and compensation for wrongful discharge. Notice of action was given to the Spanish consul at Liverpool, who entered a protest, which was supported by affidavit, against the Court exercising jurisdiction over the subject-matter of the action. The protest and affidavit stated that, according to Spanish law, the plaintiffs could not proceed elsewhere than before a Court in Spain, or, if the vessel was abroad, before a Spanish consul. The Court of Admiralty dismissed the action:—

Held, *that the plaintiffs must, under the circumstances, be considered to be subjects of the country to which the ship belonged; and that although the jurisdiction of the Admiralty Court could not be ousted even by express agreement, yet the Court had a discretion to exercise as to whether it would entertain the action or refer it to be tried before the Spanish consul, but that inasmuch as the plaintiffs had not shewn that the Judge of the Admiralty Court had wrongly exercised his discretion in dismissing the action, the Court of Appeal saw no reason for interfering with his decision.*

The Nina (37 Law J. Rep. Adm. 17) *and* The Golubchick (1 W. Rob. 143) *followed.*

Appeal from a decree of Sir R. Phillimore dismissing an action brought against the owners of the steamship *Leon XIII.* for wages and compensation for wrongful discharge.

In November, 1881, the plaintiffs were engaged at Liverpool to serve on board the Spanish vessel *Leon XIII.*, the owners and master of which were Spanish, as first, second and third engineers respectively, for a voyage from Liverpool to Manilla and back.

The plaintiffs shipped on board the *Leon XIII.*, but no articles were signed until she arrived at Barcelona. The articles did not contain any provisions as to the tribunal before which disputes were to be settled.

The plaintiffs served on board the ship until the 21st of December, 1881, when, the ship being then at Aden, the master, as the plaintiffs alleged, wrongfully imprisoned and kept them in confinement until the ship arrived at Manilla, about the 27th of March, 1882, where he discharged them, and they subsequently returned to Liverpool, being unable to obtain any other employment.

Notice of the action was given to the Spanish consul in Liverpool, who thereupon intervened and protested against the action proceeding.

The protest, so far as material, stated that the ship was a Spanish ship, and was owned by Spanish subjects; that the articles of agreement were in the Spanish language, were in the ordinary form prescribed by the Spanish law, and were signed by the plaintiffs before the duly authorised Spanish officials at Barcelona; that the plaintiffs, by the terms of the agreement and by the Spanish law, submitted themselves to that law, by the provisions of which they were restricted from taking proceedings against the vessel, or her owners, in countries other than Spain or her colonies, or Spanish consuls, and were required to submit any dispute or claim such as that raised in this action to the

* *Coram* Brett, M.R., and Bowen, L.J.

Spanish authorities in Spain or, in foreign countries, to the Spanish consul.

The protest further stated that Spain conceded certain privileges to British ships by allowing all acts of neglect, misdemeanour or crime committed on board a British ship in Spanish waters or ports, if they did not affect the public peace, to be judged by the English consuls or the tribunals in England or her colonies, even though there might be Spanish subjects amongst the crew compromised in the affair.

The protest also stated that the plaintiffs had been guilty of insubordination, for which offence they had been tried by the competent Spanish tribunal at Manilla, and the sentence had been communicated to the British consul there, and to the parties interested. Under these circumstances the consul protested against the exercise of the jurisdiction of the Admiralty Division to proceed with the action, upon the ground that the case had already been tried before a Spanish tribunal, and that if, under similar circumstances, such a case had occurred on board a British vessel in Spain, the Spanish authorities would have left the affair entirely under the jurisdiction of the British authorities.

The consul, in an affidavit made in support of the protest, also stated that he was, and always had been, ready and willing to deal with all cases of claims of a similar description to that in this action, but that the plaintiffs had never applied to him to deal with the matters in dispute.

The plaintiffs made affidavits in which they denied that they had signed any articles of agreement by which they submitted themselves to the provisions of the law of Spain, or of the law of any country other than England; or that they had contracted not to take proceedings against the vessel or her owners in the Courts of England, or that they had contracted not to submit themselves or their rights to any tribunal other than the English Courts.

The plaintiff Wardrop also made an affidavit, in which he stated that he and the other plaintiffs were kept in close confinement and subjected to great hardships on board the ship, from the 21st of December, 1881, to the 27th of March, 1882, without any reason whatever except the unexplained arbitrary exercise of the will of the master. It was also stated that when the ship arrived at Singapore on the 15th of March, efforts were made on behalf of the plaintiffs to have them brought before the English Court at Singapore in order that that Court might decide upon the propriety of the imprisonment; but that, although a writ of *habeas corpus* was issued by that Court, the master of the ship refused to bring the plaintiffs before the Court, and subsequently sailed away during the night from Singapore and kept the plaintiffs still in confinement until the ship arrived at Manilla; and that the master was sentenced by the Chief Justice of Singapore to six months' imprisonment for such conduct.

A summons to stay proceedings was taken out by the defendants and was referred to the Court by the District Registrar at Liverpool.

At the hearing, Sir R. Phillimore made a decree dismissing the action.

The plaintiffs appealed.

J. P. Aspinall and *French*, for the appellants.—The judgment of the Court below is wrong, because it is based upon the assumption that this case is on all fours with the decisions in *The Nina* (1) and *The Golubchick* (2). The case of *The Nina* (1) differs from the present case in that there the agreement to resort to the foreign tribunal was express; whereas here such an agreement can only be inferred. It is competent for a person to contract himself out of any rights that he may have; but the plaintiffs have not here expressly contracted themselves out of their right to sue in the English Courts. The inference here is that, by Spanish law, a person who signs a Spanish agreement becomes subject to the Spanish law, which law takes away his right to sue elsewhere than in a Spanish Court. No doubt, as regards the construction of a contract, the law of the place where the contract was made prevails; but, as regards the enforcement of the contract, the law of the country where it is sought to be enforced

(1) 37 Law J. Rep. Adm. 17; Law Rep. 2 P.C. 38.

(2) 1 W. Rob. 143.

must prevail. As regards the meaning of the contract the Spanish law would be applied; but, as regards the procedure, that is governed by the law of the country in which the action is brought.

In the case of *The Nina* (1) the agreement expressly provided that all disputes were to be entertained in the Portuguese Courts; but here it is doubtful where any disputes between the sailors and the owners are to be settled. In the case of *The Golubchick* (2) Dr. Lushington refused, in the exercise of his discretion, to stay the proceedings, upon the ground that it was obvious that the voyage was to be considered as having terminated in this country, and that therefore the Court was bound to exercise its jurisdiction and try the action. Even treating the plaintiffs here as Spanish subjects, the Court should consider, first, that the voyage terminated here; and, secondly, that there is a doubt as to the place where the remedy is to be enforced. Under the peculiar circumstances of this case the Court, in the exercise of its discretion, ought to say that the Admiralty Court, and not the Spanish consul at Liverpool, is the proper tribunal to determine the present case—*The Jerusalem* (3), *Sigard* v. *Roberts* (4), *Hulle* v. *Heightman* (5), *Limland* v. *Stephens* (6), *The St. Oloff* (7), *Bucker* v. *Klorkgeter* (8), *Graham* v. *Hoskins* (9) and *Davis* v. *Leslie* (10) were also referred to.

R. T. Reid, *Q.C.*, and *Phillimore*, for the defendants, were not called on.

BRETT, M.R.—In this case an action has been brought against a Spanish ship in the Admiralty Court by certain engineers who had served on board the defendants' ship, to recover wages due, and compensation for wrongful dismissal. A protest was then presented by the Spanish consul at Liverpool, in which it was asserted that the dispute ought to be tried, not in the Admiralty Court, but by the Spanish consul; and though there is some alleged difficulty as to what consul is meant in the protest, it seems to me clear that it means the Spanish consul at Liverpool—that is to say, the consul at the port where the ship was seized and the dispute arose. The consul's protest was supported by his affidavit, and both protest and affidavit allege these grounds why the case should not be tried in the Admiralty Court: that although the plaintiffs are British sailors, yet they entered into a contract with the master of a Spanish ship, and that it was made not in this country, but in a Spanish port. It seems to me that this latter allegation is immaterial. Although the plaintiffs are Englishmen, they have entered into a contract to serve on board a Spanish ship, and nowhere else, so far as the contract is concerned. The protest and the affidavit allege facts which are evidence to shew that the contract is a Spanish contract, that it is in the Spanish language, and is signed by sailors who are about to serve on board a Spanish ship, and that it is in the form of Spanish articles—all being strong, indeed I may say conclusive, evidence to shew that the contract was a Spanish contract of service. The affidavit of the consul then goes on to state that a Spanish seaman serving under such articles is liable, in case of a dispute, to have it settled by Spanish law; and that, by Spanish law, the plaintiffs can only have the dispute settled before a Spanish Court, or a Spanish consul abroad, meaning thereby, as I have said, the consul at the place where the dispute arises. To this protest and affidavit no answer by affidavit has been made—that is, no sworn answer that the Spanish consul's statement of the Spanish law is an erroneous statement of that law. Under these circumstances, and with that evidence before him, the learned Judge of the Admiralty Court held, in obedience to the decisions of Dr. Lushington in the case of *The Golubchick* (2), and of the Privy Council in the case of *The Nina* (1), that he had, notwithstanding the protest, jurisdiction to try the action; but that he had a discretion to exercise in respect of it, namely, whether he should try it in the Court of Admiralty or refer the matter to be tried by the Spanish consul at Liverpool. The plaintiffs now

(3) 2 Gallison, 191 (Amer.).
(4) 3 Esp. 71.
(5) 4 Esp. 75.
(6) 3 Esp. 269.
(7) 2 Peter's Adm. Rep. 428 (Amer.).
(8) Abbott's Adm. Rep. 402 (Amer.).
(9) Olcott's Adm. Rep. 224 (Amer.).
(10) Abbott's Adm. Rep. 123, 134 (Amer.).

appeal against that decision, upon the ground that the learned Judge had erroneously exercised his discretion. The learned Judge, in dismissing the action, stated that he gave his decision first of all upon the ground that these men must be considered *pro hac vice* to be subjects of that country to which the vessel belongs; and, secondly, upon the ground that he could see no difference between this case and the principles of law acted upon in the case of the *Nina* (1) and that of *The Golubchick* (2). It is clear that the Court, even though there may be an express provision in the articles that the seamen bind themselves to go before the tribunals of the country to which the ship belongs, is not ousted of its jurisdiction. But it is equally clear that, though the Admiralty Court has the jurisdiction, yet it will in each particular case exercise its discretion and consider whether it will entertain the action or refer it to a foreign tribunal. It seems to me that the case of *The Nina* (1) lays down this rule as a guide—that if all that the foreign consul does is to protest, without giving any reasons, then the Court of Admiralty in the exercise of its discretion will proceed with the action. If he does give reasons, then the Court of Admiralty will enquire into them, and allow them to be contradicted if that can be done. But when the Court has come to a conclusion as to what are the facts, it will proceed to exercise its discretion in each particular case whether it will proceed or not. In the case of *The Nina* (1) the circumstances were that certain English sailors entered into articles on a Portuguese ship, and that under those articles, I will assume, they undertook that they would be bound by the decision of a Portuguese tribunal. But it is to be noticed that there was not any negative stipulation in these articles that they would not apply to an English Court for redress. Then there was an affidavit by the consul in support of the protest, which stated that by Portuguese law these sailors could only proceed before a Portuguese tribunal. The Court of Admiralty thereupon held that, although not bound to abjure its jurisdiction, yet, under the circumstances of such a protest, it would decline to go further with the matter, and would release the ship. The Court held that the fact of the sailors being British seamen would not cause them to entertain the action, if, being British seamen, they had bound themselves by a foreign contract to serve on board a foreign ship. That case seems to support the proposition laid down by the learned Judge here, that when British seamen enter into a contract of service with a Spanish ship, which has Spanish papers and a Spanish flag, they are to be taken to be, *pro hac vice*, Spanish subjects. Therefore the case is to be decided as if these men were Spanish sailors serving on board a Spanish ship and under Spanish articles; and the consul says that in such a case they can only, by the law of Spain, complain to a Spanish Court, or, if abroad, to a Spanish consul; and he therefore submits that the Court should not exercise its jurisdiction. In the case of *The Nina* (1) the Court acted in accordance with the view of the consul; so here, when the learned Judge says that he abides by *The Nina* (1), he means to say that, applying the principles there laid down, these engineers are to be considered as Spanish sailors; and that in the face of the protest, which he thinks a fair and proper one, the Court will not exercise its jurisdiction. It is then said that the learned Judge has exercised his discretion wrongly. The rule as regards this point in the Court of Appeal is that the appellant must shew that the Judge has erroneously exercised the discretion on wrong principles, or that he has acted so differently from what is the view of the Court of Appeal that they are justified in saying he has exercised it wrongly. I cannot see that the learned Judge has acted upon any wrong principle or done anything in the exercise of his discretion which is so unjust or unfair as to entitle us to overrule his discretion. He acted in strict accordance with the principles laid down in the case of *The Nina* (1), and I am of opinion that the judgment of the learned Judge upon the materials which were before him was strictly correct. Then it is suggested that the materials before the learned Judge were erroneous, and that the consul's statement of law was an incorrect one of Spanish law. Perhaps if this had been distinctly proved before us now, it may be that upon terms we might have altered

the decision of the learned Judge; but no materials have been brought forward to shew that the consul's statement of the Spanish law is erroneous; and although a long period of time has elapsed since the hearing of this case in the Court below, no excuse has been given why an affidavit has not been obtained. The Court is not bound to take the statement of counsel, as against that of the Spanish consul, as to the contents of the Spanish code. The plaintiffs must go before the Spanish consul at Liverpool. I am of opinion that this appeal must be dismissed.

BOWEN, L.J.—I am of the same opinion.

Appeal dismissed.

Solicitors—Pritchard & Sons, agents for Yates, Son & Stananought, Liverpool, for plaintiffs; Gregory & Co., agents for Hill, Dickinson & Co., Liverpool, for defendants.

PROBATE. 1883. April 3. } MELLOR *v.* DYSON AND OTHERS.

Administration—Creditor of Executrix de son tort.

A by his will appointed his wife, B, and C, as his executrix and executors, and named his wife universal legatee for life. After his death, B and C renounced probate, and the widow, without taking out probate, sold a portion of the estate, and paid the proceeds into a bank in her own name. The widow having died intestate, letters of administration, with the will of A annexed, were granted to D, his brother.

The next-of-kin of the widow having been cited, and not having appeared, the Court made a grant of letters of administration of her estate to D, as a creditor.

William Mellor, of Ashton-under-Lyne, deceased, by his will, appointed his wife Mary Mellor, and William Taylor and Thomas Newton, as his executrix and executors, and also named his wife universal legatee for life.

William Taylor and Thomas Newton renounced probate, and Mary Mellor, without having taken out probate, sold certain portions of her husband's property, and placed the proceeds at a bank in her own name.

Mary Mellor died intestate on the 4th of April, 1881, leaving her two brothers her sole next-of-kin. At the time of her death the sum of 94*l.* 19*s.* 4*d.*, a portion of the proceeds of her husband's estate, remained in her name at the bank.

On the 15th of September, 1881, letters of administration, with the will annexed of William Mellor, were granted to his brother John Mellor, who afterwards issued a citation calling upon the two brothers of Mary Mellor to accept or refuse a grant of administration of her estate. To this citation no appearance had been entered.

Bayford moved for a grant of letters of administration of the estate of Mary Mellor to John Mellor, as a creditor.

THE PRESIDENT (SIR JAMES HANNEN).—The next-of-kin of the widow not having appeared after citation to protect their own interests, I think the administrator with the will annexed of the husband may be considered as a creditor of the widow, and entitled as such to a grant of administration of her estate.

Solicitors—Bower, Cotton & Bower, agents for H. J. Jackson, Ashton-under-Lyne.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. June 7. } THE HOPE.*

Solicitor and Client—Action for Seaman's Wages—Lien for Costs—Compromise by Parties without Intervention of Plaintiff's Solicitor—Collusion.

An order will not be made upon a defendant to pay to the plaintiff's solicitor the costs of an action for seaman's wages which has been settled by the parties without the intervention of the plaintiff's solicitor, unless he can clearly establish collusion between the parties to deprive him of his costs.

Appeal from an order of Sir R. Phillimore that the defendants should pay to the plaintiffs' solicitors the taxed costs of the action.

The action was brought against the owners of the *Hope* by two seamen to recover wages, and also for damages for breach of contract of the ship's articles.

The writ was issued on the 17th of January, 1883, and on the 19th the defendants' solicitors gave an undertaking to appear. On the 22nd the plaintiffs received 5*l.* each, in full discharge of their claims; and on the 2nd of February an appearance was entered.

The plaintiffs' solicitors then applied for and obtained an order at chambers that the defendants should pay their taxed costs, upon the ground that the settlement had been effected by the defendants behind the back of the plaintiffs' solicitors. Subsequently an application made on behalf of the defendants to Sir R. Phillimore in chambers, that the time for appealing might be extended, and for leave to appeal direct to the Court of Appeal instead of first appealing to the Admiralty Division, was refused. The Court of Appeal, upon an *ex parte* application, gave the defendants leave to appeal.

Bigham, for the defendants.—This order ought not to have been made. It must be shewn as a matter of fact that the object of the compromise was to defeat the solicitors' lien. There is no evidence to shew that the compromise was fraudulent, or that there was collusion between the plaintiffs and the defendants—*Brunsdon* v. *Allard* (1) and *Sullivan* v. *Pearson* (2).

Nasmith, for the plaintiffs' solicitors.—The Court, where a solicitor is not fairly dealt with, will give him his costs. There is sufficient evidence to shew that the compromise here was made with intent to injure the plaintiffs' solicitors, and to deprive them of their lien for costs. The fact that the plaintiffs were sailors, who are generally without any means, is to be taken into consideration. There is sufficient evidence of collusion between the parties to support the order.

[BRETT, M.R.—*Nelson* v. *Wilson* (3) shews that a clear case of collusion must be made out.]

Clark v. *Smith* (4) was also referred to.

BRETT, M.R.—We differ from the order of Sir R. Phillimore, upon the ground that he took a wrong view of the law in holding that if a compromise is made between the parties to the cause without the knowledge and acquiescence of the plaintiffs' solicitors, the defendants should pay the plaintiffs' solicitors' taxed costs. There was strong evidence to shew that the compromise was made without the knowledge or acquiescence of the plaintiffs' solicitors, and that the defendants knew that the plaintiffs had employed solicitors. The learned Judge acted upon a wrong principle. The cases which have been cited shew that the mere fact that a compromise has been effected without the knowledge of the solicitor is not sufficient; but that it must be further shewn clearly that there was the intention in the minds of both of the parties to deprive the plaintiffs' solicitors of their lien for their costs. It seems to me that in this case there is no evidence of such collusion, or that it was in the minds of the defendants

* *Coram* Brett, M.R.; Lindley, L.J., and Fry, L.J.

(1) 2 E. & E. 19; 28 Law J. Rep. Q.B. 306.
(2) 38 Law J. Rep. Q.B. 65; Law Rep. 4 Q.B. 153.
(3) 6 Bing. 568; 8 Law J. Rep. C.P. 226.
(4) 6 Man. & G. 1051; 13 Law J. Rep. C.P. 97.

to deprive the plaintiffs' solicitors of the fruits of what they had done. We are asked to say that that is the necessary inference to be drawn from a settlement of this kind having been made with these two sailors. But there is no evidence at all as to that. This case, therefore, has not been brought within the rule laid down in the cases which have been cited.

LINDLEY, L.J.—I also think that this order must be discharged. I do not think that there is any difference in the principles to be applied in the Admiralty Division and in the other divisions of the High Court. It seems to me that there is not any rule or practice which prevents parties effecting a compromise when they appear by their solicitors, and that they are not bound to compromise through their solicitors. Therefore a litigant who employs a solicitor in the ordinary way can compromise the action; but this principle or rule has been engrafted upon that, namely, that the compromise must be honestly effected. The general rule is stated with sufficient accuracy in *Archbold's Practice* (5), where, after referring to the Solicitors Act, 1860 (23 & 24 Vict. c. 127), s. 28, which enables the Court to make a charging order upon property recovered or preserved through the instrumentality of the solicitor, it is stated that "a solicitor has also, it is said, a lien for his costs upon a judgment recovered by his client, or upon money or costs awarded or ordered to be paid to him in a cause in which the solicitor was employed; and this even though the client had previously become a bankrupt. This lien, however, is in truth merely a claim to the equitable interference of the Court." Then it runs on thus, which I think is right, that "the Court will exercise this equitable interference where the solicitor has given the opposite party or his solicitor notice of his lien, and that he claims the amount payable to his client to be paid to him in the first instance; in which case the opposite party will at his peril pay the client or release the claim, or compromise it without the assent of the solicitor. So the Court will exercise it, though no such notice has been given, in cases where it is clearly made out that there has been some collusion or fraudulent conspiracy between the parties to cheat the solicitor of his costs. But unless such notice be given, or there has been such collusion or fraudulent conspiracy, the client, although he sues *in forma pauperis*, may compromise with the other party and give him a release without the intervention of his solicitor." In support of every one of those propositions a number of authorities are cited. Here there is no evidence that it was the intention of the parties to defeat the plaintiffs' solicitors of their lien for their costs.

FRY, L.J.—It appears to me that the law which governs this case was correctly laid down by Chief Justice Tindal in *Nelson v. Wilson* (3), to the effect that "it is undoubtedly competent for the party to settle the case without the intervention of his attorney; and if the attorney proceeds in order to secure his costs, he is bound to make out a clear case of fraud between the plaintiff and defendant to deprive him of such costs." In my judgment, no such clear case of fraud has been made out in this case. The order was therefore wrong.

Appeal allowed.

(5) 13th ed. pp. 142, 143.

Solicitors — Speechly, Mumford & Landon, agents for J. W. Carr & Tomkies, Liverpool, for plaintiffs; W. W. Wynne & Son, agents for H. Forshaw & Hawkins, Liverpool, for defendants.

ADMIRALTY.
1883.
April 28, 29,
May 2.

THE MARGARET.

Collision—Rules for the Navigation of the Thames, rule 23—*Coming to Points.*

A steamship coming out of a dock, above the pitch of one of the points specified in rule 23 *of the Rules for the Navigation of the Thames, but on the bend of the river forming the point, and proceeding down the river against the tide, came into collision off the point with another steamship which was coming up with the tide*:—Held, *that under the circumstances rule* 23 *did not apply.*

The Libra (Law Rep. 6 P.D. 139) *distinguished.*

This was an action for damage by collision brought by the owners of the steamship *Clan Sinclair* against the owners of the steamship *Margaret.*

On the 9th of March, 1883, the *Clan Sinclair*, a screw steamship of 1,911 tons register, left the South West India Dock, and proceeded down the river against the tide. When about off the point, she came into collision with the steamship *Margaret*, which was coming up with the tide. It appeared that the *Clan Sinclair* was about to round the point under a port helm when the *Margaret* was first seen, and that her engines were thereupon reversed and her way practically stopped before the collision.

The statement of claim attributed blame to the *Margaret* for several acts of negligence therein specified.

The statement of defence and counterclaim, amongst other charges, contained the following paragraph:—

"Those on board the *Clan Sinclair* disobeyed rule 23 of the rules and by-laws for the navigation of the river Thames."

At the close of the evidence, Butt, J., intimating that he only wished to hear counsel for the *Clan Sinclair* as to the application of rule 23, called attention to the case of *The Libra* (1).

Myburgh, Q.C. (with him *Charles Russell, Q.C.*, and *Hollams*), for the *Clan Sinclair*.—Rule 23 as to rounding points does not apply. To comply with the words "before rounding," the *Clan Sinclair* would have had to stop off the South West India Dock, and even there she would be on the round of the point. How can it then be said that she must wait before rounding?

Charles Hall, Q.C. (*Phillimore* with him), for the *Margaret*.—The *Clan Sinclair* did not comply with rule 23 as interpreted by the Court of Appeal in the case of *The Libra* (1). If there had been a proper look-out the *Margaret* would have been seen sooner, and the *Clan Sinclair* would then have been able to obey the rule and wait above the point. (He then proceeded to argue that the *Clan Sinclair* was alone to blame on the other facts in the case.)

Myburgh, Q.C., was not called upon to reply.

BUTT, J.—In considering this matter it is important to remember that these are two ships of very different sizes. The *Margaret* is a comparatively small steamer of 255 tons net; the *Clan Sinclair* is a screw steamer of 1,911 tons net, and she is 355 feet long between the perpendiculars. The latter is the ship which comes out of the South West India Dock practically where the curve of Blackwall Point begins, and she has to navigate down against the flood tide, having a tug to assist her. The first and possibly the most serious point that is made against her is this: it is said that whatever else there may be in the mode in which these vessels were navigated, the *Clan Sinclair* must be held to blame for disobedience of the 23rd rule of the Rules and Bye-laws for the Navigation of the River Thames. It is said that she broke that rule which provides that "steam vessels navigating against the tide shall, before rounding Blackwall Point [for I leave out all the other points] ease their engines, and wait until any other vessels rounding the point with the tide have passed clear." Now this vessel had never had her engines going other than at an extremely easy rate from the time she got into the river, and therefore, in one sense at all events, she

(1) Law Rep. 6 P.D. 139.

The Margaret, Adm.

had eased, and she was going down very slowly. But then it is said that is not sufficient. It has been laid down, it is said, in the Court of Appeal, that the meaning of the words of that rule are that a vessel going down against the tide must ease and bring herself to a standstill, or so far to a standstill as this, that the vessel coming up shall have come round the point and have passed her (that is, the vessel going down) before she has reached the point. The present Master of the Rolls lays down the construction to be put upon that rule in these words: "When it is likely that they"—that is, the two vessels—"may meet on the point"—that is, as I understand it, anywhere in the bend where there is a serious curve—"the vessel which is going against the tide shall wait. I think the meaning is that she shall so far check her speed as to prevent her coming up to the point at the same time when the other vessel would come there. The vessel going against tide is not only to wait until the other has passed the point, but to wait until the other has passed her." Now that is the interpretation put upon this rule in the Court of Appeal, and by one of the Judges of the Court of Appeal who of all others is most experienced in cases of this kind, and had I not liked the decision in this case, but had I entertained any doubts as to its accuracy, I should feel myself bound explicitly to follow it. But as a matter of fact I have no hesitation about the matter, for I think it is entirely in accordance with the true construction of the rule, and in dealing with this case I am not going to depart by a hair's breadth from what is there laid down. But there is another question which arises, which is this—Does this rule 23 apply to the circumstances of this case? The rule clearly contemplates two vessels in different reaches, the one coming down and the other coming up, sighting each other across the point, or if not across the point, at all events at a time when one vessel is in one reach and the other in the other; and it contemplates the vessel which has the tide against her, stopping in the reach where she is until the other has passed her. The words of the rule begin in this way: "Steam vessels navigating against the tide shall, before rounding the point"—that is to say, it assumes the case of vessels in different reaches, and the measures are to be taken before coming to the point. Now the peculiarity in this case is that this large vessel the *Clan Sinclair* has come out of the South West India Dock, and although I do not say she comes out on the pitch of the point, or anything like it, yet she does come out in a position where she was originally on the bend, and where the river has begun to trend round; and unless she goes astern up the river towards London, instead of pursuing her way seawards, she can never get into the position contemplated by the rule. She cannot stop above the point altogether till the vessel coming up has rounded and passed clear of her. She is not within the letter of the rule, and I do not think she is within the spirit of the rule. But it may be that if she is not in a position to comply entirely and completely with the prescription of the rule, she may still be bound, in the position in which she finds herself, to do what she can to render obedience to that rule—that is to say, to ease and to wait. She cannot, as I pointed out, without going astern, wait in the reach above the bend; the nearest compliance she can effect with the rule is to go very easy, and wait all she can in the position in which she finds herself. And if the *Clan Sinclair* did that, I think she will have given as much compliance and as much effect to the rule as she could do. Now I think, for the reasons which I will give directly, she did that. I think it is clear that those in charge of her had the rule present to their minds at the time, and that they did what they could to comply with it. Now let us consider for a moment, that being their intention, what they did to carry out that intention. It appears that the vessel had little way on her from the first, and that she materially reduced it, and had brought herself almost to a standstill at the time when this collision happened; and that is no less apparent from the strong evidence given on her behalf, than from the bulk of the evidence adduced by those who represent the *Margaret*. One must not forget one thing. It is suggested that this vessel might have stopped almost immediately

outside the South West India Dock entrance; but a large steamer 355 feet long, and of the tonnage this vessel is, cannot afford to lose way and get out of command in such a place as the river at Blackwall Point. And although she had a tug in attendance to assist her, it is almost a necessity that she should keep her engines moving, and I think, and the elder brethren agree with me in this, that that is about all she did on this occasion. [The learned Judge then referred to the evidence as to the speed of the *Clan Sinclair*, and the nature of the blow inflicted on the *Margaret*, and expressed his opinion that the way of the *Clan Sinclair* was practically stopped at the time of the collision.] We think, therefore, that as far as a compliance with rule 23 is concerned, there was as much compliance with it as was possible for this big steamer, coming out where she did, and not having been navigated down the reach above; and that she was not in fault for any disobedience to that rule. But then it is said rule 22 does not conflict with that. It does not necessarily conflict with it, but it would be rather hard to say that a vessel is not only to stop herself dead in the water, but also to use her helm effectually. I am not venturing to find fault with what has been said in the case of *The Libra* (1), but I think it is clear that those on board the *Clan Sinclair* thought it their duty to bring her as near to a standstill as possible. They ported their helm at the same time—and certainly there is no breach of rule 22 in porting your helm, because, if you can act under it at all, that is what you are bound to do. Therefore in that respect we do not think any blame whatever attaches to the *Clan Sinclair*. [The learned Judge then proceeded to deal with the other facts in the case, and having found that the collision was caused by the reckless navigation of the *Margaret*, pronounced her solely to blame.]

Solicitors—Hollams, Son & Coward, for plaintiffs; Freshfields & Williams, for defendants.

ADMIRALTY.
1883.
May 26, 28;
June 26.

THE YAN YEAN.

Salvage—Misconduct of Salvors—Forfeiture of Salvage Reward.

A vessel with her cargo was saved from a position of danger by salvors, but, instead of being taken into a secure berth, was anchored where it was, in the opinion of the Court, negligent and unskilful to place her. The vessel afterwards, from the force of a gale which came on, dragged her anchor and sank. Considerable expense was incurred in raising her, and the cargo was seriously damaged:—Held, *that as the misconduct of the salvors resulted in a loss which was not clearly less than that from which the vessel had been saved, the salvors were not entitled to salvage reward.*

This was an action brought by the owners, master and crew, of the steamship *Kirkstall*, against the owners of the steam barge *Yan Yean*, her cargo and freight, in respect of salvage services rendered to them in the Bristol Channel on the 3rd of April, 1883.

The defendants pleaded, amongst other things, that the plaintiffs were not entitled to salvage remuneration, on the ground that they had been guilty of misconduct, which had resulted in the sinking of the *Yan Yean* and her cargo; and by reason of which the defendants had been put to great expense in raising and repairing the vessel, and in recovering and reconditioning her cargo. They also counterclaimed 2,000*l.* for the damage so sustained, and the expenses incurred.

The facts of the case, as far as they are material, are fully set out in the judgment.

Phillimore appeared for the salvors.

Charles Russell, Q.C., and *W. R. Kennedy*, for the defendants.

The following authorities were cited—*The Atlas* (1), *The Perla* (2), *The Marie* (3), *The Charles Adolphe* (4), *The Mag-*

(1) Lush, 520.
(2) Swabey, 230.
(3) Law Rep. 7 P. D. 203.
(4) Swa. 153.

The Yan Yean, Adm.

dalen (5) and *The Duke of Manchester* (6).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on June 26).—The casualty out of which this action arose took place as long ago as the 3rd of April, 1881. The action was commenced on the 8th of April, and was languidly pursued till March, 1882, when the statement of defence and counter-claim were delivered; and then, to use the language of the clerk to the plaintiffs' solicitors, the action "fell asleep," and so continued till it unfortunately occurred to the plaintiffs in February of this year to awaken it. The facts are these. The *Kirkstall*, a screw steamer of 238 tons register, was proceeding up the Bristol Channel to Newport with a cargo of pig iron. She had a pilot boat in tow, which had been picked up in a disabled condition. At 5 p.m. she was about off Lavernock Point, the wind blowing a fresh gale from the east, when she observed, further out in the channel, a vessel which turned out to be the *Yan Yean*, a steam barge of ninety tons, bound from Port Talbot, near Swansea, to Bristol, laden with tin plates. The *Yan Yean* had her head to the west; the sea was breaking over her, and she had become unmanageable. Those on board of her were making signals for assistance by holding up a rope, indicating a wish to be towed. The *Kirkstall* endeavoured to approach her, and in so doing, by an accident for which I am advised and think no blame is imputable to the *Kirkstall*, the pilot cutter, which she had in tow, came in contact with the *Yan Yean*. The captain and all his crew, in alarm, immediately jumped on board the pilot cutter, and the *Yan Yean* was left with no one on board. In this condition she drifted inside of Lavernock Point, to the northward, into comparatively smooth water, where she would have gone ashore on a hard beach, if the master of the *Kirkstall* had not ordered a boat to be lowered, in which the mate and two of his crew went to the *Yan Yean* and got on board of her. The evidence is conflicting whether an offer was made to the captain of the *Yan Yean* to take him on board his vessel, and whether he refused. I am of opinion that no such offer was made; but that, on the contrary, the master of the *Yan Yean* requested to be taken on board, and that the mate of the *Kirkstall* refused to take him. Those in the *Kirkstall's* boat having boarded the *Yan Yean*, let go her anchor, and found that there was very little water in the boiler. The boat was therefore sent back to the *Kirkstall* to fetch an engineer. The second engineer was accordingly sent, and when the boat was passing the pilot cutter, in which the master and crew of the *Yan Yean* still were, the master again requested to be taken on board his vessel, but he was again refused. Apart from the question arising upon this refusal I am of opinion that the *Kirkstall* had, up to this point, rendered valuable salvage services to the *Yan Yean*, for which she would have been entitled to substantial salvage remuneration. The second engineer of the *Kirkstall* attended to the boiler and engines of the *Yan Yean*, and she was soon in a condition to steam towards Cardiff. Whilst the *Yan Yean* was at anchor, a steam tug came up and offered to tow the *Yan Yean* to a safe place at Cardiff for 10*l*. The mate of the *Kirkstall* refused to give more than 5*l*. He then took the *Yan Yean* towards Cardiff and anchored her on the Cardiff Flats. There was no reason why she should not have been taken within the Pier Head, or the Ely Harbour, in either of which places she would have been in safety. The Cardiff Flats, where she was anchored, is a place where small vessels are sometimes allowed to take the mud; but it is very exposed, especially to the east winds; and I am advised and think that, as there was nothing to prevent the *Yan Yean* being taken into a secure berth, it was negligent and unskilful to place her on the flats.

In the night of the 3rd of April the wind increased to a gale from the eastward, and the mate and the three men who were in charge of the *Yan Yean*, becoming alarmed, left her and took refuge on board a vessel called the *Varna*. The *Yan Yean* afterwards dragged her anchor to the edge of the "drain" or passage through the flats, where she sank. The *Yan Yean* was afterwards raised at an expense of

(5) 31 Law J. Rep. P., M. & A. 22.
(6) 6 Moo. P.C. 99.

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125*l.*, but her cargo was seriously damaged by being under water. In these circumstances I was asked to decree salvage remuneration. I have already said that I consider that valuable services were rendered by the mate of the *Kirkstall* and his companions in going on board the *Yan Yean* and getting her anchor out before she ran ashore at Lavernock Point; but I do not consider that there was any difficulty or risk in doing this. The mate, however, was guilty of very reprehensible misconduct in refusing to take the master of the *Yan Yean* on board his ship. He was further not justified in refusing the aid of the tug for so small a sum as 10*l.*, as he had not himself the local knowledge which would have enabled him to take the *Yan Yean* to a place of safety. If the mate had brought the *Yan Yean* into harbour, I have the authority of Dr. Lushington for holding that the refusal to take the master on board would not work a total forfeiture of salvage remuneration. But in this case there can be little doubt that the ultimate loss arose from the mate's refusal to receive the captain of the *Yan Yean*, or to accept the aid of the master of the tug, from either of whom he might have obtained the local knowledge which, it is to be presumed, he did not himself possess. It was laid down by the Privy Council in the case of *The Duke of Manchester* (6), that if, by the negligence of the salvors, a ship is led into peril as great as that from which she has been rescued, all claim to salvage is forfeited. In this case I am advised that the risk of total loss if the *Yan Yean* had been allowed to drift on Lavernock Point was great; but, on the other hand, it is a matter of the vaguest speculation whether the ship and cargo did not sustain as much damage from the sinking in the drain as would have resulted from taking the shore at Lavernock Point. As therefore this misconduct of the salvors was great, and has resulted in a loss which cannot clearly be seen to be less than that from which the vessel was saved, I am of opinion that the plaintiffs are not entitled to salvage. I do not, however, consider that the circumstances call for the condemnation of the owners of the *Kirkstall* in damages beyond the forfeiture of salvage; but, as I think that the action ought not to have been brought, the plaintiffs must pay the costs.

Solicitors—Ingledew & Ince, for plaintiffs; Waltons, Bubb & Walton, for defendants.

ADMIRALTY.
1883.
April 26, 27.

THE GEORGE ROPER.

Collision — Launch — Negligence — Warning.

The steamship "Bentinck," while proceeding down the river Mersey, came into collision with the "George Roper," which was being launched from the defendant's shipbuilding yard. There were two tugs out in the river in attendance on the launch, each flying a burgee:—Held, *that the tugs ought to have been decorated with flags, and that those in charge of the launch did not discharge the duty that lay on them of taking the utmost precaution to prevent injury to passing vessels.*

The Andalusian (46 Law J. Rep. P., D. & A. 77; Law Rep. 2 P.D. 231) *followed.*

On the 10th of February, 1883, the steamship *Bentinck*, while on a voyage from Garston to Belfast with a cargo of coals, was proceeding down the river Mersey; the weather was fine and clear, and the tide last quarter flood. In these circumstances she came into collision with the *George Roper*, which was being launched, stern first, from the defendant's shipbuilding yard.

The fifth paragraph of the statement of claim was as follows:—"A proper, sufficient, and usual, notice or warning of the launch was not given before the launch, and proper steps were not taken to apprise those navigating the river that the launch was coming away."

The defendants alleged and proved that flags were displayed from poles on board the launch, and a large red flag was flying at the end of the building yard. Two steam-tugs were also in the river opposite

The George Roper, Adm.

the yard, each flying a large burgee. They also charged the *Bentinck* with negligent navigation, and the want of a proper look-out.

Charles Russell, Q.C., and *Phillimore*, for the plaintiffs.—The tugs were not properly decorated, nor was any other warning given to the *Bentinck* that a launch was about to take place. The plaintiffs are not bound to look out to landward. The onus of shewing that they have taken every precaution is on the defendants—*The Andalusian* (1).

Myburgh, Q.C., and *Bucknill, contra.*—The defendants are only bound to take reasonable precautions—*The Blenheim* (2). The launch was properly decorated with flags, and the large red flag at the end of the building yard ought to have been seen. The two steam-tugs out in the river were each flying a burgee forty-three feet long, shewing that something unusual was about to take place.

Charles Russell, Q.C., was not called upon to reply.

BUTT, J.—This case does not present much difficulty. I and the Elder Brethren take the same view. The first question is as to the duty of those in charge of a launch, and this is laid down in the case of *The Andalusian* (1). As to this legal obligation, I am bound by that case, and, moreover, I quite agree with the law as there enunciated. The rule is thus stated:—"The law throws upon those who launch a vessel the obligation of doing so with the utmost precaution, and giving such a notice as is reasonable and sufficient to prevent any injury happening from the launch; and, moreover, the burden of shewing that every reasonable precaution has been taken, and every reasonable notice given, lies upon her and those managing the launch."

Mr. Myburgh said that this comes to a question of reasonable precaution, as no one is bound to do more than take reasonable precautions. But this is really no more than a change of terms; for reasonable precaution is, in fact, the utmost precaution under such circumstances. When you set a vessel of large size, without engines and without a helm, and with only a tug to manage her, off the ways at a speed of seven knots across the fairway of the river Mersey, the utmost precautions are certainly only reasonable. What, then, are the usual precautions? We know that one thing is to have a tug decorated with a string of flags. This is well known, certainly to all seamen, to mean that a launch is taking place, and I cannot think why these precautions should not have been taken in this instance. I am of opinion that they should be taken in all cases of a launch in the Mersey; but here the defendants chose to trust to something else. Properly enough, no doubt, there were two tugs in attendance—one at the yard and one out in the river. As to the decoration of the tugs, Mr. Potter, one of the defendants, himself says that he thinks it is the custom to have more flags than one, to shew that the tugs are not employed in the ordinary way; and if this had been done it is clear the collision would not have taken place. In *The Andalusian* (1) it was held that the tug should give warning. What, then, is the state of things here? The *United States*, the tug out in the river, sees three vessels coming down a mile off. She knows the launch is likely to come across their course, but as they get nearer she takes no steps to warn them or the launch; and this appears to me to be a clear neglect of duty: for this tug might have steamed up and given warning to the approaching vessels. It further appears that Mr. Potter went to a place where he could see if the river was clear in the immediate vicinity, then descended to the platform, and within two minutes the launch was in the water. Mr. Potter was unaware that three vessels were coming down the river towards the place where the launch would reach; and, not knowing this, he gave the order for the launch to be let go. Both the tug masters, however, were aware that these vessels were under way down the river; but they did nothing—which, as I have said, is a neglect of duty. Moreover, I consider it is negligence, on the part of those in charge of a launch, to set the vessel going on the ways without

(1) 46 Law J. Rep. P., D. & A. 77; Law Rep. 2 P.D. 231.
(2) 2 Wm. Rob. 422.

The George Roper, Adm.

taking every possible step to assure themselves that nothing is approaching the place of the launch at the time.

[The learned Judge then went on to consider whether there was any negligence on the part of those in charge of the *Bentinck*, and, having found that there was none, pronounced the *George Roper* alone to blame.]

Solicitors—Gregory & Co., agents for Hill, Dickinson, Lightbound & Dickinson, Liverpool, for plaintiffs; Bateson, Bright & Warr, Liverpool, for defendants.

DIVORCE. 1883. April 5, 24.

JUMP *v.* JUMP.

Settlements—Separation Deed—Weekly Allowance—Custody of Children.

The Court has jurisdiction, after the dissolution of a marriage on the ground of the wife's adultery, to reduce the amount of a weekly allowance which the husband, under a deed of separation, has covenanted to pay to the wife.

By a deed of separation a husband and wife agreed to live separately for the rest of their lives, and the husband covenanted to pay to the wife a sum of 15*s. per week, and to permit her to have the custody of the children of the marriage, wholly freed from his authority, as if she were a feme sole. The marriage was afterwards dissolved on the ground of the wife's adultery:—*

Held, *that the husband's agreement to permit his wife to have the custody of the children ought not to be enforced, and that the terms of the deed of separation ought to be varied by reducing the amount of the weekly payment to the wife from* 15*s. to* 10*s.*

In this case the petitioner had obtained a decree for a dissolution of his marriage on the ground of his wife's adultery with a person unknown.

The petitioner afterwards presented a petition for the variation of certain covenants contained in a deed of separation bearing date the 28th of August, 1880, and the petition had been referred to the Registrar for his report.

The material facts of the case are set forth in the judgment.

Inderwick, Q.C. (with him *E. A. Hall*), for the petitioner, moved to confirm the report of the Registrar.

C. A. Middleton, for the respondent.

The following cases were referred to—*Bullock* v. *Bullock and Strong* (1), *Crisp* v. *Crisp* (2) and *Besant* v. *Wood* (3).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on April 24).—The marriage between these parties was dissolved on the 18th of November, 1882, on the ground of the wife's adultery. A petition has since been presented for a variation of a post-nuptial settlement contained in a deed of separation entered into between the parties and a trustee on behalf of the wife on the 28th of August, 1880, by which the petitioner and his wife agreed to live separately for the remainder of their lives, and the petitioner covenanted to pay the respondent 15*s.* a week, and to permit her to have the custody of their two children, wholly freed from his authority, as if she were a *feme sole*. The petitioner has, since the decree *nisi*, taken possession of the children of the marriage, and I am not, in the existing circumstances, of opinion that it would be for the benefit of the children that his agreement to suffer the respondent to have the care and control of them should be enforced.

An objection seems to be taken, if I understand it rightly, that the Court cannot make any order with reference to this deed, because no "property" is thereby settled; but an annuity is a well recognised form of personal property, and can be dealt with in all respects as such. The only doubt I have entertained is whether, having regard to the smallness of the amount, I should interfere; but as it has not been shewn that it was disproportionate to the husband's means, I think

(1) 41 Law J. Rep. Prob. & M. 83; Law Rep. 2 P. & D. 389.

(2) 42 Law J. Rep. Prob. & M. 13; Law Rep. 2 P. & D. 426.

(3) 48 Law J. Rep. Chanc. 497; Law Rep. 12 Ch. D. 625.

that, in the changed condition of things, some reduction should be made, and I accordingly order that the petitioner be at liberty to retain out of the 15*s*. a week covenanted to be paid, the sum of 5*s*., and that in future he pay weekly only 10*s*. to the respondent.

Solicitors—Crosse & Sons, agents for Hall & Janion, Manchester, for petitioner; Ayrton & Biscoe, agents for Cobbett & Co., Manchester, for respondent.

ADMIRALTY.
1883.
July 10.

THE WINSTON.

Compulsory Pilotage—Pilotage District—Passing through—Coaling—"Loading or discharging"—Merchant Shipping Act Amendment Act, 1862 (25 & 26 *Vict. c.* 63), *s.* 41.

The steamship W., while on a voyage between two places situate outside a pilotage district, entered a port within such district to take in coal to enable her to complete her voyage, and while there, owing to the fault of a duly licensed pilot who was in charge of her, came into collision with the steamship W. C.:—Held, *that pilotage was compulsory on the W., and that her owners were therefore exempt from liability.*

This was an action brought by the owners of the steamship *Warwick Castle* against the owners of the steamship *Winston*, to recover damages for a collision which occurred in Dartmouth Harbour, on the 27th of September, 1882. At the time of the collision the *Warwick Castle* was at anchor, and the *Winston*, which was on a voyage from New York to Newcastle with passengers and a general cargo, had put into Dartmouth for the purpose of taking in coal to enable her to complete her voyage.

The defendants admitted that the *Winston* was to blame for the collision, but claimed exemption from liability on the ground of compulsory pilotage. The plaintiffs admitted that Dartmouth was a Trinity outport district, and a pilotage district within the meaning of the sections of the Merchant Shipping Acts, 1854 and 1862, relating to pilotage, and that the *Winston* at the time of the collision was in charge of a duly licensed pilot.

Evidence was given at the hearing on behalf of the defendants to prove that the collision was solely caused by the fault of the pilot on board the *Winston*.

Phillimore (*F. W. Raikes* with him), for the defendants.—The law relating to compulsory pilotage as applicable to this case is contained in the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 370, 376, 379 and 388, and the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 41 (1); and the first question is, whether under section 41 of the Act of 1862, the *Winston* was or was not exempt from compulsory pilotage. The policy underlying these sections seems to be that when a vessel is only passing through a pilotage district on a voyage between two places outside such district, she shall not be compelled to take a pilot; but that where she makes use of the conveniences of a port within a pilotage district, she shall not be exempt from the provisions of the sections which make pilotage within such district compulsory. The *Winston* in this case went into Dartmouth for the purpose of coaling, and it is submitted that loading coal is within the meaning of the words "loading or discharging" in the 41st section—*Muller* v. *Baldwin* (2). These sections relating to exemptions have been passed *pro re nata*, and twenty years ago steam being comparatively in its infancy, the probability of a vessel entering a port within a pilotage district through which she was passing,

(1) 25 & 26 Vict. c. 63. s. 41: "The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places, both situate out of such districts, shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries."

(2) 44 Law J. Rep. Q.B. 164; Law Rep. 9 Q.B. 457.

and there taking in coal for her own consumption, was not present to the mind of the Legislature.

Secondly, it is submitted that, to exempt the owners from liability for the fault of the pilot, it is not necessary that pilotage should be compulsory on the particular ship; it is sufficient if a licensed pilot is taken in a district where pilotage is compulsory—*The General Steam Navigation Company* v. *The British and Colonial Steam Navigation Company* (3), *Lucey* v. *Ingram* (4) and *The Stettin* (5). The Legislature in the 388th section of the Merchant Shipping Act, 1854, does not say "compulsory on the ship," but "compulsory in the district." It is true, however, that the Privy Council have expressed an opinion opposed to that for which I contend— *The Lion* (6).

Cohen, Q.C. (*Bucknill* with him), for the plaintiffs, was proceeding to argue on the second point when he was stopped by the Court, Sir James Hannen intimating that on that point he felt himself bound by the judgment of the Privy Council.

Cohen, Q.C., on the first point.—The words of the section are "loading or discharging," and they can only refer to loading or discharging cargo. There is no continuous policy underlying the different enactments with regard to pilotage. Each provision has been made as the occasion has arisen, and ought not to be extended beyond the plain meaning of the language used. It is submitted that the words "loading or discharging" cannot be held to include the taking on board of coals for the ship's consumption.

Phillimore, in reply.

THE PRESIDENT (SIR JAMES HANNEN).—On the question of fact I am of opinion that this collision occurred through the negligence or want of skill of the pilot. It has been proved that he was in charge of the ship—of that there is no doubt, though there was an officer on deck, and the crew were there ready to perform any duties which were necessary to carry out the orders of the pilot. The captain too had given general directions that the orders of the pilot were to be obeyed. Nor can any fault be found with the captain, that, having his ship under the care of a duly licensed pilot, he should leave the charge of it to him; and I think he was justified in leaving the deck to attend to other matters. Unless therefore there were some definite suggestion which raised the question whether something had been improperly done or left undone by the crew which was within their special province, I cannot indulge in speculations on the subject, particularly in the absence of any evidence to rebut that of the defendants. Therefore, on the question of fact, I find that the collision was due solely to the fault of the pilot. With regard to the law, I have already intimated, as to the second point raised by Dr. Phillimore, that I feel bound to follow the decision of the Privy Council; but it is unnecessary to go into that, as I have formed an opinion in his favour on the first point. I quite agree with Mr. Cohen that there is a difficulty in discovering the policy of these various enactments. It is possible that each Act was passed *pro re nata*, according as the particular occasion for it arose, and that the draughtsman used language applicable to the one state of facts present to his mind, without considering that Courts of law would have to apply it to a different state of facts. With regard to exemption from compulsory pilotage, the idea apparently was that when a ship anchored she was making use of the port; but so many vessels in passing through a district would have to anchor, that it was felt that the definition was not satisfactory, and in the particular section we have under consideration another line of thought was carried out. Here the idea seems to be that when a ship is passing through a pilotage district along the coast, there is no reason why she should be required to take a pilot. But if she should make use of the port, then that there should be no exemption from the duty of taking on board a properly licensed pilot. But in this section one only of the objects for which the port

(3) 37 Law J. Rep. Exch. 194; Law Rep. 3 Exch. 330; 38 Law J. Rep. Exch. 97; Law Rep. 4 Exch. 238.

(4) 6 Mee & W. 302.

(5) Br. & Lush. 199.

(6) 38 Law J. Rep. P., M. & A. 51; Law Rep. 2 P.C. 525.

is used is referred to, though it might well have been supposed that some such phrase as I have mentioned would have been adopted; for it is difficult to see why if the vessel comes into harbour she should not be compelled to take a pilot, whose employment gives security to other vessels. However, the Legislature has used the words "loading or discharging at any place situate within such district." Now, as the words are so limited, what is there to guide us? The Legislature has not said to what extent or for what purpose the words "loading or discharging" are to be taken. It seems to me the proper construction is that if a vessel makes use of a port for the purpose of loading or discharging anything, whether it be cargo pure and simple, or coals for the purpose of carrying on the voyage, she brings herself within the terms of the Act, and the obligation lies upon her of taking a pilot.

For these reasons I must give judgment for the defendants.

Solicitors—Parker, Garrett & Parker, for plaintiffs; Pritchard & Sons, agents for Turnbull & Tilly, West Hartlepool, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. May 30. } THE RIGBORGS MINDE.*

Compulsory Pilotage—Hull Pilot Act (2 & 3 Will. 4. c. cv.), ss. 22 and 36—Collision—Damage caused by Default of Pilot.

A foreign schooner while proceeding to her berth in the Humber Dock to unload her cargo came into collision with a fly-boat and sank her. The schooner was bound for the Prince's Dock, and at the time of the collision was under the charge of a pilot duly licensed under the Hull Pilot Act, who had taken her over whilst moored off the Island Pier, to which point she had been taken by another pilot who had piloted her from the sea; and one lump sum was paid for the services rendered by the two pilots:—Held, *that the owners of the schooner were exempted from liability for the damage done to the fly-boat, because the schooner was in charge of a pilot whose services were rendered compulsory by the provisions of the Hull Pilot Act.* Held *also, upon the facts, that there was no want of reasonable care on the part of the crew of the schooner in carrying out the orders of the pilot, the damage to the fly-boat having been caused by the default of the pilot who was on board the schooner by compulsion of law.*

Appeal from the Admiralty Division.

The Danish schooner *Rigborgs Minde* while proceeding to her berth in the Humber Dock, Hull, came into collision with a fly-boat, which she struck in the side with the fluke of her anchor, and so caused the fly-boat to sink.

The *Rigborgs Minde* at the time of the collision was in charge of a pilot duly licensed under the Hull Pilot Act (2 & 3 Will. 4. c. cv.), and was proceeding to the Prince's Dock to unload her cargo. After waiting at the Island Pier, where she had been taken up from the sea by a duly licensed pilot, she was taken in charge by another pilot for the purpose of taking her to the Prince's Dock, and one sum only was paid for the services of both pilots.

Sir R. Phillimore, in an action for damages brought by the fly-boat, gave judgment against the *Rigborgs Minde*, finding that she alone was to blame for the collision.

The owners of the *Rigborgs Minde* appealed.

Phillimore and *Raikes*, for the appellants, contended that the owners were not liable even if there had been any negligence in the navigation of their vessel, inasmuch as at the time of the collision she was under the charge of a pilot whom they were compelled to employ under the provisions of the Hull Pilot Act, ss. 22, 36 and 41 (1).

* *Coram* Brett, M.R.; Cotton, L.J.; Bowen, L.J., and nautical assessors.

(1) 2 & 3 Will. 4. c. cv. s. 22, after making provision for the granting of licences to persons duly approved and properly qualified to be pilots for conducting ships and vessels into and out of

The Rigborgs Minde (App.), Adm.

C. Hall, Q.C., and *Bucknill*, for the respondent, contended that the defendants' vessel ceased to have a compulsory pilot on board after she had come to anchor off the Island Pier, and was therefore liable for the damage done to the fly-boat.

The Maria (2) and *The Gipsey King* (3) were referred to during the arguments.

BRETT, M.R.—In this case the collision between the *Rigborgs Minde* and the fly-boat took place in the Humber Dock, Hull, and the Judge of the Admiralty Court held that the defendants' vessel—the *Rigborgs Minde*—was wholly to blame. Although no mention was made in the judgment with regard to the subject of compulsory pilotage, I cannot help thinking that the Judge was of opinion that a compulsory pilot was on board; and that being so, he must have held that the defendants' vessel was to blame for something which is not covered by the fact that a compulsory pilot was on board; and even assuming that the case was dealt with as one of compulsory pilotage, he must have assumed that no blame whatever was to be attached to the fly-boat, but that the fault was in the manner and mode in which the anchor of the defendants' vessel was let go at the time when the pilot finally gave the order to let it go. The first point is whether there was a compulsory pilot on board; and, in my opinion, it is clear upon the construction of the Hull Pilot Act that there was, and that a pilot who is taken on board a vessel bound inward to the port of Hull is a compulsory pilot. That construction has been put upon this Act by Dr. Lushington in the case of *The Maria* (2). Vessels going into the port of Hull are compelled to take a pilot on board for the purpose of bringing them into port. It was contended that the compulsory pilotage had ceased when the defendants' vessel had been taken in charge by the second pilot; but it is customary for pilots to divide their duties, and where there are a number of pilots, one part of the pilotage is performed by one pilot and another part by another pilot. But, so far as the Hull Pilot Act is concerned, it would appear that the acts of pilotage performed by two pilots are considered to be the acts of one pilot, because one sum alone is paid for the pilotage services rendered.

It was argued on behalf of the respondent that the compulsory pilotage had ceased, because the defendants' vessel had been anchored at a place off the Island Pier before she had been brought into dock, and an attempt was made to bring the case within the authority of *The Maria* (2), and it was said that therefore the pilotage was not compulsory. But I am of opinion that the compulsory pilotage had not ceased until the vessel had been brought to her final place of destination and had finally anchored there. A temporary stoppage would not therefore put an end to the

the port of Kingston-upon-Hull, and of the port of Great Grimsby, in the county of Lincoln, and upon any part of the river Humber below the port of Kingston-upon-Hull, and also out to sea so far as certain limits in the section specified, provides, "and the persons so licensed shall, for the purposes of this Act, be called 'Humber Pilots,' and all ships and vessels sailing, navigated and passing as aforesaid, except as hereinafter provided, shall be conducted and piloted within the limits aforesaid by pilots so licensed, and by no other pilots or persons."

Section 36 makes provision as to the manner in which pilots are to be signalled for and taken on board by the masters of ships liable to pilotage, and imposes a penalty for breach of the provisions; and then enacts, "that every such pilot as aforesaid who shall be employed to pilot or conduct any ship or vessel into the said port of Kingston-upon-Hull shall and is hereby required to take the same to such place of delivery, whether in the haven or the old harbour, or in any of the wet docks of the said port, as the master or commander of such ship or vessel shall require, or so near thereunto as he can safely get, and then moor such ship or vessel in some proper situation, without being paid any other rate than is hereby directed to be paid for piloting such ship or vessel into the said port; and in case the attendance of any such pilots shall be required to take care of such ship or vessel from such first mooring, and to conduct her higher up the said haven or old harbour, or into any of the said wet docks or other place of delivery, the pilot who shall have brought the said ship or vessel to such mooring, or some other of the said Humber Pilots to be by the said commodore of pilots appointed for that purpose, on the application of the master or commander of such ship or vessel, shall attend, and shall be paid for unmooring, transporting and removing such ship or vessel to her place of delivery as aforesaid. . . ."

(2) Law Rep. 1 Ad. & E. 358.

(3) 2 Wm. Rob. 537, 543.

compulsory pilotage. The defendants' vessel was bound for the Prince's Dock, and had to pass through the Humber Dock basin; she was therefore always an inward-bound vessel. It is therefore clear that, until she was brought into the Prince's Dock, the pilot was a compulsory pilot.

It was also argued that the defendants' vessel ought to have had other ropes besides the stern rope; that she came too fast into the dock; that the anchor was slung in a dangerous and improper manner, and that it was let go in an unseamanlike manner. But these are matters, with the exception of the last, connected with the navigation of the vessel on her course, and it was the pilot's duty to attend to them. With regard to the position of the anchor, the evidence shews that it was placed according to the wishes of the pilot, that he saw its position and was satisfied with it. The decision of Dr. Lushington in *The Gipsey King* (3) is an authority to shew that the placing of the anchor for such a purpose is a matter for the pilot alone, and that the crew are obliged to follow his directions. If, therefore, there is anything wrong in the mode of placing the anchor it would be the fault of the pilot. But if anything wrong is done after the moment of letting go the anchor, that is the fault of the crew, and the question whether the crew properly executed the orders given by the pilot or not is a question of seamanship. The nautical assessors are of opinion that there was no want of reasonable care on the part of the crew in letting go the anchor. The collision, so far as the defendants' vessel is concerned, was caused by the fault of the pilot alone; but, inasmuch as the fly-boat was, in our opinion, upon the evidence, also to blame, both vessels must also be held to blame. The owners of the *Rigborgs Minde*, however, are not liable for the damage done to the fly-boat through the fault of the compulsory pilot.

Cotton, L.J.—Sections 22, 36 and 41 (4) of the Hull Pilot Act shew clearly that it is compulsory upon inward-bound vessels to take a pilot; for a penalty is imposed in default of so doing. The pilotage was therefore compulsory upon the defendants' vessel. Then it was said that the compulsory pilotage had ended when the vessel had anchored off the Island Pier; but the Prince's Dock was the destination of the vessel for the purposes of the delivery of the cargo, and it is clear from the evidence that the reason for mooring the vessel was because she was obliged to wait until the tide served before she could be taken into dock. It was then said that the compulsory pilotage had ceased by the change of pilots; but the pilotage was the same pilotage throughout. Upon the construction of this Act it is clear, to my mind, that the pilotage originally was compulsory, and was not at an end when the collision took place (5).

(4) See also s. 46.

Solicitors—Pritchard & Sons, agents for A. M. Jackson, Hull, for appellants; C. A. Clulow, agents for J. & T. W. Hearfield, Hull, for respondent.

ADMIRALTY.
1883.
May 23, 24.

THE SUNNISIDE.

Salvage—Loss of Profits—Damage to Salvors—Evidence.

Evidence of the amount of loss of profits and of the damage sustained by a salving vessel, in consequence of the performance of salvage services, is admissible: such loss and damage being ingredients to be taken into consideration when making a salvage award.

This was a case of salvage services rendered to the steamship *Sunniside*, in the North Sea, by the steam trawlers *Monarch* and *Flying Arrow*, and the smack *Sirius*, in the month of November, 1882. The facts sufficiently appear from the judgment.

Gully, Q.C., and *Bucknill*, appeared for

(5) Bowen, L.J., who was present during the argument, had left the Court when judgment was delivered, but concurred in it.

the *Monarch*; *Aspinall* for the *Sirius*; and *Phillimore* for the *Flying Arrow*.

Myburgh, Q.C., and *J. Edge*, appeared for the defendants.

It having been proved at the hearing that the *Monarch* sustained damage in the performance of the services, and was delayed in the prosecution of her fishing voyage, evidence was tendered on her behalf as to the average amount of profit made on a fishing voyage, and of the cost of repairs.

Myburgh, Q.C.—Such evidence is irrelevant, and therefore inadmissible. Salvors are paid a high remuneration on account of the risk they run. The fact that they actually sustained a loss is only admissible as evidence of such risk; the actual amount cannot be given.

Bucknill.—The evidence is admissible. Fishing smacks are entitled to be paid for detention—*The Norden* (1). The practice has been to order a reference to ascertain the actual amount of loss—*The Salacia* (2).

Myburgh, Q.C., in reply.

The evidence was admitted.

THE PRESIDENT (SIR JAMES HANNEN), having dealt with the facts as to the salvage services rendered, said:—With regard to the *Monarch*, I consider that she was the vessel that did the real salvage service in the case. The question arose at the hearing yesterday as to the admissibility and effect of evidence of what a salving vessel might earn. I was asked to reject that evidence; but that I did not consider myself at liberty to do, because it appears to me it is admissible as an ingredient to the consideration of what remuneration should be paid to a vessel which renders salvage services; but I remain of the opinion I expressed yesterday, after considering it further, that it is not to be taken in ordinary cases as a fixed figure always to be allowed in the nature of damage, and then to superadd to that the amount to be awarded for salvage services. I think they must be considered, under ordinary circumstances, together. There are various reasons which recommend themselves to my mind for that course. It is to be remembered that the reason why so high a rate of remuneration is given to salvage services is because of the sacrifices which the salving vessel makes; but to give, as it were, damages for the sacrifices made, and to give a high rate of salvage remuneration, would be giving that remuneration twice over. As a rule, therefore, it appears to me that the loss of trade, and so on, cannot be taken as an actual figure in the calculation of what the salvage is to be. The same remarks apply, though not with the same force, to the question of damage done.

(1) 1 Spinks (Ecc. & Adm.), 185.
(2) 2 Hag. Adm. 262.

Solicitors — Andrew, Wood & Glasier, for *Monarch* and *Sirius*; W. Batham, agent for H. B. & C. Wright, Sunderland, for *Flying Arrow*; Botterell & Roche, for defendants.

[IN THE COURT OF APPEAL.]

PROBATE. 1883. May 9.

In re MOORDAFF.
BURGOINE *v.* MOORDAFF.*

Practice—Trial by Jury—Disagreement of Jury—Trial directed before Judge without a Jury—Jurisdiction—Discretion—20 & 21 Vict. c. 77, s. 35—Rules of Court, 1875, Order XXXVI. rules 3 and 26.

There is no limit of time to the power conferred on the Court by Order XXXVI., rule 26. Where therefore an action had been twice tried before a jury, who on each occasion were discharged without agreeing to a verdict, and the action was set down a third time by the plaintiff for trial by jury,—Held, *on application by the defendant, that the Judge had jurisdiction in the exercise of his discretion to direct the action to be tried before a Judge without a jury.*

Decision of SIR JAMES HANNEN *affirmed.*

**Coram* Baggallay, L.J., and Lindley, L.J.

In re Moordaff (*App.*), *Prob.*

This was an appeal from a decision of Sir James Hannen.

The action was brought by one of the executors of the will of Sarah Moordaff, deceased, to establish the will, which was disputed on several grounds.

The heir-at-law had been cited and had appeared, but had not made any application under 20 & 21 Vict. c. 77, s. 35, that the action might be tried by a jury.

The usual notice for trial by jury was given by the plaintiff, and the action was twice set down for trial and twice tried before Sir James Hannen and a special jury. On each occasion the jury disagreed, and were discharged without giving a verdict.

A third time the plaintiff set down the action for trial by jury. The defendant then took out a summons for directions as to the mode of trial, and Sir James Hannen, being of opinion that the action ought to be tried by a Judge without a jury, made an order to that effect. Against this order the plaintiff appealed.

Willis, *Q.C.*, and *Bayford*, for the appellant.—We are entitled to a trial by jury. The order was made under rule 26 of Order XXXVI., but under that rule trial before a Judge without a jury cannot be ordered except in cases where before the Judicature Act such a trial could, without any consent of parties, have been had without a jury. In this case such a trial could not have been had without the consent of the heir-at-law—20 & 21 Vict. c. 77, s. 35. He is a party to this action, and his consent is necessary to the validity of this order, and it has not been obtained.

[BAGGALLAY, L.J.—The Act does not say that trial without a jury shall not be had unless the heir-at-law consents, but gives him the right to require a trial before a jury if he applies for it. Here it seems he has not applied for it.]

Then we say that when once the method of trial has been fixed, and the action has been set down for trial by jury, the Court has no jurisdiction under Order XXXVI., rule 26, to alter the mode of trial. Lastly, even if the Court has jurisdiction, the discretion has not been properly exercised. This order was not made by the Court *mero motu*, but on the application of the defendants. The fact that a jury have twice disagreed is not a sufficient reason for directing the action to be tried before a Judge without a jury.

Inderwick, *Q.C.*, and *C. A. Middleton* (*Sir H. Giffard* with them), for the respondent, were only called upon on the question of jurisdiction.—The right conferred on litigants by the 3rd rule of Order XXXVI. is subject to the succeeding rules, of which the 26th rule is one. Therefore the discretion vested in the Court by the 26th rule is an overriding power, and gives the Court jurisdiction to interfere. It was never intended to limit the power of the Court under these rules. The intention is that when the Court finds that an action set down for trial by jury is not a proper case for a jury, it can then discharge the jury and direct a trial without a jury. The fact that a jury have twice disagreed is, we submit, cogent evidence that it is a proper case for trial by a Judge without a jury, and that the Judge has rightly exercised his discretion.

Willis, *Q.C.*, in reply, referred to *Sugg* v. *Silber* (1).

BAGGALLAY, L.J., said:—This is an appeal from an order made by Sir James Hannen, in the exercise of his discretion under Order XXXVI., rule 26, directing this action to be tried before a Judge without a jury. The exercise of that discretion is objected to on two grounds. First, it is said that this is not a case within the rule at all, because it is an action which before the Judicature Act could not have been tried without a jury except with the consent of the heir-at-law. But I am disposed to think that it could have been so tried. The 35th section of the Act 20 & 21 Vict. c. 77, enacts as follows:—"It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury, . . . and such question shall be so tried by a jury in any case where an heir-at-law, cited or

(1) 45 Law J. Rep. Q.B. 460; Law Rep. 1 Q.B. D. 362.

otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose." The section does not say that trial without a jury shall not be had unless the heir-at-law consents. It gives the Court a discretionary power to direct trial with or without a jury, but at the same time confers on the heir-at-law the right to have trial by jury if he makes an application to the Court for that purpose. In this case, if the heir-at-law had applied under the section, then this would have been a case that could not have been tried without a jury. But here he has not made any such application. That objection therefore fails. If then there is a *prima facie* case of jurisdiction, the next objection is that it cannot be exercised after the mode of trial has once been fixed under the 3rd rule of Order XXXVI. That rule provides:—"Subject to the provisions of the following rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in rule 2 [one of which is trial by a Judge and jury], and the defendant may, upon giving notice . . . . that he desires to have the issues of fact tried before a Judge and jury, be entitled to have the same so tried." Here the plaintiff did give notice for trial of the action before a Judge and jury, and that has been twice acted upon; and it is said that the mode of trial having been once fixed under that rule, it is now too late for the Court to exercise its discretionary jurisdiction under the 26th rule of the same Order. But I see no reason for limiting the generality of the power conferred on the Court by the 26th rule. The words are, "a Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury." That rule is very general in its terms. Nothing is said as to the time within which an order is to be made, nor is it said that the rule is to be subject to any of the foregoing rules. On the contrary, the 3rd rule is in terms made subject to the rules that come after it, of which the 26th rule is one. I am therefore of opinion that the mode of trial prescribed by rule 3 can in a proper case be interfered with by the Judge.

That being so, the question is, ought we to interfere with the discretion which the learned Judge has exercised. Now it has been said that in *Ruston* v. *Tobin* (2) it was decided that a discretion of this sort could not be interfered with. In that case Lord Justice James is reported to have said: "I repeat what I have often said before, that these appeals from the discretion of a Judge as to the mode in which a case before him can most conveniently be tried ought not to be brought. When a Judge has a discretion as to the mode of trial, his exercise of that discretion is not to be interfered with." Those words appear to have been misunderstood, and were thought to have laid down too broad a rule, and were explained and commented on by the late Master of the Rolls in *In re Martin, Hunt* v. *Chambers* (3), and the general principle there asserted was, that even if the Judge exercises his discretion in accordance with the rule, his decision is subject to appeal, though the Court will not interfere with his decision except in a very strong case. That is the true principle to apply in these cases—the Court of Appeal will not interfere unless it is satisfied that the Judge below was manifestly wrong in his decision. Then was the learned Judge below manifestly wrong in his decision? I think not: after two trials before him with a jury he was, I think, in a better position than we are to decide what ought to be done; and in the exercise of his discretion he thought that the case ought not to go again before a jury. I do not see that he was clearly wrong in so deciding, and therefore I do not think that I am justified in interfering with his decision. The appeal must be dismissed.

LINDLEY, L.J., said:—I am of the same opinion. I think that under section 35 of

(2) Law Rep. 10 Ch. D. 558.

(3) 51 Law J. Rep. Chanc. 683; Law Rep. 20 Ch. D. 365.

the Act 20 & 21 Vict. c. 77, a trial without a jury might have been had before the Judicature Act. The case, therefore, is within Order XXXVI., rule 26, and the only question is whether that rule is to be limited in its operation. The rule is not expressed in such a manner as to lead one to suppose that its construction should be narrowed in the way suggested by the appellant's counsel. It very often happens, I should think, that the Judge does not know until the trial what is the best mode of trying the action. The rule is highly beneficial, and should not be confined in its operation. The power conferred is most valuable. I think this case is within the rule, and that the learned Judge has wisely exercised his discretion, and that we ought not to interfere.

Solicitors—Wood & Wootton, agents for T. Milburn, Workington, for appellant; Bell, Brodrick & Gray, agents for W. & J. C. Thompson, Workington, for respondent.

PROBATE. 1883. May 8. } *In the goods of* MABEL ELIZA JANE ATKINSON.

Will—Codicil—Revocation—Attestation Clause.

The testatrix executed a will and three codicils. The attestation clause of the third codicil was in the handwriting of the testatrix, and was in the following words: "Signed by the said M. E. J. A. as the third codicil of her will, by which the first codicil is cancelled, in the presence of us," &c.:—Held, *that the words of revocation in the attestation clause of the third codicil were inoperative, and must be rejected.*

Mabel Eliza Jane Atkinson, spinster, died on the 12th of November, 1879, having duly executed a will and three codicils.

The will bore date the 20th of March, 1876. The first codicil bore date the 3rd of March, 1877. The second codicil bore date the 2nd of October, 1878. The third codicil bore date the 27th of July, 1878, but the affidavits of the attesting witnesses shewed that it was in fact executed in July, 1879.

The attestation clause to the third codicil was in the handwriting of the testatrix, and was as follows:—"Signed by the said M. E. J. Atkinson as the third codicil of her will, by which the first codicil is cancelled, in the presence of us both, who," &c. The codicil contained no other revocatory words.

H. B. Deane moved for probate of the will and the three codicils.

THE PRESIDENT (SIR JAMES HANNEN).—I think the words of revocation in the attestation clause of the third codicil must be rejected. It is only by accident that this clause is written by the testatrix, and if it were written by anybody else, it would clearly be no part of the will. It would only be a representation or interpretation which the testatrix put upon that which she was then about to execute, and not part of the codicil; and therefore, without prejudice to any more serious consideration which may become necessary, the words must be rejected as not forming part of the codicil. The mistake as to the date of the third codicil must of course be corrected.

Solicitors—Western & Sons.

ADMIRALTY.
1883.
July 30.
August 6.

THE LIVIETTA.

Lien—Priority of Liens—Solicitor—Property "recovered or preserved"—23 & 24 Vict. c. 127. s. 28—Italian Law—Expenses of sending Crew Home.

In a salvage action against an Italian ship, the ship was abandoned to the underwriters and sold by the Court. A solicitor who appeared for the underwriters preserved, within the meaning of 23 & 24 Vict. c. 127. s. 28, part of a fund remaining in Court, the balance of the proceeds of the sale.

The Italian Government had paid the expenses of sending the crew of the ship home to Italy, which expenses, by Italian law, are, in case of shipwreck and abandonment by the owners, made payable out of the salvage, after payment of certain expenses:—

Held, *that the claim of the Italian Government was entitled to be satisfied out of the fund in Court in priority to that of the solicitor.*

Summons adjourned into Court.

This was an application, on behalf of Messrs. Thomas Cooper & Co., solicitors, for payment out of Court to them of the balance of the proceeds of the sale of the Italian brig *Livietta*, which they claimed to have preserved within the meaning of 23 & 24 Vict. c. 127. s. 28.

Two actions had been brought against the *Livietta* in respect of salvage services rendered to her by the steamship *Waltons* and the brig *Julie* respectively; and Messrs. Cooper & Co. had been instructed by the underwriters, to whom the *Livietta* had been abandoned by the owners, to defend their interests. It was proved that they had, by giving their undertaking to procure bail, obtained the release of the vessel, which had been arrested, thereby saving possession fees. They had also obtained an order for the consolidation of the two actions, and had paid out of their own pocket certain charges of the Marshal, which would otherwise have fallen upon the property.

After payment to the plaintiffs in the actions of their salvage and costs, there remained the sum of 60*l.* 10*s.* 1*d.*, upon which Messrs. Cooper claimed to have a charge under the statute, as property preserved through their instrumentality.

The Italian consul opposed the application, on the ground that the Italian Government had paid the expenses of sending the crew of the *Livietta* home to Italy, and was entitled to be repaid the amount out of the proceeds of the ship in priority to Messrs. Cooper & Co.

The Italian law was relied on in support of the claim of the Italian Government.

Articles 56 and 133 of the Code of the Italian Mercantile Marine are as follows:—

Art. 55. "The owners and charterers are also responsible jointly .... for the expenses of board and return to their country of the men composing the crew, and for every outlay made on their behalf by Government agents, if such expenses are to be chargeable against the ship. The liability to refund the expenses of board and return to their country of the men forming the crew ceases in case of shipwreck and abandonment of the vessel, but repayment of the same shall be effected out of the salvage or the value thereof, with privilege according to the terms of article 133. . . ."

Art. 133. "Out of the proceeds of the sale of the ship and cargo will be privileged in the following order—first, the expenses of sale; secondly, the expenses of salvage and safe keeping of the effects wrecked, including the remuneration of the persons who effected the salvage and the expenses of conveyance of the harbour employés. . . ."

Phillimore, for Messrs. Cooper & Co.—Messrs. Cooper & Co. are entitled to a charge upon this fund for their costs, and to be paid out of it in priority to the Italian Government. If it had not been for their exertions the property would have been entirely extinguished, so that it cannot be said that this is not property preserved within the meaning of the statute. The question must be decided by the *lex fori*; and by the law of this country the last lien, at all events in cases arising *ex contractu*, is to be satisfied first.

He cited *The Oneiza* (1), *The Soblom-*

(1) Law Rep. 4 Ad. & Ec. 36.

sten (2), *The Jeff Davis* (3), *The Heinrich* (4), *Scholefield* v. *Lockwood* (5) and *The Le Jonet* (6).

Aspinall, contra.—This is not a question of conflicting laws. The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 205, gives exactly the same rights to consular officers abroad who send seamen home as is claimed by the Italian Government. Messrs. Cooper & Co. have done nothing to preserve property within the meaning of the statute. They have only taken the ordinary steps in an action. Nor is there any reason to suppose that their clients for whom they acted cannot or will not pay their costs. It has always been the practice of the Courts to enforce foreign liens against the ship or proceeds.

He cited *Pinkerton* v. *Easton* (7), *Foxon* v. *Gascoigne* (8) and *The Elin* (9).

Phillimore, in reply.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN), on August 6.—Two actions were instituted by the steamship *Waltons* and the brig *Julie* for salvage services rendered by them to the Italian brig *Livietta*. Messrs. Thomas Cooper & Co., solicitors, were instructed by the agents of the Italian underwriters, to whom the *Livietta* had been abandoned, to appear in these actions and defend their interests. In the result the *Livietta* was sold by order of the Court, and the salvage and costs due to the plaintiffs having been paid out of the proceeds of the sale, a balance of 60*l.* 10*s.* 1*d.* remains in Court. Messrs. Cooper & Co. assert that this sum has been preserved through their instrumentality, and claim to be entitled, under the 23 & 24 Vict. c. 127. s. 28, to a charge upon the amount now in Court for their costs, charges and expenses in the said actions, amounting to 92*l.* 7*s.* 11*d.* I do not consider that the whole sum remaining in Court has been preserved by Messrs. Cooper & Co.'s services, but they have, by payments which they have made, and by giving bail, saved the fund in Court from some charges which would otherwise have fallen upon it. The Italian Government, through its consul, prefers a claim to be paid, out of the proceeds of the ship remaining in Court, the expenses it has been put to in sending back to Italy the crew of the *Livietta*, and proof has been given that by the law of Italy the Italian Government is entitled, in case of shipwreck and abandonment of the vessel by the owners, to be repaid out of the salvage the expenses of sending the crew home, "after payment—first, of the expenses of sale; and secondly, of the expenses of salvage and safe keeping of the effects wrecked, including the remuneration of the persons who effected the salvage and the expenses of conveyance of the harbour employés."

The question is, whether this claim of the Italian Government is to be preferred to that of Messrs. Cooper & Co. The Italian law on this subject is very similar to our own. By the 205th section of the Shipping Act, 1854, the expense of sending seamen belonging to a British vessel home from a place abroad where their services have terminated, is to be paid by the master; and if not paid by him, may be defrayed by the consular officer, and shall in that case be a charge upon the ship, and may be recovered against the owners with costs; and if allowed to the consular officer out of the public moneys, may be recovered as a debt due to her Majesty, either by ordinary process of law, or in the manner in which seamen are enabled to recover wages. The same measure which we should expect to be meted in similar circumstances by the Italian tribunals to our Government ought to be applied in this case to the Italian Government. The object of the 28th section of the 23 & 24 Vict. c. 127, is to prevent a client who has had the benefit of his solicitor's services from carrying off the spoils of victory without applying them towards the remuneration of those services. It was not, I conceive, intended to give the solicitor priority over claims giving a lien which

(2) 36 Law J. Rep. P., M. & A. 5; Law Rep. 1 Ad. & Ec. 293.
(3) Law Rep. 2 Ad. & Ec. 1.
(4) 41 Law J. Rep. P., M. & A. 68; Law Rep. 3 Ad. & Ec. 505.
(5) Law Rep. 7 Eq. 83.
(6) 41 Law J. Rep. P., M. & A. 95; Law Rep. 3 Ad. & Ec. 556.
(7) 42 Law J. Rep. Chanc. 878; Law Rep. 16 Eq. 490.
(8) 43 Law J. Rep. Chanc. 728; Law Rep. 9 Chanc. 654.
(9) *Ante*, p. 55; Law Rep. 8 P. D. 129.

could have been enforced in a suit by other persons against the property which was the subject of litigation. A mortgage created by the client to a person having no notice of the litigation would not be superseded by a charging order subsequently obtained by the solicitor—and a charge created by the law must, I think, be put on an equal footing with one arising out of the contract of the client. Such charges in effect diminish the property, or the value of the property which could be recovered or preserved by the solicitor's instrumentality. In the present case, the *Livietta*, when it came within British jurisdiction, was already, by the law of its flag, subject, in the events which had happened, to a charge in favour of the Italian Government for the expenses of conveying its crew to Italy. It appears to me that this charge should, on general principles, as well as by analogy with our own statute, rank as high as wages. When the law imposes on the ship in the event of shipwreck a charge for the expenses of the seamen's reconveyance to their own country, this must be looked upon as a part of the terms upon which the seamen engage for the voyage, and as another form of remuneration for the services the sailors rendered up to the time of the wreck. In *The Gustaf* (10), Dr. Lushington held that the claim of seamen for their wages earned before a ship came into a shipwright's hands took precedence of the shipwright's common law right of lien for repairs; and in the case of foreigners, that they were entitled, in addition to their wages, to priority for what the learned Judge terms the "ordinary allowance for return to their country."

In support of the solicitor's charge reliance was placed on *The Soblomsten* (2), where Dr. Lushington ordered the funds in Court to be applied—first, in satisfaction of the proctor's costs; and secondly, of a shipbroker's claim for necessaries supplied after the arrest of the ship; but, as the learned Judge had pointed out in *The Gustaf* (10) and other cases, the "supplying of necessaries does not give, *ab origine*, a lien, but only a statutory remedy against the *res*, which is essentially different." The same observation applies to the case of *The Heinrich* (4), where the claim of a solicitor was preferred to one for necessaries, with the additional circumstance that the necessaries were there supplied after the institution of the original suit. Priority was also given in that case to the solicitor's claim over that of the master's claim for wages; but it appeared that he was a part owner, and had himself instructed the solicitor to defend the suit, and on this ground it was held that he could not enforce his claim to wages to the prejudice of the solicitor. In *The Jeff Davis* (3) priority was given to the claim of the solicitor over that of the holder of a garnishee order—that is, the claim of the solicitor was preferred to a debt of the client wholly unconnected with the ship. This does not appear to me to tend to shew that Sir Robert Phillimore would have preferred the solicitor's claim to that of seamen for their wages, to which the present case must, I think, be likened. For the reasons above given, I am of opinion that the Italian Government is entitled to an order for payment, out of the sum in Court, of the expenses of sending back the crew of the *Livietta* to Italy.

(10) 31 Law J. Rep. P., M. & A. 207.

Solicitors—Thomas Cooper & Co.; Deacon, Son & Gibson.

ADMIRALTY. 1883. July 9, 23.

THE HENRICH BJORN.

Necessaries—3 & 4 *Vict. c.* 65. *s.* 6—*Advances—Premiums of Insurance.*

A., the owner of a foreign ship then in England, owed the plaintiffs 398*l. on a balance of account, and, requiring a further advance, offered to give them a lien on the ship. It was estimated that the necessary disbursements of the ship would amount to* 350*l. The plaintiffs handed A. a cheque for this sum, as if for necessaries, which he immediately returned to them, the ship being actually disbursed by certain shipbrokers out of the inward freight. The plaintiffs made a further*

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advance of 200*l.* *to A., and an agreement was drawn up, in which it was stated that the plaintiffs had advanced a sum of about* 600*l.* *for "necessaries supplied." The plaintiffs effected an insurance on the ship to cover advances. In an action for necessaries,*—Held, *first, that the premiums of insurance could not be recovered; secondly, that the plaintiffs were entitled to recover so much of the* 350*l.* *as was, in fact, expended on necessaries; thirdly, that the advance of* 200*l.* *could not be recovered.*

The plaintiffs were shipbrokers in London, and the defendants had purchased the Norwegian ship *Henrich Bjorn*, subsequently to the transactions which were the subject of the action, and which took place between the plaintiffs and one Gunder Abrahamsen, the then owner of five-sixths of the *Henrich Bjorn*. The claim, so far as it was disputed, was for 68*l.* 6*s.* 8*d.* paid for premiums of insurance, and 550*l.* alleged to have been paid to the owners and master of the vessel in respect of disbursements.

The material facts are fully set out in the judgment.

Charles Hall, Q.C., and *Bucknill*, appeared for the plaintiffs.

Myburgh, Q.C., and *L. E. Pyke*, for the defendants.

The following cases were cited in the arguments:—*The Riga* (1), *Ex parte The National Mercantile Bank; in re Haynes* (2), *The Perla* (3) and *The Alexander* (4).

Cur. adv. vult.

The President (Sir James Hannen), on the 23rd of July.—This is a suit for necessaries supplied to the ship *Henrich Bjorn*, a Norwegian vessel. It is sought to be enforced against the defendants, who have purchased the ship since the alleged supply. In March, 1882, the *Henrich Bjorn* was lying in the port of Liverpool in need of certain necessaries. Gunder Abrahamsen, the then owner of five-sixths of the vessel and managing owner, was indebted to the plaintiffs in the sum of 398*l.* on a general account unconnected with the ship, and required a further advance. This the plaintiffs refused to make, and pressed Abrahamsen, who was then in England, for payment. The *Henrich Bjorn* was at that time in the hands of Messrs. Brodersen, Vaughan & Co., shipbrokers, of Liverpool, and they had received, or were about to receive, the freight due on the ship's voyage to Liverpool, out of which freight they were to disburse the ship. Abrahamsen, in order to induce the plaintiffs to make the further advance he required, proposed, if they distrusted him, to give them a lien on the ship, and to this the plaintiffs agreed. The manner in which this arrangement was attempted to be carried out was as follows. The sum which was required for the disbursements of the ship for its outward voyage was estimated at 350*l.* Instead of paying 350*l.* of the debt due to the plaintiffs out of the freight, and the plaintiffs advancing that sum to Abrahamsen for the purchase of necessaries, it was agreed that this amount should be settle in account between them as though this had been done; and to symbolise this arrangement the plaintiffs handed Abrahamsen a cheque for 350*l.* as for necessaries, which he immediately returned to the plaintiffs in discharge of so much of the debt due to them. The plaintiffs made a further advance of 200*l.* to Abrahamsen, and an agreement was then drawn up, of the 23rd of March, in which it was stated that, in consideration of the plaintiffs advancing an amount of about 600*l.* "for necessaries supplied" to the *Henrich Bjorn*, Abrahamsen undertook to return the amount advanced, with interest and all charges, on the return of the vessel from her then present voyage, as concluded for him by the plaintiffs; and he authorised the plaintiffs to cover the said amount advanced by insurance on the ship, out and home, at his cost. The plaintiffs effected this insurance, and paid premiums, amounting to 68*l.* 6*s.* 8*d.*, and this is the first item in the claim for necessaries. I am, however, of opinion that premiums of insurance cannot be regarded as necessaries. The expression, "neces-

(1) 49 Law J. Rep. Bankr. 62; Law Rep. 15 Ch. D. 42.
(2) 41 Law J. Rep. Adm. 39; Law Rep. 3 Ad. & Ec. 516.
(3) Swabey, 354.
(4) 1 Wm. Rob. 361.

saries supplied," in the 3 & 4 Vict. c. 65. s. 6, which gave the Admiralty Court jurisdiction over foreign ships, though it is not to be restricted to things absolutely and immediately necessary for a ship in order to put to sea—*The Perla* (3)—must still be confined to things directly belonging to the ship's equipment necessary at the time, and under the existing circumstances, for the service on which the ship is engaged—*The Alexander* (4). But the insurance of a vessel is something quite extraneous to its equipment for sea; and however prudent it may be for an owner to insure, it is prudence exercised for his own protection, and not for the requirements of the vessel, which is the sense in which the word "necessaries" is used in the statute. With regard to the second head of claim for disbursements, I am of opinion that the plaintiffs are entitled to recover so much of the sum of 350*l.* as was, in fact, expended in necessaries for the *Henrich Bjorn*. The plaintiffs and Abrahamsen attempted to create a charge on the ship for the further amount of 200*l.* advanced to Abrahamsen, and for the balance of the 398*l.* not discharged by the return of the cheque for 350*l.*, and for the premiums of insurance. They thought they could do this by treating the whole amount as though it were for necessaries; but it was not competent for them to do so. In whatever other way Abrahamsen might have given a charge on the ship or his share in it, he could not do so by calling things necessaries which were not so in fact. But, assuming that 350*l.* was *bona fide* required for necessaries, then, though the mode of carrying out the arrangement between the plaintiffs and Abrahamsen was peculiar, and calculated to excite suspicion, I think that, when explained, it does establish the plaintiffs' right to recover that amount in this action. If the plaintiffs had advanced 350*l.* for the purchase of necessaries, their right would have been clear; and I do not think that it was necessary that the additional steps should be gone through, first of Abrahamsen obtaining the freight from the brokers at Liverpool and paying over to the plaintiffs, and then of the plaintiffs advancing the sum required for necessaries to Abrahamsen. With regard to the amount, it seems probable that the 350*l.* has been correctly arrived at; but the defendants are not precluded from disputing the amount. It must, therefore, if it be desired by the defendants, be referred to the Registrar and merchants, to ascertain how much of the 350*l.* was expended in necessaries.

Solicitors—Hollams, Son & Coward, for plaintiffs; Plews, Irvine & Hodges, for defendants.

ADMIRALTY. 1883. June 28. July 9.

THE THYATIRA.

Collision—Bill of Lading—Insurance—Advanced Freight — Increased Value of Goods at Port of Destination.

S. V. & Co. shipped at Liverpool on board their own ship, the A., a cargo of their own coals to be carried to Valparaiso. The plaintiffs advanced money to S. V. & Co., taking as security bill of lading, on which was indorsed a receipt for 1,000*l. on account of freight and policy of insurance on "advanced freight." The A. was sunk on her voyage by the T., whose owners admitted their liability for the collision. In an action by the plaintiffs against the owners of the T. for compensation for loss of "advanced freight,"*—Held, *that the plaintiffs were entitled to recover.*

Messrs. S. Vaughan & Co. were merchants carrying on business at Liverpool, and in the month of November, 1881, the owners of a cargo of 1,650 tons of coal shipped on board the ship *Atmosphere*, of which they were also the owners, to be carried to Valparaiso. The plaintiffs, Messrs. Cockbain, Allardice & Co., advanced a sum of 1,650*l.* to Messrs. S. Vaughan & Co., and a bill of lading was thereupon signed by the master of the *Atmosphere*, making the cargo deliverable at Valparaiso to Messrs. S. Vaughan & Co., or their assigns; he or they paying

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freight for the same at the rate of 23*s.* per ton; and a receipt for 1,000*l.*, stated to be "on account of freight," was indorsed on the bill of lading.

As security for the advances made by them, the bill of lading, so indorsed, was handed to the plaintiffs, together with policies of insurance on cargo, and on "advanced freight valued at 1,000*l.*"—the latter policy being effected by Messrs. S. Vaughan & Co. with the Thames and Mersey Marine Insurance Company, Limited.

The *Atmosphere*, while on her voyage to Valparaiso, was run down and sunk by the steamship *Thyatira*, of which the defendants were the owners. The defendants admitted that the collision was caused by the negligent and improper conduct of their servants.

The Thames and Mersey Marine Insurance Company settled the insurance on "advanced freight" as for a total loss, and paid the sum of 1,000*l.* mentioned in the policy.

The action was brought by the plaintiffs, on behalf of the insurance company, to recover the said sum of 1,000*l.* as advanced freight.

It appeared at the hearing that, in an action brought by S. Vaughan & Co. against the owners of the *Thyatira*, to recover damages for the collision, S. Vaughan & Co. had claimed for the loss of the ship, the value of the cargo at the port of shipment, and the expenses of sending the ship to sea; and in respect of this claim the Registrar had allowed the following amounts, namely:—

£4,100 for the loss of the ship;
£823 for the cargo; and
£783 for disbursements.

It was proved that the increased value of the cargo at Valparaiso would be at least 21*s.* per ton, in respect of which no claim was made by S. Vaughan & Co. in their action.

Gully, Q.C., and *Bucknill*, for the defendants.—The plaintiffs are not entitled to recover in this action. There was no advanced freight here, the owners of the ship and owners of the cargo being the same persons. Vaughan & Co. cannot advance freight to themselves; and if they do, it is not at risk and cannot be insured as advanced freight. It is true that a shipowner may insure the increased value of his cargo at the port of destination as freight; but the plaintiffs are mere lenders of money, and cannot be subrogated to Vaughan & Co. If the plaintiffs were out of the question, Vaughan & Co. could only have recovered the value of the ship, the value of the cargo at the port of shipment, disbursements made for purpose of sending the ship to sea, and interest. They could not have recovered from the defendants the increased value of the cargo at Valparaiso—*The Parana* (1). If the plaintiffs do stand in Vaughan & Co.'s shoes, Vaughan & Co., having already recovered all they are entitled to, could not recover this 1,000*l.*

Cohen, Q.C. (*Pollard* with him), for the plaintiffs.—The defendants' case is, that if a wrong-doer sinks my property, he is only bound to put me in the same position as if I had never embarked on the adventure. *The Parana* (1) is not in point, there is no question here of a falling market. It is submitted that the plaintiffs have fully made out their title, and could have recovered against the defendants as owners of this cargo. It doesn't matter whether there has been a misdescription of interest. He cited *Arnould on Marine Insurance* (2) and *Hall* v. *Janson* (3).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN), on July 9.—Messrs. S. Vaughan & Co. were the owners of the ship *Atmosphere*, in which they shipped a cargo of 1,650 tons of their own coals from Liverpool to Valparaiso. The price of the coal at Liverpool was 9*s.* per ton, and it would have fetched from 30*s.* to 33*s.* per ton at Valparaiso. Messrs. S. Vaughan & Co. desiring an advance of 1*l.* per ton on this cargo, the plaintiffs, Messrs. Cockbain, Allardice & Co., agreed to make it, on the terms that Messrs. S. Vaughan & Co. should hand them "bills of lading, together with policies of insurance, to cover them in case of loss." This arrangement

(1) Law Rep. 2 P. & D. 118.
(2) 3rd ed. p. 31.
(3) 4 E. & B. 500; 24 Law J. Rep. Q.B. 97.

was carried out in the following manner; the master of the *Atmosphere* signed a bill of lading for 1,650 tons of coal deliverable to Messrs. S. Vaughan & Co. or assigns, they paying freight at the rate of 23*s.* per ton, and he indorsed on the bill of lading a receipt for 1,000*l.* on account of freight. An insurance was effected in the Thames and Mersey Marine Insurance Company, described as on "advanced freight valued at 1,000*l.*" This policy, together with another on cargo, and the bill of lading duly indorsed, were handed to the plaintiffs on their making an advance of 1,650*l.*

The *Atmosphere*, while on her voyage to Valparaiso, was run down and sunk by the *Thyatira*. This action is brought by the plaintiffs against the owners of the *Thyatira* to recover compensation for the loss occasioned to them by the sinking of the *Atmosphere*, "whereby," as alleged in the statement of claim, "the said advanced freight of 1,000*l.* became and was wholly lost." The action is, in fact, brought for the benefit of the insurance company, who have paid the amount of 1,000*l.* insured by them. This, however, can in no way affect the rights and liabilities of the parties in this action. The defendants deny their liability to the plaintiffs, contending that no freight in advance was in fact paid; and so that none has been lost.

If Messrs. Vaughan & Co. had had on board the *Atmosphere* a cargo belonging to other persons they would have had the cargo, together with the freight to be earned by carrying it, to offer as security for the proposed advance; but, as they were the owners of the cargo, they had not any claim to freight properly so called to offer as security. They had, however, the prospective benefit to be derived from the carriage of the coal in their own ship —that is, the enhanced value of the coal when conveyed to the port of delivery— and this, though not strictly freight, is so like it that it has been held that it may be insured under that name—*Flint* v. *Flemyng* (4). It was perfectly competent for Messrs. Vaughan & Co. to transfer the benefit of this enhanced value, under whatever name, to the plaintiffs. If it be regarded from the point of view of the shipowner, it was freight; but if regarded from the point of view of the cargo-owner, it is freight paid in advance; because the holder of the bill of lading would have been entitled to receive the cargo at Valparaiso, without paying any freight; and the plaintiffs, who are the holders of the bill of lading, have been deprived of this benefit by the wrongful act of the *Thyatira*. For this they are entitled to compensation. What is the proper amount of that compensation? It is not to be computed according to the rate of freight mentioned in the bill of lading, because that might be an imaginary sum, exceeding what could have been obtained as freight, or an increased value by reason of not having to pay freight; but there is nothing to contradict the evidence that the enhanced value of this cargo at Valparaiso would have been at least 21*s.* per ton, or 1,732*l.*; that is to say, more than the amount sought to be recovered in this action, as the equivalent for advanced freight. It cannot therefore be contended that the benefit, which would have been derived from carrying the cargo to Valparaiso, is estimated in this action at a fictitious or exaggerated amount. The case of *The Parana* (1) was relied on by the defendants. It was there held that damages cannot be recovered for delay in the carriage of goods on a long voyage by sea, where there has been an accidental fall in the price between the time when the goods ought to have arrived and the time when they did arrive. But no question of rising or falling market occurs in this case. The plaintiffs' estimate of loss is not based on the highest price that could in any circumstances be obtained at Valparaiso; but on uncontradicted evidence that that which they have lost—namely, the increased value of the cargo free of freight—would have been far more than the 1,000*l.* claimed in this action. It was further contended by the defendants that if the 1,000*l.* now claimed is to be regarded as freight, Messrs. Vaughan & Co. have claimed in another action, brought by them against the *Thyatira* and her owners, the disbursements made in order to earn the so-called freight, and that the

(4) 1 B. & Ad. 45.

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defendants ought not to be called on to pay both disbursements and freight. This, however, is no defence to this action, in which the plaintiffs are suing as holders of the bill of lading, and cannot be prejudiced by what has passed, without their concurrence, between Messrs. S. Vaughan & Co. and the defendants. Messrs. S. Vaughan & Co. are not before me on this occasion, and I therefore abstain from expressing an opinion whether they are or are not entitled to recover the disbursements claimed.

Solicitors—Freshfields & Williams, for plaintiffs; Pritchard & Sons, for defendants.

DIVORCE. 1883. April 5, 24.

BIRCH *v.* BIRCH.

Sequestration — Military Pension — Indian Army—Indian Act, XXIII. of 1871—*Army Act,* 1881 (44 *&* 45 *Vict. c.* 58), *s.* 141.

Upon a writ of sequestration issued in consequence of the non-payment of alimony and the costs of a divorce suit, the Court will not restrain a retired officer in Her Majesty's army from receiving a pension for past services.

In this case a wife had obtained a decree of dissolution of marriage on the ground of her husband's adultery and desertion, and the respondent had been ordered to pay the costs of the suit and a sum of 11*l.* 9*s.* 6*d.* per month for permanent maintenance.

The respondent was a retired lieutenant-colonel in Her Majesty's Indian army, and was in receipt of a pension of 359*l.* 12*s.* 6*d.* for past services.

The costs and permanent maintenance not having been paid, a writ of sequestration was issued against the respondent.

C. A. Middleton, for the petitioner, moved for an order restraining the respondent from receiving his pension.

Beddall, for the respondent.

The following cases were referred to:—*Dent* v. *Dent* (1), *Willcock* v. *Terrell* (2) and *Sansome* v. *Sansome* (3).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN), on the 24th of April.—The petitioner has obtained a decree of dissolution of marriage on the ground of her husband's adultery and desertion. The respondent was ordered to pay the costs, amounting to 91*l.* 1*s.* 7*d.*, and was also ordered to pay to the petitioner, by way of permanent maintenance, the sum of 11*l.* 9*s.* 6*d.* per month. He has not obeyed either of these orders, and a writ of sequestration issued against him on the 6th of March, 1883.

The respondent is a retired lieutenant-colonel in Her Majesty's Indian army, and is in receipt of a pension of 359*l.* 12*s.* 6*d.* per annum. Application was made to restrain the respondent from receiving this pension, on the authority of *Willcock* v. *Terrell* (2). In that case the pension of the defendant was for past services as a county court judge, and the Court was of opinion that it was assignable by the person entitled to it, and that, being so assignable, it was liable to be attached in the manner there adopted. That appears to be the principle upon which the judgments of the Exchequer Division and of the Court of Appeal proceeded. In the present case, however, the respondent's pension, though for past services, is not assignable. It was admitted that it came within the Indian Pensions Act, 1871 (4), by which it is enacted that acts, assignments, agreements, orders, sales and securities made by the person entitled to any pension (*inter alia,* for past services) in respect of any money not payable at or before the making thereof, on account of any such pension, or for giving or assigning any future interest therein, are null and void.

Again, by section 141 of the Army Act, 1881 (5), it is enacted that "every assign-

(1) 36 Law J. Rep. Prob. & M. 61; Law Rep. 1 P. & D. 366.
(2) Law Rep. 3 Ex. D. 323.
(3) 48 Law J. Rep. P., D. & A. 25; Law Rep. 4 P. D. 69.
(4) XXIII. of 1871.
(5) 44 & 45 Vict. c. 58.

ment and every charge on . . . . any deferred pay . . . . payable to any officer of Her Majesty's forces or any pension . . . . payable to any such officer . . . . shall, except so far as the same is made in pursuance of a Royal warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void." It thus appears that, by both the Indian Act and the Imperial Act, this pension cannot be assigned; and it is to be presumed that this prohibition was imposed in order that a military pension of this kind should be placed on the same footing as half pay, or as an allowance for maintenance to a public civil officer, such as was in question in *Wells* v. *Foster* (6).

The ground, therefore, of the decision in *Willcock* v. *Terrell* (2) is found wanting in this case; and I am of opinion that the Court ought not, by its order, to indirectly make a pension assignable which the Legislature has declared shall not be so. I am, therefore, reluctantly compelled to hold that I cannot make any order restraining the respondent from receiving his pension.

Solicitors—Waddilove & Nutt, for petitioner; W. Rogers, for respondent.

ADMIRALTY.
1883.
July 12, 23.

THE CLAN MACDONALD.

Bill of Lading—Overside Delivery—Goods landed on Dock Quay—Merchant Shipping Act Amendment Act, 1862 (25 & 26 *Vict. c.* 63), *s.* 67, *sub-ss.* 6 *and* 7.

The plaintiffs were consignees of goods under a bill of lading by the terms of which the goods were "to be delivered from the ship's tackles." The cargo was a general one, and the plaintiffs having failed to take delivery of their goods at the time when the ship began to discharge, the whole of it was landed on the quay in the East and West India Docks and there sorted. When the sorting had been completed, the plaintiffs were informed that the goods were ready for delivery; and if they had then taken delivery, they would have received them free of charge. The goods were not removed for thirteen days, during which time the dock company held them for charges, which the plaintiffs paid, and now sought to recover from the shipowners:—Held, *that the plaintiffs were not entitled to recover, as it was their duty to take delivery of the goods within a reasonable time after they knew that they could receive them.* Held *also, that the plaintiffs were not entitled to twenty-four hours' notice in writing, under the Merchant Shipping Act Amendment Act*, 1862* (25 & 26 *Vict. c.* 63), *s.* 67, *sub-s.* 7, *of the shipowner's readiness to*

(6) 8 Mee. & W. 149; 10 Law J. Rep. Exch. 216.

* Merchant Shipping Act Amendment Act (25 & 26 Vict. c. 63), section 67: "Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or, having made entry thereof, to land the same or take delivery thereof and to proceed therewith with all convenient speed by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following."

Sub-section 6: "If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry, and is ready and offers to take delivery thereof and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner."

Sub-section 7: "If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods, or of such wharf or warehouse as last aforesaid, twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense."

make delivery—that sub-section relating to the case of a vessel discharging overside where the necessity to land for sorting does not arise. Held, *further, that section 67 of the Merchant Shipping Act Amendment Act includes cases in which the owner of goods is not in default, but from any cause fails to obtain delivery.*

This was an action brought by the owners of a consignment of jute shipped on board the steamship *Clan Macdonald* against the owners of the ship, to recover certain charges made by the East and West India Dock Company in respect of the goods, the plaintiffs alleging that such charges were incurred owing to the failure of the defendants to deliver the goods in accordance with the terms of the bill of lading. The material facts are fully stated in the judgment.

Bucknill appeared for the plaintiffs.
Pollard for the defendants.

The following cases were cited:—*Oliver* v. *Colven* (1), *Wilson* v. *The London, Italian and Adriatic Steam Navigation Company* (2), *Marzetti* v. *Smith* (3) and *The Energie* (4).

THE PRESIDENT (SIR JAMES HANNEN) (on July 23).—The plaintiffs are owners of a consignment of jute in the ship *Clan Macdonald*, under bills of lading containing the following clauses:—"500 bales of jute to be delivered, subject to the exceptions and conditions hereinafter mentioned, from the ship's tackles." . . . "The goods are to be discharged from the ship as soon as public intimation shall be given that she is ready to unload; and if not thereupon removed without delay by the consignee, the master or agent is to be at liberty to land the same, or if necessary to discharge into hulk, lazaretto, or hired lighters, at the risk and expense of the owners of the goods." The ship arrived in the East and West India Docks on the 12th of December, and began to unload on the 13th. The whole of the cargo, which was a general one, was landed on the dock quay, and there sorted. Twelve of the bales of jute were landed on the morning of the 13th, and on the afternoon of that day the lighterman employed by the plaintiffs attended with a barge to receive the jute, but was informed that it was not ready, and that the whole cargo would be landed. On the 14th the lighterman again attended, but could get no further information as to when the jute would be delivered. The cargo was then being discharged, and parcels of the jute, as they were come to, were landed on the quay and there sorted. On the 24th the plaintiffs wrote the following letter to the defendants:—

"We have made application at the ship *Clan Macdonald* for delivery of 500 B/ jute marked EP_3, but having failed to obtain delivery, or correct information of the time when delivery could be given, we have lodged on board the usual notices, duplicate of which we enclose."

The enclosed notice was as follows:—

"With reference to 500 bales jute per the above vessel, as per particulars at foot, we hereby give you notice that, in compliance with the provisions of the Merchant Shipping Amendment Act, 1862, we have made due entry and sent by craft (with documents in proper order) alongside the above-named vessel for, and have offered and been ready to take delivery of, the above-mentioned goods; and you having failed to make such delivery, and you having also failed at the time of our said offer to give us correct information of the time when such goods can be delivered, we hereby give you notice and require you to give us twenty-four hours' notice in writing of your readiness to deliver the said goods, and further that we will not be responsible for any dock or landing charges on the same. And we give you further notice that, in the event of any further default in making complete delivery at the proper time of the aforesaid goods, we shall claim from you 12*s.* 6*d.* per day for detention of lighterman and craft, whether such detention be caused by your making default in delivery at the proper time of a part of such goods or of the whole quantity thereof."

To this the defendants replied as follows:—

(1) 27 W.R. 822.
(2) 35 Law J. Rep. C.P. 9; Law Rep. 1 C.P. 61.
(3) Law Rep. W.N. June 30, 1883.
(4) 44 Law J. Rep. Adm 25; Law Rep. 6 P.C. 307.

The Clan Macdonald, Adm.

"We return document received from you this morning. The dock company state that every despatch is being given your craft alongside our steamers *Clans Macdonald* and *Mackenzie*, and further state that if any delay is caused, it is on account of your not having sufficient men to receive the goods. We can, therefore, admit of no liability in the matter."

Some further correspondence followed, and on the 16th the defendants wrote:—

"Your favour of yesterday to hand, enclosing documents which we again beg to return, as we can admit of no liability in the matter. On making further enquiries of the dock company, we are informed that they arranged with your man to go at 8 o'clock this morning, and that up to 12.30 neither the man nor the craft had put in an appearance."

On the 15th the landing and sorting of the cargo were completed, and the plaintiffs' lighterman was informed on the afternoon of that day that the jute would be delivered to him on the following morning, and that a gang of men would be in attendance to deliver the goods into his barge. The men were in fact ready to do so, but the lighterman did not attend. If he had attended at any time during business hours on the 16th, the jute would have been delivered to him free of charge; but as the goods were not taken away on the 16th, the dock company from that time held them for charges, without payment of which the goods could not have been delivered. The goods were not taken away until the 29th, when the dock company's charges had amounted to 18*l.* 12*s.* This sum was paid by the plaintiffs, and they now seek to recover it from the defendants.

The plaintiffs contend that the defendants were bound, under the terms of the bill of lading, to deliver the jute over the side of the ship; and that, having neglected to do so and landed the cargo, they remained liable for any charges to which the jute was subject, until they had given twenty-four hours' notice in writing that it was ready for delivery. The defendants, on the other hand, allege that the cargo was discharged according to the custom of the port of London with regard to the discharge of vessels in dock—namely, by the cargo being unloaded by the dock company's servants, and by them landed upon the dock quay, and sorted, ready for removal by the parties entitled to take delivery of goods from the vessel. They further rely on the provisions of the Merchant Shipping Act Amendment Act, 1862, section 67.

The alleged custom was not established by the evidence.

The real question in dispute between the parties, as appears from the correspondence, turns on the proper construction and application of the 67th section of the Merchant Shipping Act Amendment Act, 1862.

By that section it is enacted that, "Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or, having made entry thereof, to land the same or take delivery thereof and to proceed therewith with all convenient speed by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods, at the times, in the manner, and subject to the conditions following." Then follow seven sub-sections setting forth various cases in which the section becomes applicable. The 6th and 7th are the material ones.

The first question which arises on this section is the meaning of the words "where the owner of any goods fails to make entry and to take delivery thereof and to proceed therewith with all convenient speed." These words, no doubt, include a case of default on the part of the owner of goods to take delivery of them; but they also apply to cases in which the goods owner is not in default, where he from any cause fails to obtain delivery. This is pointed out in the case of *The Energie* (4). It is there said: "Their Lordships conceive that the word 'failed' need not be taken to imply wilful default in the cargo owner; but that, upon the true construction of the section, the shipowner is at liberty to land the goods under it, whenever the delivery of them to the owner within the proper time has been prevented by the force of circumstances, whether the latter is or is not to blame. They think that this construc-

tion is fortified by some of the provisions of the section, which, in certain cases, throw the risk and expense of the landing upon the shipowner." In the present case I do not think that there was any wilful default on the part of the goods owner; but, in fact, he had no barge in attendance to take delivery of the jute when the first twelve bales had to be disposed of; and, considering the question which afterwards arose, it is to be remembered that if the jute had been delivered overside, it would have caused the detention of the barge during the whole time that the ship was being discharged; because the bales came to hand at intervals down to the end of the three days during which the unloading was proceeding. But I am of opinion that there was a failure on the part of the goods owner to take delivery by the time mentioned in the 6th sub-section of the 67th section—that is, the time when it became necessary, for the purpose of convenience in assorting the goods, to land them at the wharf. The shipowner was therefore entitled under that sub-section to land the jute at his own expense, and he became bound within twenty-four hours after assortment to deliver them to the goods owner if demanded.

This would have been on the 16th; and if the plaintiffs had demanded the goods on that day, they would have received them without charge. On the other hand, it was the duty of the plaintiffs to take delivery of the goods within a reasonable time after they knew that they could receive them. This would not necessarily be on the 16th, and if the plaintiffs had been in ignorance that they could receive them on the 16th, I should not consider that their failure to demand them within twenty-four hours after their assortment, would render them at once liable to the charges arising from their remaining on the dock quay. But it is clear that the failure of the plaintiffs to take delivery did not arise from ignorance that they could have the goods, but from a preconceived determination to try the question whether or not they were entitled to insist on a twenty-four hours' notice in writing, under the 7th sub-section of the 67th section. I am of opinion that where goods are landed under the 6th sub-section the 7th is not applicable. That sub-section relates to the case of a vessel discharging overside, where the necessity to land for sorting does not arise. Even if the 7th sub-section were applicable, I do not think it would make any difference in the position of the parties. Where the several conditions imposed on the goods owner by the 7th sub-section have been complied with, it becomes the duty of the shipowner to give the goods owner twenty-four hours' notice in writing of his willingness to deliver the goods: with the consequence that if he lands or unships the goods without such notice, he does so at his own risk and expense. But this does not mean that the goods are to remain at his risk and expense for any time that the goods owner thinks fit to leave them at the wharf, though he has notice that he may receive them by sending for them. And there is no necessity for this notice being in writing. The notice in writing referred to in the 7th sub-section is only required as a condition of the shipowner's right to land the goods at the goods owner's risk and expense. If without this notice the goods are landed, this must be done at the shipowner's risk and expense; but the duty of the goods owner remains to take away the goods within a reasonable time after he has notice, whether written or verbal, that he can receive them. In the present case notice was given to the lighterman, on the 15th, that he might have the goods on the 16th, and I have no doubt that he knowingly left the officers of the dock company under the impression that he would then come and fetch them; but, being aware of the dispute which had arisen as to the necessity for a written notice, he abstained from going to receive the goods. It was contended for the plaintiffs that the lighterman was not their agent to receive notice when the goods would be ready for delivery; but I am of opinion that, as he was sent by the plaintiffs to receive the goods, information as to the time when they would be delivered was so connected with the service for which he was employed, that the plaintiffs are bound by the notice given to him. But in any case the letter of the 16th did give the plaintiffs notice that they could receive the goods

by sending for them. The plaintiffs were bound to act on this notice within a reasonable time; but the correspondence shews that the plaintiffs refused to act upon this or any notice, other than some special twenty-four hours' notice in writing, to which they considered themselves entitled under the 7th sub-section. The charges, therefore, to which the goods became subject arose, not from the plaintiffs' ignorance of the time when they could receive the goods, but from their voluntarily allowing them to become and remain subject to charges, in order that they might test their view of the law, in which I consider them mistaken. I am therefore of opinion that the defendants are entitled to judgment, with costs.

Solicitors — J. A. & H. E. Farnfield, for plaintiffs; Freshfields & Williams, for defendants.

PROBATE. 1883. June 26. } *In the goods of* LUCY CUMING MILLER.

Codicil—Will proved Abroad—Probate in England.

The Court will not admit to probate in England a codicil to a will which has been proved in a colonial Court.

Lucy Cuming Miller, spinster, died, on the 20th of March, 1881, in the island of Antigua, having on the 3rd of September, 1878, duly executed a will, by which she appointed as her executors George William Bennett (since deceased), Michael Brown and William Guffroy.

On the 29th of July, 1879, the testatrix executed a codicil to her will.

On the 4th of July, 1881, the will was duly proved in the Supreme Court of the Leeward Islands.

Phillimore moved for a grant of letters of administration, with exemplification of the will, and with the codicil annexed, to Hugh John Anderson, as attorney in England of the surviving executors.

BUTT, J.—It is the practice to require that codicils shall be proved in the same Court from which probate of the will was obtained. In this case the probate of the will was properly obtained in Antigua. I must therefore refuse this application, and leave the applicants to obtain probate of the codicil in the colonial Court.

Solicitors—Freshfields & Williams, for the executors.

PROBATE. 1883. May 1. } *In the goods of* MARY ANNE KING.

Administration with Will annexed—Limited Grant—Sale of Leasehold—Death of Tenant-for-life, Residuary Legatees and Executor—Administration de bonis non.

The testatrix bequeathed a leasehold house to A, who was one of the four residuary legatees, for life, and directed that upon A's death the house should be sold and the proceeds of the sale divided between B and C. The sole executor named in the will died, without leaving any personal representatives, after having administered all the remaining estate of the testatrix. A and the other residuary legatees having died, and their residuary legatees being unknown, B entered into a provisional contract for the sale of the house; and C, who was married and was resident in India, executed, jointly with her husband, a power of attorney to her solicitor in England for the sale of the house.

The Court, on an affidavit that all the debts due from the testatrix had been paid, and with the consent of C, granted letters of administration with the will annexed to B, limited to the leasehold house.

Mary Anne King, widow, of 115 Drummond Road, Bermondsey, died on the 26th of May, 1870, having on the 18th of March executed a will whereby she appointed John White Sears her sole executor, and nominated Amy Wood (her sister), Mary

In the Goods of Mary Anne King, Prob.

Lawrence, Amelia Coxwell and Amelia Harmen her residuary legatees.

The testatrix bequeathed a leasehold house, situated at 14 Elizabeth Street, Bermondsey, to the said Amy Wood for life, and directed that upon the death of the latter the said house should be sold, and that the proceeds of such sale should be divided between Mary Gillam and Adelaide Drew.

John White Sears died on the 2nd of December, 1879, having taken out probate of the will, and having administered the whole of the estate of the deceased, other than the said leasehold house. Amy Wood died shortly afterwards, and the three other residuary legatees were also dead. John White Sears had left no personal representative, and the personal representatives of the four residuary legatees were unknown.

Mary Gillam having entered into a contract for the sale of the leasehold house, if she should be able to make a good title to it, Adelaide Drew, who was married, and was resident in India, executed, jointly with her husband, a power of attorney, empowering her solicitor, Mr. Washington, to sell the house; and she had also consented to a grant of letters of administration with the will annexed to Mary Gillam.

Searle moved for a grant of letters of administration with the will annexed to Mary Gillam, limited to the leasehold house. He referred to *In the goods of Watson* (1).

THE PRESIDENT (SIR JAMES HANNEN).—On the filing of an affidavit stating that all the debts due from the testatrix have been paid, I order a grant of letters of administration with the will annexed to Mary Gillam, limited to the leasehold house. Justifying security must be given.

Solicitors—Hicklin & Washington.

(1) 1 Sw. & Tr. 110.

PROBATE. 1883. August 6.

In the goods of LUCIUS HENRY HOMAN.

Administration with Will annexed—No Appointment of Executor—Passing over Widow—Grant to Legatee.

The testator died, leaving a widow but no issue. He bequeathed a policy of insurance for 100*l. to his sister for her separate use, but appointed no executor. Such policy of insurance comprised almost the whole of the personal estate of the testator, and there were charges of adultery against the widow.*

The Court, in the exercise of its discretion, without going into the allegations against the widow, made a grant of letters of administration with the will annexed to the sister of the deceased, as the person having the larger interest, but ordered that the widow should have her costs out of the estate.

Lucius Henry Homan, of 40 St. Andrew's Road, Southampton, deceased, executed a will in the following terms:—"This is to certify that I, Lucius Henry Homan, of 40 St. Andrew's Road, hereby will and bequeath to my sister Charlotte Eliza Simpson, for her separate use, the sum of 100*l.* sterling, payable on my decease from the Prudential Assurance Company." The will was duly executed and attested, but there was no appointment of an executor. The deceased left a widow, but no children.

It was stated that the policy of insurance referred to in the will constituted the whole personal estate of the deceased, with the exception of his wearing apparel.

Bayford moved for a grant of letters of administration with the will annexed to Charlotte Eliza Simpson, passing over the widow of the testator. He produced affidavits, in which it was alleged that the widow had been living in adultery during the lifetime of the deceased.

Searle, for the widow, produced affidavits in which the charges made against the widow were denied. In the absence of an appointment of executor, the widow has the first right to a grant of administration with the will annexed.

In the Goods of Lucius Henry Homan, Prob.

THE PRESIDENT (SIR JAMES HANNEN).—Without going into any of the allegations which have been made against the widow, I think that, in the exercise of my discretion, I ought to make a grant of letters of administration with the will annexed to the testator's sister, as the person having the larger interest. The widow will have her costs out of the estate.

Solicitors—Clarkson, Greenwell & Wyles, agents for Damant & Son, Cowes (I.W.), for the widow; Wood & Wootton, agents for H. C. Guy, Southampton, for the legatee.

PROBATE. 1883. July 7.

PARKER AND ANOTHER *v.* FELGATE AND ANOTHER.

Will—Testamentary Capacity—Knowledge of Contents—Execution by Proxy.

If a person who has instructed a solicitor to prepare his will accepts a will which is put before him as a carrying out of such instructions, and consents to his signature being appended to the will by another person, the will is valid, although the testator may then be unable to remember the instructions which he had previously given.

The testatrix, being in failing health, had several interviews with her solicitor, and instructed him to prepare her will. A few weeks afterwards, a will prepared by the solicitor's partner from the instructions given by the testatrix was brought to her for execution. She was then in a comatose condition, but was able, when roused, to speak or make signs in answer to questions. One of her medical attendants held the will before her, saying, "this is your will," and asked her whether she wished F. to sign it for her. The testatrix was heard to say "yes," and the will was then signed in her name by F., and was duly attested.

The jury found—first, that the testatrix, when the will was executed, did not remember and understand the instructions which she had given to her solicitor; secondly, that she could not, if it had been thought advisable to rouse her, have understood each clause of the will; thirdly, that she was capable of understanding, and did understand, that she was executing a will for which she had given instructions:—

Held, *that the will was valid, and was entitled to probate.*

The plaintiffs George Francis Parker and Jane Court propounded the will, bearing date the 29th of August, 1882, of Georgiana Annie Stevens Compton, widow, of 16 Upper Gloucester Place, London, who died on the 2nd of September, 1882.

The defendants, William Felgate, the father of the deceased, and John Tilly, the trustee under the bankruptcy of the said William Felgate and of his son, alleged in their respective statements of defence that the will was not duly executed, that the deceased was not of sound mind, memory and understanding at the time of the execution of the will, and that the deceased did not know and approve of the contents of the will, and that certain provisions had been inserted in the will without her instructions.

The testatrix, who was suffering from Bright's disease, consulted her solicitor, the plaintiff Parker, as to making her will. She had several interviews with him in the months of July and August, 1882, and expressed her desire, among other things, to give a legacy of 500*l.* to her father, and another of 250*l.* to her brother, and to leave the residue of her property to the Hospital for Sick Children. She also expressly directed that the legacies to her father and brother should be secured to them in the event of their becoming bankrupt, and that if the hospital could not take the bequest the residue should be distributed among the members of her family.

Later in the month of August the health of the testatrix became worse; and Mr. Parker being absent from London, his partner, Mr. Ponsford, prepared a will from instructions derived from conversations with Mr. Parker, and from a draft will and a draft bill for preparing the will which were in the handwriting of the latter. The will contained directions that the legacies to the father and brother should be paid to them for their personal use, and that if the hospital should be unable to take the bequest the residue

should be divided among the members of her family.

The effect of the evidence as to the execution of the will, and as to the condition of the testatrix at the time of its execution, is stated in the summing-up.

The case was tried before the President of the Division and a special jury.

E. Clarke, *Q.C.*, and *Searle*, for the plaintiffs.

Inderwick, *Q.C.*, and *Bayford*, for the defendant Tilly.

Dunham, for the defendant Felgate.

The defendants' counsel called no witnesses.

THE PRESIDENT (SIR JAMES HANNEN) to the jury.—Nobody can doubt that Mr. Tilly is acting in what he deems to be the discharge of his duty to the creditors of the other defendant Mr. Felgate, and of Mr. Felgate's son; and it may be presumed that he is sorry that it has become his duty to oppose a will, which, subject to some observations to which certain circumstances fairly give rise, is one which the deceased seems to have been desirous of making. Certainly this lady, who, it is to be remembered, had not become seriously ill till the 26th of August, which was the date fixed upon as that when *coma* set in, and whose mental capacity up to that day nobody disputed, appears to have managed her affairs, so far as the disposition of her property was concerned, in a kindly and considerate manner towards her father and the other members of her family. Apparently she had the affairs of her father and brother in her mind before her fatal illness. She had advanced them 450*l.*, and she was prepared to make them a further advance if she could thereby enable them to satisfy their creditors. That shews that she had her father's and brother's difficulties in her mind. There are in Mr. Parker's books very full entries of instructions for making her will. On the 24th of July she gave instructions for an alteration in the draft, and on the 10th of August a further alteration was made, and then the will was engrossed; but unfortunately Mr. Parker went away for his holiday; the bankruptcy of the father and brother occurred, and the illness of the lady took a fatal turn, while he was away. On the 18th of August Dr. Hickman was called in, and on the 26th *coma* manifested itself; but Dr. Hickman says that after that time she was capable of being roused, and could speak. It is true that he added, "I would hardly say that she was perfectly rational;" but if she could be roused to talk, and if she could answer questions, as he says she could, these circumstances qualify his observations as to her not being perfectly rational. The *coma* went on increasing, but still she could be roused, and could answer general questions up to the 28th of August. Dr. Palmer, another medical man in attendance, said that after the partial *coma* had set in she answered questions by making signs in response. On the 29th Dr. Tanner was called in, that there might be a fresh opinion taken at the time when it was proposed to have the will executed. He states that she opened her eyes, put out her hand, and smiled; that he rustled the will in front of her face, and thus roused her up; that he said, "this is your will; do you wish this lady" (Mrs. Flack) "to sign it?" and that she replied "yes." Dr. Tanner adds, "I have no doubt about it;" and further, "as far as I could judge, she understood what she did." Mr. Wills, a gentleman who was present, and a lady who was by the bedside, corroborated Dr. Tanner's testimony. Mrs. Flack did not hear the reply of the deceased so distinctly, for she observed, "does she say 'yes'?" but another lady who was there said, "that is clear enough." A nurse who stood at a further corner of the bed says that she could not hear the "yes" distinctly, but that she understood the sound to mean "yes." That is the evidence as to the condition of the testatrix.

With regard to the requirements of the law as to due execution, if a person has given instructions to a solicitor to draw a will up after those instructions, and the solicitor draws a will, that, in my judgment, is in law a valid will, if the person assents to his signature being put to it while he is in this frame of mind—"I made a disposition of my property, and gave my solicitor instructions to carry it out; I have no doubt that he did so, and I accept the document which is put before me as

carrying it out." I have put into language what flashes across the mind without being expressed in words. The first question, then, which I shall ask you is whether, at the time of signing the will, the testatrix knew and recollected all the instructions which she had given to Mr. Parker? That would be one state of mind. If you come to the conclusion that she did not recollect in every detail all that passed as regarded instructions to Mr. Parker, I will ask you whether you think she was in such a condition of mind that if each clause of the will had been read to her, and she had been asked "do you wish this?" she would have been able to answer intelligibly. That would be another condition of mind which would be sufficient, although not so strong as the first. There is a third state of mind which, in my judgment, would be sufficient. A person might no longer have capacity to go over the whole transaction, and take up the thread of business from the beginning to the end, and think it all over again; but if he can say to himself, "I have settled that business with my solicitor; I rely upon his having embodied it in proper words, and I accept the paper which is put before me as embodying it"—it is, of course, not necessary that he should use those words; but if he is capable of that train of thought, it is, in my judgment, sufficient. It is for you to say whether, having regard to the circumstances under which this will was prepared and executed, you accept the view of those who were present and say that, in their judgment, she was conscious.

There remains the question of the contents of the will. You must consider whether the instructions given to Mr. Parker justified the insertion of the bankruptcy clause, and the clause leaving to the family the bequest primarily intended for the hospital if the hospital could not take it. Nobody can doubt that the deceased must have discussed with Mr. Parker the probability of that bankruptcy of her father and brother which her generosity had staved off. Mr. Parker says, "If anything happened, we were to insert a clause to prevent their bequests going to the trustees." As to the other clause, he says that his instructions were that if the bequest could not go to the hospital, it should go to her family. In the will drawn by him the phrase "next-of-kin" was used instead of "family." That seems to have been a slip, and his partner having heard from him that his client had said "members of my family," altered the clause accordingly. If that is so, the clause as it stands only carries out the instructions of the testatrix. You will have to return a finding as to both those clauses; but even if you find that both or either of them were inserted without instructions, the rest of the will may stand good. As to the will as a whole, I will put to you the three following issues:—First, did the deceased, when the will was executed, remember and understand the instructions which she had given to Mr. Parker? Secondly, could she, if it had been thought advisable to rouse her, have understood each clause of the will? Thirdly, was she capable of understanding, and did she understand, that she was executing a will for which she had given instructions?

[The jury answered the two first questions in the negative, and the third question in the affirmative. They also found that the testatrix had given instructions for the insertion of the clauses as to the bankruptcy, and as to the disposal of the bequest given to the hospital in the event of the hospital being unable to take it.]

THE PRESIDENT.—I pronounce for the will as it stands, with costs.

Solicitors—Parker & Ponsford, for plaintiffs; W. Foster, for defendant Tilly; J. J. Chapman, for defendant Felgate.

PROBATE. 1883. May 8. } *In the goods of* HARRIET AYRES.

Administration—Husband and Wife—Married Woman—Consent of Husband—Married Women's Property Act, 1882 (45 & 46 *Vict. c.* 75), *ss.* 1-5, 24.

Under the provisions of the Married Women's Property Act, 1882, *a married woman is entitled to take a grant of administration without her husband joining in the administration bond.*

Harriet Ayres, widow, died intestate, at 29 Market Street, Paddington, on the 23rd of January, 1883, leaving her mother and her three sisters her only next-of-kin.

Harriet Dearing, the mother of the deceased, who was a married woman, had applied for letters of administration, but her husband had refused to join in the administration bond.

R. Hughes moved for a grant of administration to Harriet Dearing.—Under the Married Women's Property Act, 1882 (1), a married woman is entitled to take a grant of probate or administration without her husband's intervention. Section 1 renders a married woman capable "of acquiring, holding and disposing .... of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee," and also capable "of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in *tort* or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceedings brought by or taken against her." By the same section, "every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shewn." Section 5 enables a married woman married before the passing of the Act "to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property her title to which shall accrue after the commencement of this Act;" and by section 24 the word "contract" is to "include the acceptance of any trust, or of the office of executrix or administratrix."

THE PRESIDENT (SIR JAMES HANNEN).—The sections of the Married Women's Property Act, 1882, which have been referred to, satisfy me that a husband incurs no responsibility by reason of his wife accepting the office of administratrix; and as the grant confers no benefit upon him, the reason for the old practice fails, and his concurrence is no longer necessary.

(1) 45 & 46 Vict. c. 75.

Solicitors—Masterman, Hughes, Masterman & Rew.

DIVORCE. 1883. May 1. } HUNT *v.* HUNT.

Judicial Separation—Maintenance of Children—Payment into Court—20 & 21 *Vict. c.* 85. *ss.* 22 *and* 32.

The Court has no jurisdiction, after a decree for a judicial separation upon a wife's petition, to order the respondent to pay into Court such a sum as will produce an income equal to the amount ordered to be paid by the husband for the maintenance of the children of the marriage.

The petitioner had obtained a decree for a judicial separation on the ground of her husband's adultery, with an order for the custody of the two children of the marriage. The Court had since made an order that the respondent should pay to the petitioner the sum of 30*l.* per annum for the maintenance of his children.

Searle, for the petitioner, moved for an order that the respondent should pay into

Court such a sum as would, when invested, secure to the wife an income of 30*l.* per annum.

C. E. L. Strong, for the respondent.—The Court has no jurisdiction to make the order asked for. The 20 & 21 Vict. c. 85. s. 32, empowers the Court to order payment of a lump sum to produce permanent alimony for the wife, but there is no corresponding provision with reference to the permanent maintenance of children. Section 22 shews that the former practice of the Ecclesiastical Courts is applicable, under which practice the order asked for could not have been made.

The PRESIDENT (SIR JAMES HANNEN).—I have no power to make the order asked for.

Solicitors—Hicklin & Washington, for petitioner; W. Millman, for respondent.

[IN THE COURT OF APPEAL.]

DIVORCE. 1883. July 3.

ELLIS *v.* ELLIS.*

Practice—Divorce—Decree nisi for Dissolution of Marriage—Application after decree nisi for alimony pendente lite—20 *& 21 Vict. c.* 85. *ss.* 31 *and* 32—23 *& 24 Vict. c.* 144. *s.* 7.

After a decree nisi, and before a decree absolute, for a dissolution of marriage, the suit is still pending; and in the interval an order for alimony pendente lite can, in a proper case, be obtained.

Latham *v.* Latham (2 Sw. & Tr. 299) *overruled.*

This was an appeal from a decision of Sir J. Hannen.

On the 27th of October, 1882, Mrs. Ellis filed a petition for dissolution of her marriage, on the ground of her husband's cruelty and adultery; and on the 11th of November she filed a petition for alimony.

On the 21st of November she obtained a decree *nisi* for the dissolution of her marriage; and on the 22nd of January, 1883, she applied for alimony *pendente lite*. The application was heard and dismissed by the Registrar; but on the 17th of April Sir J. Hannen, sitting in chambers, reversed the decision of the Registrar, and referred it back to him to fix the amount of alimony.

Against this decision the husband appealed.

The appellant appeared in person, and contended that the application for alimony was made too late. After a decree *nisi* the suit was no longer pending. The application should have been made either before or at the time when the decree *nisi* was pronounced. He referred to 20 & 21 Vict. c. 85. ss. 31 and 32, *Pritchard on Divorce* (1), *Latham* v. *Latham* (2) and *Laxton* v. *Laxton* (3).

McCall and *Guiry*, for Mrs. Ellis, argued, *contra*, that the decree *nisi* did not put an end to the *lis pendens*, because the *status* of the wife remained unaltered until the decree absolute was made. Delay was the only ground for refusing alimony—*Noblett* v. *Noblett* (4); and there had been none here, as the petition for alimony was filed before the decree *nisi*. The soundness of the decision in *Latham* v. *Latham* (2) had been questioned, by the same Judge who decided it, in *Laxton* v. *Laxton* (3); and it was therefore of doubtful authority.

The appellant, in reply.

COTTON, L.J., said,—I am of opinion that the order of the Court below was quite right. The 32nd section of the Act 21 & 22 Vict. c. 85, gives the Court power, if it think fit, on any decree for dissolution, to order the husband to pay such alimony as it deems reasonable; but then the Act 23 & 24 Vict. c. 144. s. 7, provides that only a decree *nisi* is to be pronounced in the first instance, which decree can be made absolute after six months. The decree *nisi* is not final, and

* *Coram* Cotton, L.J., and Bowen, L.J.

(1) p. 25.

(2) 2 Sw. & Tr. 299; 30 Law J. Rep. P., M. & A. 163.

(3) 30 Law J. Rep. Prob. & M. 208.

(4) Law Rep. 1 P. & D. 651.

until the decree absolute the marriage tie is not at an end; although it is true that the respondent can do nothing after a decree *nisi*, except move for a new trial. Now, the question we have to decide is whether, during the interval between the decree *nisi* and the decree absolute, alimony ought to be granted. Until the decree is made absolute the Court cannot make any permanent provision for the wife; it seems to me, therefore, reasonable that the Court should, in the mean time, have power to make some temporary provision for the wife. For this reason I am of opinion, independently of authority, that the order of the Court below was right. If the case of *Latham* v. *Latham* (2) had been generally followed, it would not, in my opinion, be right to disturb the practice; but it does not appear to be so. *Laxton* v. *Laxton* (3) only decides that an application for permanent alimony before decree absolute is premature; and in that case the Judge doubted the soundness of the decision in *Latham* v. *Latham* (2), although it was his own decision. I think, therefore, that we are justified in overruling *Latham* v. *Latham* (2), and in dismissing this appeal.

BOWEN, L.J., said:—I am of the same opinion. All reason and common sense are in favour of the decision of the Court below. It is clear that alimony *pendente lite* can be obtained down to the decree *nisi*, and permanent alimony when the decree is made absolute. Then why should the wife be deprived of alimony during the interval? In my opinion, the decision in *Latham* v. *Latham* (2) is unsound in principle, and contrary to the spirit of the Act of Parliament. Its validity was certainly doubted in *Laxton* v. *Laxton* (2). I think, therefore, that the Judge below was right to disregard it.

Solicitors—Indermaur & Clark, for respondent.

DIVORCE. 1883. June 6.

FREEGARD *v.* FREEGARD, COWPER AND LUCAS.

Dissolution of Marriage—Bigamy—Belief of Petitioner that Respondent was dead—Discretion of Court.

A husband, believing that his wife was dead, went through the ceremony of marriage with another woman. He afterwards discovered that his wife was alive and that she had been guilty of adultery. He thereupon separated from the woman with whom he had gone through the ceremony of marriage, and presented a petition for a divorce.

The Court granted a decree for a dissolution of the marriage.

This was a husband's petition for a dissolution of marriage on the ground of the respondent's adultery with the two co-respondents and with a person unknown. The respondent, in her answer, alleged that the petitioner had been guilty of cruelty, bigamy and adultery. Neither of the co-respondents had entered an appearance.

The case was tried before Butt, J., without a jury.

The parties were married in 1849, and had six children. They cohabited till 1873, when they separated in consequence of the drunken habits of the respondent. The petitioner paid her an allowance for about three years, but he heard nothing of her from 1876 till 1880. In September of the latter year he read in the newspapers a report of an inquest held upon the body of a woman who had been drowned near Hackney. He afterwards viewed the body at the Hackney mortuary, and believed it to be that of his wife. His son and daughter and another person also believed that they had identified the body as that of the respondent. In December, 1880, the petitioner went through the ceremony of marriage with another woman.

In 1882 the petitioner discovered that the respondent was still alive, and that she had been guilty of adultery. He immediately ceased to cohabit with the woman with whom he had gone through

the ceremony of marriage, and instituted the present suit.

Inderwick, Q.C., and *Searle*, for the petitioner.

Hall, Q.C., for the respondent.

BUTT, J.—I am satisfied that the adultery of the respondent has been proved, but that the cruelty of the petitioner has not been proved. As to the bigamy, the petitioner, when he married the second time, had good reasons for believing, and did believe, that the respondent was dead. As soon as he discovered his mistake he separated himself from the other woman, and he has not cohabited with her since. Under these circumstances I am of opinion that I ought not to deprive him of his right to have his first marriage dissolved, and I therefore pronounce a decree *nisi*.

Solicitors—Lewis & Lewis, for petitioner; G. H. Hall, for respondent.

PROBATE. 1883. July 16, 30. } *In the goods of* WILLIAM BRADLEY.

Will—Construction—Executor—Omission of word.

A will contained the words, "I appoint R. H. B. and J. E. W." Then followed certain bequests, including the following:—"To each of my executors the sum of twenty pounds." The testator also gave, devised, and bequeathed all the residue and remainder of his property, of every kind, "unto my said executors and trustees," upon the usual trusts, for sale, conversion, and investment:—The Court granted probate of the will to R. H. B. and J. E. W., as executors.

William Bradley, deceased, late of 11 Ely Place, London, solicitor, executed a will on the 28th of August, 1882, which contained the following words:—"I appoint Robert Hanson Brooks, of 17 Moorgate Street, in the city of London, and James Edward Walker, of 2 Chancery Lane, in the county of Middlesex." The will contained several bequests, among which was the following:—"To each of my executors the sum of twenty pounds"; and the residuary gift was in the following terms:—"I give, devise and bequeath unto my said executors and trustees all the residue and remainder of my property, of every kind, upon the usual trusts, for sale, conversion and investment, &c."

The father of the testator had consented to a grant of probate being made to Messrs. Brooks and Walker.

A. Powell moved for a grant of probate to Robert Hanson Brooks and James Edward Walker as executors.—Although the word "executors" has been omitted after the words "I appoint," the testator's intention can be inferred from the legacy of 20*l.* to each of his "executors," and from the residuary gift to his "said executors and trustees" upon the usual trusts. Even if the intention is not apparent on the face of the will, it can be shewn by parol evidence.

He referred to *Spelding* v. *Spelding* (1), *Baylis* v. *The Attorney-General* (2), *Hunt* v. *Hort* (3), *Doe* v. *Hicks* (4), *Doe* v. *Somerset* (5), *Doe* v. *Micklem* (6), *In re Daniel's Settlement Trust* (7), *Fawcett* v. *Jones* (8), *Cropton* v. *Davis* (9), *Sweeting* v. *Prideaux* (10), *In the goods of De Rosaz* (11), *Greenwood* v. *Greenwood* (12), *Red-*

(1) Cro. Car. 184.
(2) 2 Atk. 239.
(3) 3 Bro. C.C. 311.
(4) 7 Term Rep. 437.
(5) 5 Burr. 2608.
(6) 6 East, 486.
(7) 45 Law J. Rep. Chanc. 105; Law Rep. 1 Ch. D. 375.
(8) 3 Philli. 434.
(9) 38 Law J. Rep. C.P. 159; Law Rep. 4 C.P. 163.
(10) 45 Law J. Rep. Chanc. 378; Law Rep. 2 Ch. D. 413.
(11) 46 Law J. Rep. P., D. & A. 6; Law Rep. 2 P. D. 66.
(12) 47 Law J. Rep. Chanc. 298; Law Rep. 5 Ch. D. 954.

In the goods of William Bradley, Prob.

fern v. *Bryning* (13), *Morrell* v. *Morrell* (14) and *Jarman on Wills* (15).

THE PRESIDENT (SIR JAMES HANNEN) (on July 30).—In this case the testator made a will, in which he used the words, "I appoint Robert Hanson Brooks and James Edward Walker"; and further on he says, "I give to each of my executors the sum of twenty pounds"; and then he gives, devises and bequeaths to his "said executors and trustees" the residue of his property on the usual trusts. The question was, whether or not those persons could be treated as his executors. The application is made with the consent of the persons interested; and therefore I have the less hesitation in expressing my opinion that the testator does sufficiently express his intention to make these persons his executors. That it is his intention to appoint executors is clear, and he must have supposed that he had done so by his giving a sum of money to each of them, and giving the residue to them. I am, therefore, supported by the words of the will, and am of opinion that when he appointed them he meant to appoint them to something; and the inference I draw from the words of the will is that he meant them to be his executors. I therefore grant probate to them, as executors.

Solicitor—J. E. Walker.

PROBATE. 1883. April 5.

In the goods of THOMAS MACDOUGALL BLECKLEY.

Codicil—Revocation—Will and Codicil on same Paper—Cutting off Signature to Will.

B. executed a will and a codicil upon the same piece of paper. He afterwards cut off the signature to the will. The codicil was dependent upon the will, and there was evidence that B. believed that he had revoked the codicil:—Held, *that the codicil was revoked.*

Thomas Macdougall Bleckley, M.D., formerly a surgeon in Her Majesty's Indian army, died on the 23rd of November, 1882, having on the 29th of December, 1875, duly executed a will.

On the 13th of May, 1880, the deceased duly executed a codicil, which was written at the foot of the will and on the same piece of paper, whereby he appointed another executor, but in all other respects the codicil confirmed the will.

On the 18th of October, 1882, the deceased cut off his signature to the will, but did not do anything to revoke the codicil. He had previously given instructions for a fresh will, but such will was never executed. Shortly before his death he told his wife that he should die intestate.

Bayford moved for a grant of letters of administration to the widow of the deceased as in the case of an intestacy. He referred to *In the goods of Turner* (1).

THE PRESIDENT (SIR JAMES HANNEN).—The question whether the revocation of a will is also the revocation of a codicil must depend on the circumstances of each particular case. Actual destruction of the instrument is not necessary to constitute revocation, and therefore the question is whether the deceased intended to revoke the codicil as well as the will. Here the codicil is dependent upon the will, and the circumstances shew me that he intended to revoke both documents. I shall therefore grant administration to the widow.

Solicitors—Tompson, Pickering, Styan & Neilson.

(13) 47 Law J. Rep. Chanc. 17; Law Rep. 6 Ch. D. 133.
(14) 51 Law J. Rep. P., D. & A. 49; Law Rep. 7 P. D. 68.
(15) 4th ed. 486.

(1) 36 Law J. Rep. Prob. & M. 8; Law Rep. 2 P. & D. 403.

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insolvent, and judgment on the bills was obtained against the master in July, 1881, and he issued a writ against the ship on the 23rd of November, 1881, and the owners' solicitors then gave an undertaking to put in bail,—*Held*, that there was no *laches* which would prevent the plaintiff from maintaining the action. Ibid.

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—— *costs: appeal: judgment of admiralty division varied: collision: both vessels found to blame*]—Where the Court of Appeal vary a judgment of the Admiralty Division that one of two vessels only is to blame for a collision by finding both to blame, no order will be made as to costs either in the Court of Appeal or in the Court below, but each party will pay his own costs of the whole litigation. *The Hector* (App.), 47

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THE

LAW JOURNAL REPORTS

FOR

THE YEAR 1883:

CASES

DECIDED BY THE

JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council,

REPORTED BY

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MICHAELMAS 1882 TO MICHAELMAS 1883.

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MDCCCLXXXIII.

CASES ARGUED AND DETERMINED

IN THE COURT OF

THE JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

MICHAELMAS 1882 TO MICHAELMAS 1883.

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1883. Feb. 10. GERALD STRICKLAND (*appellant*) v. THE MARCHESE FELICISSIMO APAP (*respondent*).

Malta — Primogenitura — Majoratus — Construction — Presumption of Law.

In the construction of settlements the presumption of law is in favour of "primogenitura" rather than "majoratus," and a deviation from the ordinary mode in which primogenitura descends is not to be construed as interfering with that mode of descent more than is necessary to give effect to such deviation.

Succession in primogenitura depends, in the first place, on the line, in the second place on the degree, in the third place on the sex, and in the fourth place on the age.

A primogenitura preferred sex to line or degree, and gave certain powers of nomination, and provided that in default of male issue the property should go to one of the male descendants by a female of the same male line; that the direct line of the last possessor was to be preferred to the collateral line, and the nearer to the more remote:—

Held, *that the grandson of an elder sister of a possessor had priority in succession over the son of a younger sister.*

This was an appeal from Her Majesty's Court of Appeal for the Island of Malta.

The action was commenced in the Court of First Instance of the Island of Malta by the respondent against the appellant.

The Court of First Instance of the Island of Malta gave judgment in favour of the appellants.

From this judgment the respondent appealed to the Court of Appeal of the Island of Malta.

The Court of Appeal gave judgment, and reversed the judgment of the Court below.

From this judgment the present appeal was brought.

The facts of the case are fully stated in the judgment of their Lordships.

H. Matthews, Q.C., Benjamin, Q.C., and *Seward Brice*, for the appellant.—The appellant being the eldest and nearest male in the best line is entitled to the primogeniture in preference to the respondent, who is a more remote descendant.

Charles, Q.C., and *Mackey*, for the respondent.—Having regard to existing genealogical relations, the respondent is entitled to the primogenitura as against the appellant. The respondent upon his birth became entitled in immediate expectancy to the primogenitura. Nothing afterwards occurred to defeat his title.

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (1):—

The question to be determined in this appeal arises thus:—

(1) Sir Barnes Peacock, Sir Robert P. Collier, and Sir Arthur Hobhouse.

Strickland v. *Apap.*

Canon Dr. Don Gio. Francesco Maria Mangion made a will on the 10th of June, 1737, the material parts of which are as follows. After constituting Count Pietro Gaetano Perdicomati Bologna his universal heir, the will proceeds:—

"Voluit tamen jussit ordinavit atque mandavit dictus Dominus Testator, prout vult jubet ordinat et mandat, quod prænominatus Dominus Hæres universalis ut supra institutus infra annos duos a die sui obitus in antea computandos teneatur et debeat de omnibus bonis stabilibus hæreditarijs ipsius Domini Testatoris, et in quibus dictus Dominus Petrus Caietanus fuit ut supra institutus hæres universalis, erigere et fundare in valida et subsistenti forma perpetuam primogenituram, sub arcto et perpetuo fideicommisso, favore masculi legitimi et naturalis ex legitimo matrimonio procreati et descendentis ex dicto Domino Petro Caietano, cum prohibitione quod dicta bona stabilia hæreditaria eorumque fructus etiam durante vita possessoris non possint alienari subjugari hypotecari neque in specie neque in genere nec aliter quomodocumque, in quascumque personas quovis sub prætextu transferri ex quacumque causa quantumvis necessaria, excludens expresse idem Dominus Testator a fruitione huiusmodi primogenituræ perpetrantes aliquod delictum, et hoc in odium delicti, ac etiam omnes et singulos religionem ingressuros ibique regularem professionem emissuros, nedum a proprietate dictorum bonorum, verum etiam ab eorum usufructu, dans et concedens dictus Dominus Testator facultatem dicto Domino Hæredi Universali in erectione et fundatione huiusmodi primogenituræ pactum legem et conditionem apponendi, quod sit in libertate ipsius Domini Petri Cajetani, qui vita sua durante usufructuare debet bona stabilia hæreditaria prædicta pro fruitione bonorum ad primogenituram erigendam spectantium nominare quem voluerit ex proprijs filijs masculis legitimis et naturalibus, etiam postposito primogenito, et talis nominatus haberi debeat pro primogenito quamvis non fuisset major natus taliter ut filius primogenitus, et quilibet alius nullum jus habeat ad primogenituram nisi fuerit ad eam nominatus a dicto Domino Petro Cajetano a cuius libero arbitrio dependere debet nominatio, quam liberam facultatem nominandi unum ex filijs masculis legittimis et naturalibus dictus Dominus Testator dedit et concessit cuicumque possessori bonorum dictæ primogenituræ. Prout quoque idem Dominus Testator facultatem dedit dicto Domino Hæredi Universali legem pactum et conditionem apponendi in erectione huiusmodi primogenituræ, quod si ultimus masculus illius possessor non haberet masculos, tunc bona ad primogenituram spectantia pervenire debeant ad alium masculum ex ipso Domino Hærede Universali descendentem quamvis remotiorem, in exclusionem fæminarum etiam ex ultimo masculo descendentium, vel quod debeant transire ad fæminam donec et quousque ex ea nasceretur masculus; quatenus tamen nullus masculus per directam lineam masculinam descendens ex dicto Domino Hærede Universali reperiretur, tunc admitti debeat ad primogenituram fœmina ex descendentibus ex dicto Domino Hæredi Universali ex proximiori ultimo masculo possessori primogenituræ, donec et quousque ex ipsa fœmina nasceretur masculus, et ita in perpetuum observari, excludens dictus Dominus Testator a dicta primogenitura omnes qui non sunt legitimi et naturales et ex legitimo matrimonio procreatos. Similiter dictus Dominus Testator amplam et liberam facultatem dedit dicto Domino Hæredi Universali apponendi in erectione dictæ primogenituræ quæcumque alia pacta leges et conditiones sibi benevisa, quæ habeantur ac si ab initio fuissent a dicto Domino Testatore apposita, etiamsi non compaterentur cum superius expressis, dummodo tamen non sint derogatoria perpetuo fideicommisso et primogenituræ et supra ordinatis, ac substitutionibus et vocationibus de quibus infra, et non alias aliter nec alio modo."

If Count Pietro Gaetano fails to found the primogenitura "tunc illius filius primogenitus teneatur et debeat eamdem primogenituram erigere infra tempus supra prescriptum, et cum omnibus pactis, legibus, conditionibus, vocationibus, prohibitionibus, facultatibus, et fideicommissis supra expressis, et non alias."

In default of the whole line, male and female, of Count Pietro Gaetano, the property is to go to the Baroness Mompalao

"retento tamen semper et religiose observato ordine primogenituræ et fideicommissi ut supra ordinatum."

Canon Mangion died soon after the date of his will, and Pietro Gaetano, on the 3rd of November, 1739, purporting to act in execution of the powers conferred upon him by the will, executed a deed, of which the most material passages are the following:—

"Hinc prædictus Dominus Petrus Caietanus Perdicomati Bologna, filius quondam Domini Martini Antonij, Civis Civitatis Vallettæ, mihi Notario cognitus præsens coram nobis, adimplendo voluntatem prædicti Domini Testatoris, et utendo facultate sibi ab eodem concessa, vigore præsentis instrumenti erexit et erigit constituitque in primogenituram perpetuam et individuam, omnia stabilia hæreditaria dicti Domini Canonici, sub legibus et conditionibus infrascriptis, quæ inviolabiliter observari voluit et vult cunctis futuris temporibus, reservata tamen sibi vita sua naturali durante usufructu eorumdem bonorum, et non aliter.

"Et primo, quod dicta bona in primogenituram erecta sint simplici absoluto et perpetuo fideicommisso subjecta favore totius descendentiæ dicti Domini Petri Cajetani servato ordine infrascripto; ita ut nullo unquam futuro tempore, nec inter vivos, nec per ultimam voluntatem, nec in totum, nec in partem, possint vendi subjugari, hypotecari, transferri, et alienari in alios, alienationis vocabulo latissime sumpto, quovis titulo et ex quavis causa etiam necessaria et privilegiata, scilicet detractione etiam legittimæ alimentorum dotis et alia qualibet etiam per Rescriptum et dispensationem Principis, ac de ejus plena potestate; neque quoad fructus, et eorum commoditatem etiam in vita possessoris; sed integra et indiminuta semper conserventur; pro decore suæ familiæ ad commodum tamen infra vocatorum, et juxta ordinem primogenituræ inferius designandorum; quod si quis ex possessoribus pro tempore dictorum bonorum per se vel per alium directe vel indirecte præmissis vel alicui præmissorum contravenerit, statim, et ipso jure, cadat a commodo dictorum bonorum eorumque fructuum etiam pendentium, illaque devolvantur ad alios vocatos, servato ordine quo infra: licitum tamen erit possessori pro tempore eorumdem bonorum illa permutare cum alijs bonis æquivalentis valoris, sitis tam in hoc dominio quam in alijs ditionibus, quæ bona censeantur hoc casu subrogata et in totum subjecta præsenti dispositioni et non aliter.

"Secundo, quod dicta bona semper et omni futuro tempore in perpetuum detineri et possideri debeant ab uno ex masculis descendentibus per lineam masculinam a dicto Domino Petro Cajetano, incipiendo ab illo quem ipse nominaverit, et continuando de uno in alium sive descendentem sive transversalem possessoris pro tempore usque ad ultimum, ita ut omnes et singuli masculi descendentes per lineam masculinam a dicto Domino Petro Cajetana, habeant jus præcipuum consequendi dicta bona privative quo ad alios, sive masculos ex fœminis, sive fœminas ejusdem lineæ masculinæ, unus tamen post alium, servato hoc ordine, quod masculus descendens actualis possessoris præferatur masculo collaterali, et masculus collateralis lineæ magis proximæ ejusdem possessoris præferatur masculo collaterali aliarum linearum, et non aliter.

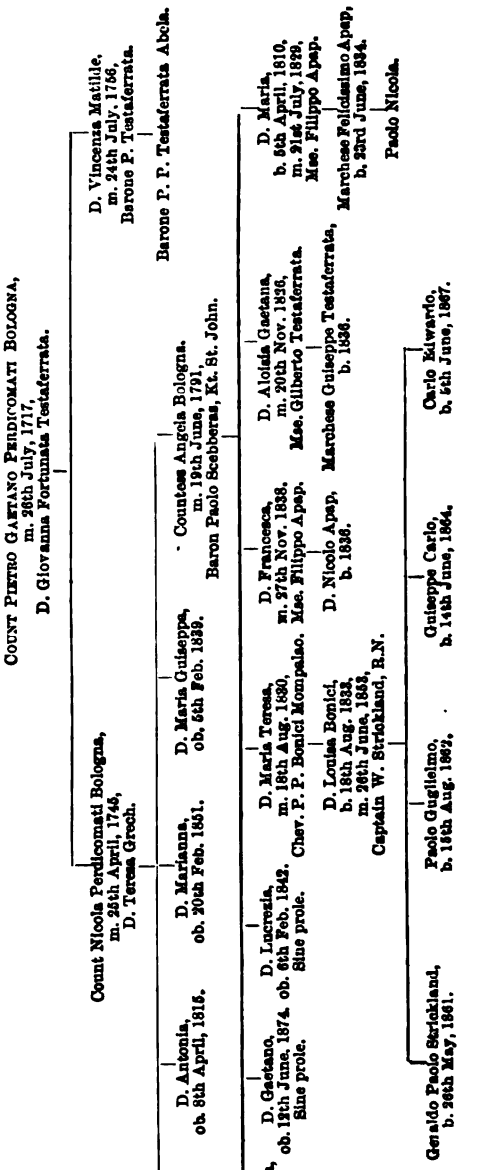
"Tertio, quod donec adfuerit aliquis etiam remotissimus ex dictis masculis descendentibus per lineam masculinam a dicto Domino Petro Cajetano, numquam admittantur fœminæ aut masculi descendentes ab eis, etiam si sint descendentes ultimi possessoris, vel de ejus linea magis proxima; non extantibus vero vel quandocumque deficientibus et extinctis omnibus masculis prædictis, dicta bona perveniant et pervenire debeant in perpetuum ad unum ex masculis descendentibus a fœminis de eadem linea masculina, et transeant de uno in alium usque ad ultimum, servato eodem ordine prælationis qui supra; et non extantibus vel quandocumque deficientibus hujusmodi masculis ex fœminis, eadem bona perveniant ad unam ex ipsismet fœminis, et transeant de una in aliam usque ad ultimam fœminam de dicta linea masculina, eodem ordine servato; quæ tamen fœminæ semper censeantur vocatæ in subsidium donec nasciturus masculus, ad quem post mortem naturalem fœminæ actualis posseditricis redire debeant dicta bona toties quoties casus dederit, et non aliter.

"Quarto, quod non extantibus vel quandocumque extinctis omnibus masculis descendentibus per lineam masculinam a dicto Domino Petro Cajetano eorumque fœminis et masculis descendentibus ab eis in præcedentibus duobus capitibus respective vocatis, dicta bona semper et in perpetuum perveniant et pervenire debeant ad descendentes per lineam fœminam a dicto Domino Petro Cajetano, de uno in alium usque ad ultimum tam marem quam fœminam, servatis eodem methodo et eodem ordine præscriptis pro descendentibus per lineam masculinam in dictis duobus capitibus præcedentibus, ita ut primo loco admittantur masculi, et inter istos masculi ex masculis usque ad ultimum etiam remotum et transversalem ultimo possessori præferantur masculis ex fœminis etiam proximioribus, ac secundo loco in defectu omnium masculorum subintrent fœminæ, donec tamen nasceretur masculus qui semper illas excludere debeat salvo usufructu vita durante fœminæ posseditricis, et ulterius inter concurrentes de unaquaque specie respective præferatur descendens ultimi possessoris collaterali et collateralis ejus linea magis proximæ collaterali aliarum linearum ut supradictum fuit, et non aliter.

"Quinto, quod quilibet possessor pro tempore præsentis primogenituræ, si fuerit masculus, possit nominare et eligere suum immediatum successorem aliquem vel aliquam ex vocatis in præsenti instrumento ad sui libitum, etiam si sit sibi magis remotus vel remota, vel minor natu, dummodo non pervertat ordinem vocationis et prælationis superius præscriptum; et non facta hujusmodi nominatione et electione censeatur semper nominatus magis proximus ultimo possessori pro tempore in gradu naturæ, et in paritate gradus major ætate, si autem actualis possessor fuerit fœmina hujusmodi nominationem successoris nunquam facere possit, sed magis proximus et major ætate ut supra succedere debeat juxta methodum superius traditum, et non aliter."

Pietro Gaetano proceeded to nominate his son, Count Nicola, who will hereafter be called Nicola the First.

It is convenient here to introduce the pedigree of the family, beginning with Count Pietro Gaetano.



Strickland v. *Apap.*

The actual devolution of the property has been as follows :—

On the death of Count Nicola the first without male issue, the property devolved upon his eldest daughter, Maria Giovanna (and would seem to have been held under some family arrangement by the Countess Angela—on which subject there is no distinct information); on her death it devolved on her son Count Nicola Sceberras, hereafter called Nicola the second. He died in 1875 without issue, and without having made a nomination, leaving sisters (his brothers having predeceased him); and the question to be decided is, whether, under the true construction of the will and the deed of 1739, Geraldo Paulo Strickland, born in 1861, the grandson of Maria Theresa, an elder sister, or the Marchese Felicissimo Apap, born in 1834, the son of Maria, a younger sister, is entitled to the succession. The Marquis Apap relies on being nearer in degree to Count Nicola, Geraldo Strickland on being in the nearer line.

The course of litigation has been as follows :—

An action was brought by the Marchese Apap in the Court of First Instance in the Island of Malta, against Mrs. Strickland, a daughter of Maria Theresa, and the mother of Geraldo, both in her own name and as tutrix and curatrix of her son Geraldo, then a minor. Chevalier Bonici Mompalao, a curator of the minor, was added as a defendant. The Court gave judgment for Mrs. Strickland so far as regarded the claim to the property made by her on behalf of her son, to the exclusion of Mrs. Strictland as claiming in her own right, and of the Marchese Apap.

From this judgment the Marchese Apap appealed, and the Court of Appeal, by a majority of two Judges against one, reversed the judgment of the Court of First Instance, and gave judgment in his favour.

From this judgment Geraldo Strickland has appealed.

It is, in the first place, to be observed that the deed of 1739, which, in their Lordships' view, did not exceed the powers conferred by Canon Mangion's will, constituted a "primogenitura," and not a "majoratus."

The presumption of law in the construction of settlements of this class favours "primogenitura" as against "majoratus," and the deed has been treated by all the Judges as establishing a primogenitura.

The primogenitura is undoubtedly in some respects irregular, but it has been observed by this Board in the case of the Bologna primogenitura, "By a well known rule a deviation from the ordinary mode in which a primogenitura descends is not to be construed as interfering with that mode of descent more than is necessary to give effect to that deviation."

The general rule governing the succession to a primogenitura is thus expressed in *Rohan's Dritto Municipale di Malta*, B. iv. c. ii. s. 10, "To succeed in primogenitures, in the absence of any particular rule, one must consider, in the first place the line, in the second place the degree, in the third place the sex, and in the fourth place the age."

The same rule is to be found in many other books of authority.

The present primogenitura differs from a strictly regular primogenitura by preferring sex to line and degree, and by giving powers of nomination. The rule must therefore be modified in its application so far as such preference and such powers render necessary, but no farther; the principle still obtains, when it is not at variance with the terms of the instrument, that line is to be preferred to degree and age. The difference of the application of the rule, as far as concerns line and degree, to "primogenituras" and "majoratus" respectively, is thus clearly illustrated by Torre, vol. i. s. 5, page 51.

After expressing his opinion that, in a majoratus, the younger son of the last possessor would take in preference to the son of the elder son deceased, because he is nearer in degree, he proceeds to state, as an uncontroverted proposition, that in a primogenitura the nephew, because he is in a better line, would exclude the uncle.

It may be added that this primogenitura has been before the Sacred Roman Rota, of which high tribunal two decisions are before their Lordships, one by Judge Herzan, the other by Judge Origo.

It appears that, on the death of Nicola the first, Vincenza Matilde, his sister, and

her son, the Baron Testaferrata Abela, claimed the succession as against Maria Giovanna Nicola's eldest daughter, mainly relying on a second nomination which Pietro Gaetano had made (fifteen years after his former nomination of Nicola) of Matilde, in the event of Nicola dying without male issue. Both Judges held that the second nomination was invalid, the power of nominating having been exhausted by the first. Both treated the deed of 1739 as establishing a primogenitura, and Judge Origo further stated that, independently of the question of nomination, Maria Giovanna had the better title, because she was in the better line—that is, the male line of Pietro Gaetano, and the direct line from Nicola, as distinguished from the collateral. He further dwelt upon the lines as pointed out in the settlement, evidently treating them as of great importance. These authorities are all opposed to the contention of the respondent, that, in determining the succession on the death of Nicola the second, the question of line is not to be considered.

But apart from authority and technical rules of construction, their Lordships are of opinion that the language of the deed, in its ordinary and natural sense, is sufficient of itself to solve the question in the cause.

The second clause, if it had stood alone, would have established an agnatial primogenitura—that is, of males from males; and the order of descent is thus described:—

"Servato hoc ordine, quod masculus descendens actualis possessoris præferatur masculo collaterali, et masculus collateralis lineæ magis proximæ ejusdem possessoris præferatur masculo collaterali aliarum linearum, et non aliter."

The third clause deals with the very case before us:—

"Non extantibus vero vel quandocumque deficientibus et extinctis omnibus masculis prædictis, dicta bona perveniant et pervenire debeant in perpetuum ad unum ex masculis descendentibus a fœminis de eadem linea masculina."

Nicola the second is the "unus" answering this description, whereupon it is distinctly directed how the property is to descend from him:—"De uno in alium usque ad ultimum servato eodem ordine prælationis qui supra"—that is to say, that the direct line from him (the last possessor) is to be preferred to the collateral line, and the nearer collateral line to the more remote. The fourth clause, relating to the devolution of the property on females in the absence of any male (which has not happened), has no bearing on the case, except as it further illustrates in the last paragraph the importance which the settlor attached to line. If the settlement had concluded with clause 3 (or clause 4, which would have made no difference), it seems clear that Strickland being in the nearer collateral line would have succeeded in preference to Apap in the more remote. There can be no question that each of the sisters of Nicola was capable of originating a line.

The question in the cause is then reduced to the effect of clause 5.

If the words in this clause, which the respondent relies upon, are taken without the context, and the clause be read thus—"Quod quilibet possessor pro tempore præsentis primogenituræ, si fuerit masculus, possit nominare, et eligere suum immediatum successorem aliquem vel aliquam, ... ad sui libitum, etiam si sit sibi magis remotus vel remota, vel minor natu, ... et non facta hujusmodi nominatione et electione censeatur semper nominatus magis proximus ultimo possessori pro tempore in gradu naturæ, et in paritate gradus major ætate," there would be no restriction on nomination, and in the absence of nomination (the present case), Mrs. Strickland being equal in degree with the Marchese Apap, and the elder, would take in preference to him.

Such a construction, therefore, would not suit his case, and would, indeed, be manifestly inadmissible. These words must be read with their context, whereupon the power of nomination is limited, firstly, by the words "ex vocatis in præsenti instrumento"; secondly, by the words "dummodo non pervertat ordinem vocationis et prælationis superius prescriptum," words the signification of which does not seem to have been sufficiently appreciated by the majority of the Court of Appeal. These words necessitate the enquiry, what is the order above prescribed? This is to be found in clause 3, which adopts the order of line prescribed in clause 2—that is, the

direct before the collateral line, the nearer collateral line before the more remote.

It follows that Nicola the second could not have nominated the Marchese Apap in the more remote collateral line in preference to Geraldo Strickland in the nearer collateral line without "perverting the order of vocation and preference above prescribed." But if this is the effect of the prohibitory words, what effect is left for the words empowering nomination "ad sui libitum"? The answer to this question is not difficult. The order of lines had been expressly prescribed, but not the order of succession within those lines, which, if not interfered with by the power of nomination, would have been governed by the ordinary rules. The power enables the nominator to disregard these rules as far as degree and age are concerned. Nicola, if he had had sons, could have nominated the younger, in pursuance of the express provision in the Canon's will; he might probably have nominated his grandson in preference to his son, he might have nominated a younger brother of Geraldo.

This construction gives effect both to the power and to the prohibition, and reconciles all the clauses of the deed.

The remainder of the clause relative to the devolution of the primogenitura in the absence of nomination must, in their Lordships' judgment, be construed relatively to the power of nomination. It is almost incredible that the settlor should have restricted the latitude of nomination within certain limits, and should have desired the devolution of the property in the absence of nomination to go beyond those limits; still less that it should go so far beyond those limits as to destroy the whole character of the primogenitura he was founding; nor is such a construction consistent with the strict language of the clause. In default of actual nomination one is to be deemed nominated: "censeatur nominatus." The natural meaning of that expression is, that this imported or supposed nomination is to be of the same nature as the real nomination might have been. The limit of line must be taken to apply to devolution in the absence of nomination, and the effect of the provision on this subject is that whereas the last possessor might, with due regard to the prescribed order of sex or line, give a preference to the more remote in degree, or to the younger in age; in the absence of nomination, the nearest in degree, or, if there be equality of degree, the eldest in that degree shall take. Thus the power of nomination and the gifts in default of nomination have precisely the same range of objects. The gifts in default of nomination apply the ordinary rules of primogenituras to the cases not before expressly provided for; the power of nomination gives to its possessor a free choice in those same cases; but neither the nomination, nor the gifts in default of it, operate to displace the order of vocation or preference expressly prescribed by the previous parts of the deed. This construction is fortified by the provision at the end of the clause, that, on the succession to a woman (who cannot nominate), "magis proximus et major ætate, ut supra, succedere debeat, juxta methodum superius traditum, et non aliter."

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the Appeal Court of Malta be reversed, and the judgment of the Court of First Instance be affirmed. The respondent should pay the costs in the Courts of Malta and of this appeal.

Solicitors—Ward, Mills, Witham & Lambert, for appellant; Gregory, Rowcliffes, Rawle & Johnstone, for respondent.

1882. Nov. 28. SILLERY (*appellant*) *v.* HARMANIS AND ANOTHER (*respondents*).

Ceylon — Judgment — Immovable Property—Sale by Fiscal—Absence of Debtor —Ordinance No. 4, 1867, *ss.* 53 *and* 54.

By Ordinance No. 4, 1867 (*Ceylon*), *section* 53, *it is provided that the Fiscal shall report every sale of immovable property made by him within a week after sale, and it shall be open to the debtor to impeach such sale on the ground of irregularity or informality within thirty days of such sale.*

Sillery v. *Harmanis.*

Section 54 *provides that "no sale shall be held bad on the ground of irregularity or informality the objection to which shall not be made within thirty days."*

The appellant's estate was sold in execution in his absence by the Fiscal. The appellant had notice of the action:—

Held, *that the appellant could not impeach the sale after the expiration of thirty days.*

This was an appeal from a judgment of the Supreme Court of Ceylon.

The action was brought by the appellant in the District Court of Kandy against the two respondents to set aside a sale of certain property which had been sold by the Fiscal in execution of a judgment, on the ground that such sale was irregular.

On the 29th of September, 1876, the action was dismissed. The appellant appealed to the Supreme Court, which Court affirmed the judgment of the District Court.

From this judgment the present appeal was brought.

The Solicitor-General (*Sir F. Herschell, Q.C.*) and *Barnes*, for the appellant.

Rigby, Q.C., and *Maclean*, for the respondents.

Sir Richard Couch delivered the judgment of their Lordships (1):—

The appellant in this case was, in 1871, the owner of a coffee estate or plantation in the island of Ceylon, called Bathford, which was subject to two mortgages in favour of Charles Cowan for 2,000*l.* and Rs. 20,000 respectively, with interest at eight per cent. per annum, and also to a lease for ten years from the 1st of July, 1872, to the Ceylon Company, Limited, at the yearly rent of Rs. 2,500, in which it was provided that the company should pay the rent to Charles Cowan on behalf of the appellant in part payment of the interest on the mortgages, the interest being 700 rupees per annum in excess of the rent. On the 27th of March, 1871, the appellant being indebted to the respondent Harmanis in the sum of 36*l.* 15*s.* 2*d.* for the construction of a wooden store on the estate, the latter brought an action against the appellant in the District Court of Kandy for its recovery. The summons in the action was served on the appellant, who duly entered an appearance on the 4th of April, 1871, and on the 7th of April left the island of Ceylon, and has not since returned to it. The action was proceeded with, and on the 18th of December, 1871, Harmanis obtained a judgment *ex parte* in it against the appellant for 36*l.* 15*s.* 2*d.* and interest, and costs. On the 21st of December a writ of execution was issued against the property of the appellant, which, having been twice extended and reissued, was finally extended and reissued on the 30th of October, 1873, returnable on the 3rd of December, 1873.

On or about the 29th of October, 1873, the sale of the Bathford estate, in execution of the decree, was advertised in the Government Gazette to take place on the 24th of November, 1873, the description of the property to be sold being, "All that coffee estate called Bathford estate, containing in extent 212 acres, more or less, together with the buildings and plantations thereon situate," &c. On the 31st of October, 1873, one A. O. Joseph, the proctor for Mr. Cowan and for the Ceylon Company, sent to the fiscal of Kandy, the officer charged with the execution, two letters, one giving notice of the mortgages, but without stating the rate of interest, and the other stating that the estate was leased for ten years from the 1st of July, 1872, but not mentioning the rent. On the 24th of November, 1873, the estate was put up for sale, when these letters were read, and the respondent Harmanis was declared the purchaser at the sum of 16 rupees. Of this sum 15 rupees 38 cents were retained for the expenses of the sale, and the remaining 68 cents were deposited in the Kandy katcheri. The sale was confirmed by the District Court, and on the 23rd of February, 1874, the fiscal executed a conveyance to Harmanis of all the right, title and interest of the appellant in the estate. On the 2nd of March, 1874, Harmanis sold and transferred to the respondent Holloway an undivided half part or share of the estate,

(1) Lord Fitzgerald, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

subject to the mortgages and lease, for 8 rupees; and on the 18th of September, 1874, he executed a mortgage of the other half with other property to Holloway to secure Rs. 9,000 and interest.

On the 4th of August, 1875, the appellant brought an action in the District Court of Kandy against the two respondents, alleging in his libel that the sale in execution was invalid and void by reason of the judgment being a nullity, and also by reason of the sale having been made subject to the mortgages and lease; and prayed that the *ex parte* judgment should be declared a nullity by reason of gross and material irregularities, and that the sale in execution should be declared null and void, and the appellant be permitted to enter into his defence in the original action. On the 29th of September, 1876, this action was dismissed, with costs; and the appellant having appealed to the Supreme Court of Ceylon, the judgment of dismissal was affirmed.

On the 11th of October, 1878, the appellant commenced the action which is the subject of this appeal, alleging that the advertisement in the Government Gazette materially misdescribed the property to be sold, in that the property was described as the Bathford estate, and the fiscal had power to sell only his reversionary interest, and that the misdescription seriously affected his interests, and praying that the sale of the 24th of November, 1873, and the fiscal's conveyance, might be set aside. The defendant denied that the sale was impeachable for irregularity, and pleaded the judgment in the former action as *res judicata*. As to the value, there was some evidence that the estate, about the time of the execution, was worth 7,000*l*. The District Judge held that the plea of *res judicata* was sustained, and also said that, in his opinion, the plaintiff's right at the date of the sale was of no value; and the action was dismissed with costs. The plaintiff appealed to the Supreme Court of Ceylon, which held that the judgment of the Lower Court on the plea of *res judicata* was right, and added that, apart from the question of *res judicata*, they did not see that the plaintiff had shewn any ground on which the sale in execution could be set aside; and from this judgment the plaintiff has appealed to Her Majesty in Council.

Their Lordships are of opinion that the 53rd and 54th sections of the Ceylon Ordinance No. 4, 1867, are a conclusive answer to the action. By section 53 it is enacted: "The fiscal or deputy fiscal shall report every sale of immovable property made by him or under his directions within a week after the same shall have been so made, and it shall be open to the debtor, or any other party impeaching such sale on the ground of irregularity or informality, or to the fiscal or deputy fiscal, if any such ground shall be made apparent to him within thirty days of the sale, to state or report to the Court his objections to the sale being confirmed, and the Court, having enquired into the same summarily, shall either confirm or disallow the sale as to it shall appear just and reasonable, but no sale shall be disallowed unless a material irregularity in publishing or conducting the sale shall be shewn, and that the applicant has sustained substantial injury by reason of such irregularity. The fiscal, or his deputy, shall either grant the conveyance or withhold the same for a time, or absolutely, according to the directions which the Court shall give him." And by section 54: "No sale shall be held bad on the ground of irregularity or informality the objections to which shall not be made within thirty days, as prescribed by the preceding section." The irregularity, if any, was only in the description in publishing the sale, and no application was made to set the sale aside. The plaintiff has not shewn that the want of bidders was caused by this irregularity; and if the Lower Courts are right in their opinion as to the value, he has not sustained any injury; but it is not necessary to decide that question. The terms of the Ordinance are positive, and the appellant cannot excuse his non-compliance with it by his absence from Ceylon. He knew of the action, and might have instructed some person to watch the proceedings, and the Chief Justice says in his judgment that it is not the practice of the Ceylon Courts that formal notice should be given to a defendant of the steps taken to enforce a judgment by execution.

Sillery v. *Harmanis.*

This being their Lordships' view of the case, it is not necessary for them to give any opinion upon the defence of *res judicata*; but it is not to be inferred from their not doing so that they concur in the opinion of the Ceylon Courts on that question. They will humbly advise Her Majesty that the judgment of the Supreme Court of Ceylon ought to be affirmed and this appeal dismissed; and the appellant will pay the costs.

Solicitors—Young, Jones, Roberts & Hale, for appellant; Johnsons, Upton, Budd & Atkey, for respondents.

1882. Dec. 9. ARTHUR RANKIN BLACKWOOD (*appellant*) *v.* THE QUEEN (*respondent*).

Victoria—Estate of Deceased Persons—Duties on—Foreign Personalty—Liability to Duty.

Section 7 of The Duties on the Estates of Deceased Persons Act, 1870 (*Victoria*), *provides that every executor shall file a statement specifying the particulars of the personal estate of or to which his testator was at his death possessed or entitled:*—Held, *that the Act did not apply to personal estate situated outside the colony.*

This was an appeal from a judgment of the Supreme Court of the Colony of Victoria.

A Special Case was stated by the consent of the parties for the determination of that Court. The Case stated that the appellant was the executor of James Blackwood, of Melbourne, in the Colony of Victoria, who died in the Colony of Victoria on the 4th of February, 1881, domiciled in Victoria. That James Blackwood was, at the time of his death, possessed of or entitled to real estate and to personal estate, which latter portion of his estate consisted in part of (1) a share in station property in the Colony of New South Wales, held under occupation from the Crown, with improvements, stock, &c., thereon; (2) capital in the mercantile business of the firm of Dalgety, Blackwood & Co., in the Colony of New South Wales, and accumulated profits in that business up to the date of his death, payable in that colony; (3) a share in station property in New Zealand, with stock, improvements, &c., thereon. All these were situated outside the Colony of Victoria.

The Duties on the Estates of Deceased Persons Statute, 1870 (Act No. 388), of the Colony of Victoria, contains provisions to the following effect which were material to the present case:—

Section 7, sub-section 2: "Every executor and every administrator with the will annexed shall, within the prescribed time from the grant of probate or letters of administration to him or such further time as the Master may allow, file in the office of the Master a statement specifying the particulars of the personal estate of or to which the deceased was at his death possessed or entitled, and of the real estate comprised in such will, and the value thereof, and of the debts due by the deceased, distinguishing between secured and unsecured debts, and stating the nature of the security held for the same and the estimated value of such security, and shewing the balance remaining after deducting the amount of the debts from the value of the estate of the testator."

Section 8: "Except as herein otherwise provided there shall be paid to the Master, to be by him paid into the Consolidated Revenue of Victoria, by every administrator, executor, administrator with the will annexed, administrator of freehold lands and heir-at-law, the duty mentioned in the schedule to this Act, which shall be calculated upon the final balance appearing upon his statement."

Section 10: "The duty payable under this Act shall be deemed to be a debt of the testator or intestate to Her Majesty, her heirs and successors, and shall be paid by any executor or administrator with the will annexed out of the personal estate of the testator after payment of his testamentary and funeral expenses."

In consequence of the appellant contending that the duty under the Act was payable only in respect of the real estate in Victoria, and of the personal estate locally

situated in that colony, the Crown, on the 9th of September, 1881, commenced an action in the Supreme Court against the appellant in the manner directed by the 7th section of the Crown Remedies and Liability Statute, 1865.

The Special Case was stated by consent, the question for the opinion of the Court being whether the personal estate or any part thereof belonging to the deceased locally situated outside the colony was liable to duty.

The Supreme Court, on the 28th of September, 1881, gave judgment for the Crown, deciding that personal property in the nature of movable property situate outside the Colony of Victoria, belonging to a testator domiciled in Victoria, was liable to the duty imposed by the Act.

Leave was given to appeal to Her Majesty in Council.

Davey, Q.C., Macnaghten, Q.C., and *Dennistoun Wood,* for the appellant.—The provisions of sub-section 2 of section 7 of the Duties on Estates of Deceased Persons Act, 1870, does not apply to personal estate situate outside the colony. The expression "personal and real estate" must refer to estates in Victoria, and can only apply to property situate there. In the absence of words indicating an intention that the Act is to extend beyond the colony, the provisions of the Act must be limited to real or personal estate situated within the limits of the colony. The provisions of the Legacy and Succession Duty Acts are confined to the property situated in the United Kingdom. They referred to *In re Ewing* (1), *Arnold* v. *Arnold* (2) and *The Attorney-General* v. *Campbell* (3).

Benjamin, Q.C., Kekewich, Q.C., and *H. E. Gurner,* for the respondent.—Upon the right construction of the Act quoted, personal property in the nature of movable property is liable to the duty imposed. The fact that the property is situate outside the Colony of Victoria cannot exempt it from duty. Personal property has no locality, and must be considered as situate in the country in which its owner is domiciled, and is therefore subject to the laws of that country. The legal effect of this rule is recognised in the maxim *Mobilia sequuntur personam.* The personal estate of a deceased person which is comprised in the term *mobilia* is subject to the law of the country where the deceased was domiciled. Personal property has no locality. It follows the owner. They referred to *Story's Conflict of Laws,* p. 380, *The Attorney-General* v. *Napier* (4), *Freke* v. *Carbery* (5) and *Chatfield* v. *Berchtoldt* (6).

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (7).

In this case an action was brought by Her Majesty the Queen in the Supreme Court of Victoria against the appellant, as executor of James Blackwood, for the recovery of 5,000*l.* for duty claimed under the Duties on the Estates of Deceased Persons Statute, 1870. It appears that James Blackwood died domiciled in Victoria, and that, besides his property in Victoria, he was the owner of certain property both real and personal in New South Wales and New Zealand. The Crown claimed duty on so much of the foreign assets as consisted of personal estate, and the appellant resisted the claim. By consent, a Special Case was stated, setting forth in a schedule the foreign assets on which duty was claimed, and concluding as follows:—

"5. The question for the opinion of the Court is:—

"Whether the personal estate in the said schedule or any part thereof belonging to the deceased and locally situated outside the Colony of Victoria is liable to duty under The Duties on the Estates of Deceased Persons Statute, 1870.

"6. If the Court shall be of opinion in the affirmative, then judgment shall be entered up for Her Majesty for an amount to be ascertained by the Court, or in such

(1) 1 Cr. & J. 151; 9 Law J. Rep. Exch. 37.

(2) 2 Myl. & Cr. 256; 6 Law J. Rep. Chanc. 218.

(3) 41 Law J. Rep. Chanc. 611; Law Rep. 5 H.L. Cas. 531.

(4) 6 Exch. Rep. 217; 20 Law J. Rep. Exch. 173.

(5) Law Rep. 16 Eq. 461.

(6) 41 Law J. Rep. Chanc. 255; Law Rep. 7 Chanc. 192.

(7) Lord Fitzgerald, Sir Barnes Peacock, Sir Montague E. Smith, Sir Richard Couch and Sir Arthur Hobhouse.

manner as the Court may direct, with the costs of suit.

"7. If the Court shall be of opinion in the negative, then judgment of *nol. pros.* with costs of defence, shall be entered up for the defendant.

"The Schedule of Personal Property above referred to.

"1. A share in station property in New South Wales, held under occupation from the Crown, with improvements, stock, &c., thereon.

"2. Capital in the mercantile business of Dalgety, Blackwood & Co. in New South Wales, and accumulated profits in that business to date of death, payable in that colony.

"3. A share in station property in New Zealand, with stock improvements, &c., thereon."

The Court directed judgment to be entered for the Crown for the amount found to be due on so much of the scheduled property as was of a movable nature so as to fall within the maxim *Mobilia sequuntur personam.* They held that the nature of the property should be ascertained by enquiry with reference to the laws of New South Wales and New Zealand. The correctness of that decision is challenged by the present appeal. No copy of any order is set out in the Record, as ought to have been done, and their Lordships take the decision to be as described in the judgment of the Chief Justice.

The statute under discussion was passed in the year 1870, and is numbered 388. Its general scheme is to make the representatives of a deceased person, as regards both real and personal estate, liable to pay the duty mentioned in the schedule (section 8), which duty is (section 10) to be deemed a debt due from the deceased to the Crown. For this purpose (section 7), the representatives are to file statements specifying the particulars and value of the personal and real estate and of the debts due by the deceased, and shewing the balance remaining after deducting the debts from the value of the estate. The duty payable is (section 8) to be calculated upon the final balance appearing by the statements. The time of payment is to be fixed by rules made by the Governor. In the case of legal personal representatives the Act contemplates (section 7) a grant of probate or administration prior to the filing of statements, but provides (section 12) that the actual probate or letters of administration shall not issue until the duty has been paid, nor be receivable in evidence unless indorsed with a certificate by the proper officer certifying the fact of payment and its amount. The same principle applies to administrations of freehold lands and rules to administer. In the case of heirs-at-law (section 7, sub-section 4), if the heir does not file his statement in proper time, the Master in equity may assess the duty. When the legal personal representative comes to distribute the property, he is (section 11), unless a testator has made a different disposition, to deduct from every devise, bequest and legacy an amount equal to the duty upon such devise, bequest or legacy, calculated at the same rate as is payable on the estate. The schedule imposes duty upon the estate in bulk at a percentage rate, increasing from one to five per cent., as the value of the estate increases, but (section 24) a more favourable rate is allowed to the widow and children of the deceased.

There has been a great deal of discussion, both in the Court below and at the bar here, on the question whether the duty imposed by this statute is to be considered a probate duty or a legacy duty. If those terms are used merely as short descriptions familiar to English lawyers of two classes of statutes, the principle of one being to tax the property to which probate gives title and to levy that tax at a time prior to administration, and the principle of the other being to tax the property which actually falls to the successors of the deceased and to levy the tax at the time when the enjoyment accrues, they may be conveniently used for the purposes of the argument. If used for any more exact application, they are misleading. The statute under discussion does not make any such distinction as the English law has made between probate and legacy duties. It imposes a single duty on the property of deceased persons. That duty resembles our probate duty in being made a condition of the issue of the probate, and in being taken from the estate while it is

yet in bulk and before the process of administration begins. In other respects, notably by reason of its incidence on real estate, and of its being chargeable against every legatee, and of the difference in its rate according to the relation of the successor to the deceased, it more resembles our legacy or succession duties. The one term or the other will seem more appropriate to the statute according to the point from which it is approached or the operation it is called on to perform.

This discussion, therefore, is not very profitable. The essential question is whether the Victorian Legislature intended that a legal personal representative in Victoria should state accounts of all personal or all movable estate belonging to the deceased wherever actually situate, or only accounts of so much as comes under his control by virtue of his probate. That question must be decided by a careful examination of the statute itself.

There are decisions on the construction of English statutes with reference to English methods of taxation which would be of great value if it were first found that the Victorian Legislature had adopted any such method, but which are of little value until that conclusion has been reached. It appears to their Lordships that the Court below has first searched for a rule of law, and has then bent the statute in accordance with it; whereas, until the true scope and intention of the statute has been discovered, it cannot be seen what rules of law are applicable to it.

The words of the statute which directly affect the appellant are to be found in section 7, sub-section 2, and run as follows:—

"Every executor and every administrator with the will annexed shall within the prescribed time from the grant of probate or letters of administration to him, or such further time as the Master may allow, file in the office of the Master a statement specifying the particulars of the personal estate of or to which the deceased was at his death possessed or entitled, and of the real estate comprised in such will, and the value thereof, and of the debts due by the deceased, distinguishing between secured and unsecured debts, and stating the nature of the security held for the same and the estimated value of such security, and shewing the balance remaining after deducting the amount of the debts from the value of the estate of the testator."

The Chief Justice says, "*Prima facie*, the expressions 'personal estate' and 'real estate' refer to estates in Victoria, affect persons resident there, and relate to property within the limits of the country." Mr. Justice Higinbotham says, "In the absence of words indicating a clear intention to extend the duty beyond Victoria, the duty must be held to be limited to real and personal estates within the limits of the colony." But then he adds, "As there are no words of limitation, I think that the Legislature must be deemed to have intended that the duty shall be paid upon all real and personal estates whatsoever which are in contemplation of law situate in Victoria." Thus, he appears to treat the absence of qualifying words as indicating a clear intention to extend the duty beyond the *prima facie* meaning of the words which impose it. Then it is said that personal estate is governed by the law of the country in which the owner at the time of his death was domiciled. The result of the two latter propositions is that the duty is to be paid on all personal estate, wherever situated, which belonged to the testator in this case. But the Court qualify that result by confining the duty on foreign personal estate to such part of it as is of a movable character. The counsel of the respondent followed the same line of argument at this bar, excepting that they do not admit that the *prima facie* construction of the statute is against them.

It does not appear to their Lordships that the doctrines relied on are by any means conclusive of the present question. In the first place, the statement that personal estate is governed by the law of its owner's domicile must be taken with material qualifications. To say nothing of other limitations, it is limited just at the point which is material for the present purpose. The grant of probate does not of its own force carry the power of dealing with goods beyond the jurisdiction of the Court which grants it, though that may be the Court of the testator's domicile. At

most it gives to the executor a generally recognised claim to be appointed by the foreign country or jurisdiction. Even that privilege is not necessarily extended to all legal personal representatives; as, for instance, when a creditor gets letters of administration in the Court of the domicile. And when the legal personal representative has been constituted in the foreign country, whether he be the executor of the domicile or another, the administration of assets must take place in the foreign country, with the effect of giving the foreign creditors priority as regards the foreign assets; as is shewn by the cases of *Preston* v. *Melville* (8) and *Cook* v. *Gregson* (9). For the purpose of succession and enjoyment the law of the domicile governs the foreign personal assets. For the purpose of legal representation, of collection, and of administration, as distinguished from distribution among the successors, they are governed not by the law of the owner's domicile, but by the law of their own locality.

It is true that under the English Legacy Duty Acts, which impose a tax on the succession at the time when the enjoyment of it takes place, it has been held that the intention of the Legislature was to tax all the property of a domiciled English testator, the enjoyment of which is carried and regulated by his will. That is settled by the cases of *In re Ewing* (1) and *The Attorney-General* v. *Napier* (4), and other well known cases. But it is not easy to see why it should be thence inferred that the Victorian Legislature, when imposing a tax on the property while yet in bulk and waiting for administration, and as a condition precedent to the issue or validity of the instrument which is the foundation of the right to administer, intended to tax the same class of property.

The Supreme Court, as above stated, thinks that *prima facie* the words "personal estate" relates to property within the limits of the colony. In their strict and literal meaning the words clearly include all personal estate, wherever it may be. By their *prima facie* meaning the learned Judges perhaps intend to indicate the meaning they are calculated to bear when the subject-matter of the statute is ascertained, and before legal rules and maxims are applied to it. But then they ought to have decided that the duty attaches only on the property so indicated. For their Lordships find no reason assigned for enlarging the meaning of the words so interpreted, except the application of the maxim *Mobilia sequuntur personam.* And the foregoing considerations appear to them to preclude the application of that maxim to a duty like the present, unless it is made apparent by the Act itself that the Legislature intended it to apply.

Before entering into verbal criticism of the statute, it is to be remarked that no one contends for any construction of it without substantial modification of its literal meaning. According to that meaning the duty would be levied in respect of all the property of every deceased person. But the Supreme Court think that the necessary correlative of holding that the foreign assets of a domiciled Victorian must be taken into account is that the Victorian assets of one who, though resident in Victoria, had a foreign domicile, escape taxation altogether. It appears that they have so decided in the case of Bagot's estate. That question is not before their Lordships, and they express no opinion upon it.

Their Lordships conceive that one of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification. But that is exactly what we do find in the statute under discussion. Sub-section 2 of section 7 which has been quoted above must be read with the other sub-sections, and in them we find repeated use of the expressions of "personal estate" and "real estate," without qualifying words, while it is impossible to read them as unqualified.

(8) 8 Cl. & F. 1.

(9) 2 Drew. 286; 23 Law J. Rep. Chanc. 734.

In sub-section 3 of section 7 it is enacted that every administrator of freehold lands shall file a statement specifying the situation and extent of the freehold lands of or to which the deceased died seized or entitled. Now this general expression is clearly to be modified by confining it not only to lands in Victoria but to lands comprised in the grant of administration. For if a man dies testate as to a portion of his land, it is (by sub-section 2) the duty of the legal personal representative to file a statement as to the real estate comprised in the will. If both these enactments are to receive a literal construction, two statements would be required of, and double duty would be assessed on, the same property; and the administrator would be required to pay in respect of land which does not pass to him.

Precisely the same remark is to be made of sub-section 4. There the heir-at-law of an intestate is directed to file a statement of the freehold lands of or to which the deceased died seized or entitled. But the meaning can only be that he shall state the freehold lands in Victoria which he takes as heir-at-law.

Again, by sub-section 1, every administrator is directed to state the particulars of which the personal estate of the deceased consisted at his death, and the debts due by the deceased. An administrator is defined to be one to whom administration of the goods, chattels, rights and credits of any person deceased intestate is granted by the Supreme or any other Court. This definition must necessarily refer to personal estate situate in Victoria. It is hard to suppose that the Legislature has required a statement of any other personal estate than that which it specified as passing to the administrator, especially as an administrator does not necessarily hold the same position as an executor in a foreign Court of Probate. And their intention not to require any statement out of the strict line of the administrator's business is shewn by the direction that he is not to state debts fully secured by mortgage of real estate; evidently because it is considered that he will probably have nothing to do with those debts.

In these three cases, therefore, words requiring persons to make statements of all real or all personal estate have clearly to be modified by confining them to statements of property coming to the person in the character in which he is required to make the statement.

Coming to sub-section 2, the one under which the present claim for duty is made, we find that the same statement which is to specify the personal estate of the deceased is also to specify the real estate comprised in his will. A will may comprise foreign real estate. It is said that the expression "real estate" carries its own limitation with it, because it is something inconceivable—almost a violation of the law of nations—that a State should tax its subjects on the basis of their foreign real estate. But, in fact, personalty in England is as far beyond the direct power of the Victorian Legislature as realty in England. Suppose that a testator domiciled in Victoria has property of both kinds in England, that he gives his English realty and his Victorian personalty to a domiciled Victorian, and that for his English personalty he appoints an English executor, and gives it to a domiciled Englishman. In such a case the Victorian Government has no point of contact with the English personalty; but as regards the English realty the owner of it is the subject of that Government, and so much the richer and more able to pay taxes by reason of his ownership. There is nothing in the law of nations which prevents a government from taxing its own subjects on the basis of their foreign possessions. It may be inconvenient to do so. The reasons against doing so may apply more strongly to real than to personal estate. But the question is one of discretion, and is to be answered by the statutes under which each state levies its taxes, and not by mere reference to the laws which regulate successions to real and personal property. Agreeing that the statement required by sub-section 2 is not meant to include foreign real estate, their Lordships consider that construction to be a distinct modification of the literal sense of the words there used.

It is observable that the person who is directed to state the particulars of the real estate is the executor, who did not at the time, nor until the passing of Act No. 427

two years afterwards, take the real estate by force of the probate. This circumstance, and this alone, makes it impossible to say that the statements required by section 7 are in every case to be limited to the property which the person making the statement takes in that character in which he is required to make it. It is possible that this may have been an oversight, as other passages in the Act, corrected by Act 427, are alleged to have been; but their Lordships must read Act 338 as it stands.

We find then that the framers of this Act have required four descriptions of persons to state particulars of property in general terms which clearly require limitation; that in three cases the statement is to be confined to the property which the person making it takes in the character in which he is required to make the statement; and that in the fourth case the statement is to be confined to property situate in Victoria. That supplies, as it were, a key to the meaning of such general terms in this statute, and a strong reason for subjecting them to a like modification in the one other passage in which they occur.

Further passages of the Act were brought in aid of this construction, because they contain expressions which, literally construed, would embrace all the deceased's property; whereas, so it was argued, they must necessarily be confined to his Victorian property. But their Lordships do not now enter into those discussions, because the point to be decided is what statements are required by section 7, and they think that the meaning of that section is quite clear by itself.

Other arguments were pressed at the bar, founded on considerations external to the Act. The Acts relating to curators were referred to as proving that in the view of the Legislature the property for which a curator has to account, which is clearly confined to Victoria, and the property for which an executor has to account, are coextensive. And the difficulties thrown in the way of Victorian administration by previously requiring an account of foreign assets were dwelt on, to shew the improbability that the Legislature could intend such an arrangement. Their Lordships think there is force in both these lines of argument, but they do not refer to them in detail, because they find more satisfactory ground for their decision in the Act itself.

What their Lordships find is that the Victorian Legislature have imposed a tax payable by an executor, as a condition precedent to the issue and efficacy of the probate necessary for his action, out of the estate while it is in bulk, and before distribution or administration has commenced. All these things, the person to pay, the occasion for payment, the fund for payment, and the time for payment, point to the Victorian assets as the sole subject of the tax. The reasons which led English Courts to confine probate duty to the property directly affected by the probate, notwithstanding the sweeping general words of the statutes which imposed it, apply in full force to this case. The circumstance that in the ultimate adjustment of the estate each beneficiary is to contribute to the duty appears to their Lordships to have no bearing on the present question. It was not because the duty fell on the residuary legatee instead of the pecuniary or specific legatees, that the English Courts placed a limitation on the general expressions of the Probate Duty Acts. It was because they thought that the Legislature could not intend to levy a tax on the grant of an instrument in respect of property which that instrument did not affect. Their Lordships think that, in imposing a duty of this nature, the Victorian Legislature also was contemplating the property which was under its own hand, and did not intend to levy a tax in respect of property beyond its jurisdiction. And they hold that the general expressions which import the contrary ought to receive the qualification for which the appellants contend, and that the statement of personal property to be made by the executor under section 7, subsection 2, of the Act, should be confined to that property which the probate enables him to administer.

The result is that the question put by the Special Case should be answered in the negative, and judgment of *nol. pros.*, with costs of defence, should be entered up for the defendant. The costs of this

appeal must follow the result. Their Lordships will humbly advise Her Majesty in accordance with this opinion.

Solicitors—Lawrence, Graham & Long, for appellant; Freshfields & Williams, for respondent.

1883. Feb. 27. WILLIAM MILES (*appellant*) *v.* THOMAS M'ILWRAITH (*respondent*).

Queensland — Member of the Legislative Assembly — Government Contract— Penalty.

The Queensland Constitution Act, 1867, *by section* 6, *enacts that any person who shall, directly or indirectly, hold or enjoy any contract for or on account of the public service, shall be incapable of sitting or voting as a member of the Legislative Assembly; and section* 7 *imposes a penalty on any person so disqualified so sitting or voting.*

The respondent, being part-owner of a ship which had been chartered by the Government, sat and voted as a member of the Legislative Assembly. The respondent had instructed his agents, who were also part-owners, not to charter the ship to the Government, and that if they did, the contract should be made with such part-owners only who should be held to have chartered the respondent's share at a rate fixed independently of such contract. The Government had no knowledge that the respondent was a part-owner:—

Held, *that under these circumstances the respondent was not liable to the penalties imposed by the Act.*

This was an appeal from a judgment of the Supreme Court of Queensland.

The action was brought by the appellant against the respondent to recover several sums of 500*l.*, alleged to have been forfeited by the respondent on account of his having sat and voted as a member of the Legislative Assembly on certain days of July, 1880, while a contract with the Government, to which the respondent, as the appellant alleged, was a party, was in full force and effect. The statement of claim set out a charter-party, made on the 23rd of February, 1880, between the Agent-General of the colony and McIlwraith, McEacharn & Co., for and on behalf of the owners of the ship *Scottish Hero*, for the conveyance of Government immigrants from Plymouth to Queensland. It further alleged that, at the time of the making of the charter-party, the respondent was a registered joint owner of that ship.

The respondent in his statement of defence alleged that the charter-party mentioned in the statement of claim was made contrary to his express directions, and that Andrew McIlwraith and Malcolm Donald McEacharn were not, nor was either of them, authorised by the respondent to enter into any contract or charter-party with the Government of Queensland, and that when he sat and voted in the Legislative Assembly he did not know of the said charter-party.

The cause was heard and judgment given in favour of the respondent.

The appellant afterwards moved the Supreme Court to set aside the judgment; but that Court affirmed the judgment of the Court below.

From this judgment this appeal was brought.

Cohen, Q.C., *McLeod, Q.C.*, and *Leverson*, for the appellant. — Upon the true construction of the statute, the respondent forfeited to the appellant a sum of 500*l.* for each occasion on which he sat and voted in the Legislative Assembly after the charter-party was made. Although the respondent had no knowledge of the charter-party, he, nevertheless, has derived benefit from the contract. The words of the statute are very plain. It says, "Any person who shall directly or indirectly hold any contract." The respondent was a part-owner of the ship chartered, and must be *de facto* a contractor in respect of the ship. The respondent cannot relieve himself from liability by wilful ignorance of the contract. They referred to *Rayse* v. *Birley* (1), *Smith* v.

(1) 38 Law J. Rep. C.P. 203; Law Rep. 4 C.P. 296.

M'Guire (2), *The Queen* v. *Price* (3) and *Davies* v. *Hervey* (4).

Davey, Q.C., and *Dennistoun Wood*, for the respondent. — The respondent was not bound by the contract of charter-party made between the Agent-General and Andrew McIlwraith and M. D. McEacharn. If the respondent was bound by the contract, he was not found to have been aware of it when he sat and voted as a member of the Legislative Assembly. Those members only of the firm would be bound by the contract who authorised the firm to enter into the contract. The respondent could obtain no benefit which might arise from the contract. The statute expressly refers to any person who shall obtain any "benefit" by a contract with the Government. The jury expressly found that the respondent was not cognisant of the contract. Nor were the Government aware of the fact that the respondent was a part-owner of the ship. The words used in the section imposing the penalty are, "presume to sit or vote as a member." Such words cannot apply to the respondent. They referred to *Appleton* v. *Binks* (5), *Tanner* v. *Christian* (6), *Cooke* v. *Wilson* (7), *Sharman* v. *Brandt* (8) and *Fraser* v. *Cuthbertson* (9).

Lord Blackburn delivered the judgment of their Lordships (10):—

This is an appeal from an order of the Supreme Court of Queensland, which is in the following words:—

"Upon the motion of Mr. Griffith, Q.C., with whom was Mr. Garrick, Q.C., and Mr. Rutledge, of counsel for the above-named plaintiff, for a rule calling upon the defendant to shew cause why the judgment directed to be entered for him by His Honour Mr. Justice Harding, at the trial of this cause at the civil sittings of this Court, at Brisbane, on the twenty-fifth day of August last, should not be set aside, and instead thereof a judgment entered for the plaintiff for one thousand pounds, upon the ground that, upon the findings of the jury as entered, the judgment so directed is wrong, and the plaintiff is entitled to judgment for the said sum of one thousand pounds, or why the judgment and the findings of the jury in answer to the questions numbers 7, 8, 15 and 16 should not be set aside and a new trial had between the parties upon the issues raised by these questions, upon the ground following of

"Misdirection in that

"1. The Judge directed the jury with respect to 7th and 15th questions that the defendant must be shewn to have had actual knowledge of the charter-party or contract in question at the times when he sat and voted.

"2. The Judge ought to have directed the jury with respect to 7th and 15th questions that it must be shewn that the defendant at the times when he sat and voted had actual knowledge of the charter-party or contract, or had had his attention called to it in such a manner as to attract the attention of a reasonable man, whereas he did not do so.

"3. The Judge directed the jury with regard to the 8th and 16th questions that it must be shewn that the defendant intended knowingly to offend against the provisions of the Constitution Act of 1867, that the word 'presume' in that Act means 'knowing of and intending the consequences,' and that if the defendant was ignorant of the effects of the documents he had given, his ignorance was to be taken into consideration by the jury in determining whether his sitting and voting was accompanied by the intention necessary to constitute an offence against the provisions of the statute.

"4. The Judge should have directed the jury that if the defendant, when he sat and voted, knew of the said charter-party, or had means of knowing of it, or had had his attention called to it, and wilfully shut his eyes, or voted recklessly, or defiantly,

(2) 3 Hurl. & N. 554; 27 Law J. Rep. Exch. 465.

(3) 44 Law J. Rep. M.C. 122; Law Rep. 2 C.C.R. 154.

(4) 43 Law J. Rep. M.C. 121; Law Rep. 9 Q.B. 433.

(5) 5 East, 148.

(6) 4 E. & B. 591; 24 Law J. Rep. Q.B. 91.

(7) 26 Law J. Rep. C.P. 15; 1 Com. B. Rep. N.S. 153.

(8) 40 Law J. Rep. Q.B. 312; Law Rep. 6 Q.B. 720.

(9) 50 Law J. Rep. Q.B. 277; Law Rep. 6 Q.B. D. 93.

(10) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

he presumed to sit and vote within the meaning of the statute, whereas he did not do so.

"And upon reading the record between the said parties, and this matter coming on by adjournment this day, it is ordered that the said rule be refused."

The terms of the rule are such as not to be intelligible without some previous statement of the nature of the case.

The Queensland Constitution Act of 1867, by section 6, enacts that—

"Any person who shall, directly or indirectly, himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract or agreement for or on account of the public service, shall be incapable of being summoned or elected, or of sitting or voting, as a member of the Legislative Council or Legislative Assembly during the time he shall execute, hold or enjoy any such contract, or any part or share thereof, or any benefit or emolument arising from the same; and if any person, being a member of such Council or Assembly, shall enter into any such contract or agreement, or, having entered into it, shall continue to hold it, his seat shall be declared by the said Legislative Council or Legislative Assembly, as the case may require, to be void, and thereupon the same shall become and be void accordingly. Provided always, that nothing herein contained shall extend to any contract or agreement made, entered into or accepted by any incorporated company, or any trading company, consisting of more than twenty persons, where such contract or agreement shall be made, entered into or accepted for the general benefit of such incorporated or trading company."

Then by section 7 it is enacted that—

"If any person, by this Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly, shall, nevertheless, be summoned to the said Council, or elected and returned as a member to serve in the said Assembly for any electoral district, such summons or election and return shall and may be declared by the said Council and Assembly, as the case may require, to be void, and thereupon the same shall become and be void to all intents and purposes whatsoever; and if any person, under any of the disqualifications mentioned in the last preceding section, shall, whilst so disqualified, presume to sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of five hundred pounds, to be recovered by any person who shall sue for the same in the Supreme Court of Queensland."

The appellant, as plaintiff below, sued for five penalties of 500*l.* each, as being incurred by the respondent, then defendant, under the latter part of this section.

It is clear that the party suing for the penalty must shew that the defendant at the time when he sat or voted was under one of the disqualifications mentioned in the 6th section, it being a question of law depending on the construction of the statute whether the facts proved are such as to amount to a disqualification; and on this being proved the further question will arise whether the defendant at the time when he sat or voted presumed to do so, it being a question of law depending on the construction of the statute what constitutes presuming within the meaning of the statute.

It appears from the Judge's notes that on the trial of this case the Judge summed up at considerable length, and then asked the jury 16 questions. After they had retired, the counsel for the plaintiff made some objections to part of the Judge's direction. The Judge, however, refused to alter his direction. The jury returned and gave answers to the 16 questions. The Judge then, in consequence of what had passed, asked a 17th question, to which the jury gave an answer. On these 17 findings he directed judgment to be entered for the defendant.

The rule moved for was in the alternative, that on the findings as entered the plaintiff was entitled to judgment for two penalties, or that if the answers to the 7th, 8th, 15th and 16th questions prevented his being so entitled on the ground that it was not found that the defendant, though disqualified when he voted, had such knowledge of his disqualification as to make him when so voting "presume" within the meaning of the statute, there

should be a new trial on the ground that there was misdirection as to what would be sufficient proof of presuming. And that there should be a new trial to ascertain whether in fact the defendant had "presumed" to vote.

If the findings had amounted to finding that the defendant was disqualified when he voted, it would have been necessary to ascertain what was the direction actually given; and then to decide whether the Judge had given the proper guide to the jury on that which would then have been an important issue. But if the defendant was not disqualified, and was entitled to vote, it was not material what he knew, or what knowledge would have subjected him to the penalties if he had been disqualified. Their Lordships think that on those findings of the jury which are not impeached, judgment ought to be given for the defendant, on the ground that he was found not disqualified; and consequently that it is no longer material to enquire whether he knew so much that his voting would have amounted to presumption, within the meaning of the Act, if the findings of the jury had amounted to finding that he was disqualified; so that even if there was misdirection as to this, there ought not to be a new trial for the purpose of ascertaining what is not material whilst the other findings stand. This is the only point on which their Lordships decide. It is necessary, in order to explain it, to say what the state of the record and of the evidence at the trial was.

The firm of McIlwraith, McEacharn & Co. consisted of Andrew McIlwraith (a brother of the defendant) and Malcolm Donald McEacharn. The defendant Thomas McIlwraith was not a member of that firm, and had no interest in it.

The statement of claim was, that by a contract or charter-party made on the 23rd of February, 1880, between the Agent-General of the Colony of the one part, and McIlwraith, McEacharn & Co., "thereafter referred to as the party of the second part, for and on behalf of the owners of the ship *Scottish Hero* of the other part, it was agreed," and then it sets forth the stipulations of the charter-party.

Though there was on the statement of defence a formal refusal to admit that such a charter-party was made, it was not at the trial and is not now in dispute that there was such a charter-party, and that it, on the face of it, was such as is asserted in the statement of claim. It was signed by McIlwraith, McEacharn & Co., and by Mr. McAlister, the Agent-General of the Colony.

The statement of claim then proceeds:—

"The said Agent-General and the said Andrew McIlwraith and Malcolm Donald McEacharn were respectively authorised by the Government of the said colony and the owners of the said ship to enter into and did enter into the said contract or charter-party as agents for and on behalf of the said Government and the owners of the said ship respectively.

"At the time of the making of the said contract or charter-party, and thenceforward to the time of the commencement of this action, the defendant and Arthur Hunter Palmer and Andrew McIlwraith were registered as the joint owners of fourteen sixty-fourth shares in the said ship.

"At the time of the making of the said contract or charter-party, and thenceforward to the time of commencement of this action, the total number of registered owners of the said ship, including the defendant and the said Arthur Hunter Palmer and the said Andrew McIlwraith, did not exceed fifteen.

"In pursuance of the said charter-party, the said ship sailed on the voyage therein mentioned, carrying emigrants for the said Government, as therein stipulated.

"On the 6th day of July, 1880, the 7th day of July, 1880, the 8th day of July, 1880, the 13th day of July, 1880, and the 14th day of July, 1880, while the said contract or charter-party was in full force and effect, the defendant knowing of the said contract or charter-party did, contrary to the provisions of 'The Constitution Act of 1867,' sit in the said Legislative Assembly as a member thereof, and vote therein, whereby and by force of the said statute the defendant for each and every such offence, to wit, on each and every of the aforesaid days, became liable to forfeit, and forfeited the sum of 500*l.* to the plaintiff.

"All things have happened, all times have elapsed, and all things have been

done to entitle the plaintiff to recover from the defendant the said sums of 500*l.*, and each and every of them.

"And the plaintiff claims 2,500*l.* forfeited by the defendant as aforesaid."

The statement of defence was as follows:—

"1. The said contract or charter-party in the claim mentioned, purporting to be made by the said Andrew McIlwraith and Malcolm Donald McEacharn for and on behalf of the owners of the ship *Scottish Hero*, if it ever was made (which defendant does not admit), was so made without authority from the owners of the said ship, and contrary to the express directions of the defendant; and the defendant says that the said Andrew McIlwraith and Malcolm Donald McEacharn were not, nor was either of them, authorised by the owners of the said ship or by the defendant to enter into the said contract or charter-party, or any contract or charter-party, with the Government of Queensland, for or on behalf of the owners of the said ship *Scottish Hero* or of the defendant.

"2. The defendant admits that he did sit and vote in the said Legislative Assembly on the days in para. 8 of the claim mentioned, but he does not admit that he did so sit and vote knowing of the said contract or charter-party, or contrary to the provisions of 'The Constitution Act of 1867.' And he says that before the days or any of the days or times in the said paragraph mentioned, to wit, before the 6th day of July, 1880, the voyage in the said contract or charter-party and in para. 7 of the claim mentioned had terminated, and that the emigrants carried by the said ship had been landed with their luggage at Townsville, in accordance with the provisions of the said charter-party, and that all the stipulations and conditions in the said contract or charter-party contained, to be performed by the party thereto of the second part and by the owners of the said ship *Scottish Hero*, had been faithfully performed and completed, and that such performance and completion had been accepted by the Government of Queensland as and for a due performance of the said contract or charter-party, but the said Government had not paid the second moiety of the passage money payable under the same. Save as aforesaid the defendant does not admit that, on the days or any of the days or times in the said para. 8 of the claim mentioned, the said contract or charter-party therein mentioned was in full or of any force or effect, and does not admit any of the allegations in the said para. 8 or in para. 9 of the claim contained."

To this the plaintiff replied,—

"The plaintiff joined issue upon so much of the defendant's statement of defence as does not contain admissions of the plaintiff's case, or any part thereof."

The material part of the issue as to authority was, whether the contract or charter-party was made so as to make the defendant party to a contract with the Government. Whether the other part-owners of the *Scottish Hero* were or were not parties to such a contract was not material, though it is made part of the statement of defence. Nor was it material that the firm had made the contract professedly for and on behalf of the owners (that is, all the owners, including the defendant), unless they had authority on behalf of the defendant to do so. Some evidence was given that they had such authority.

It was proved that the firm were the general agents for the defendant to charter ships in which he held shares, and it was proved that Malcolm Donald McEacharn was, in compliance with 39 & 40 Vict. c. 80. s. 31, registered as the managing owner of the *Scottish Hero*. These facts were evidence from which the jury might have inferred actual authority to make all ordinary contracts for the chartering the ships. But the defendant and his brother Andrew McIlwraith gave evidence that when the firm of McIlwraith, McEacharn & Co. entered into an agreement with the Colonial Secretary, acting as agent for the colony of Queensland, on the 28th of February, 1876, by which that firm agreed to supply ships to carry emigrants on behalf of the colony, the defendant required them not to employ any ships in which he had shares for that purpose, lest he, being a member of the Assemby, should be thereby made a contractor with the Government. And thereupon it was agreed that the firm might themselves

charter the ship from the owners, including the defendant, and afterwards subcharter it to the Government, and that, in all such cases, the remuneration of the defendant for the use of his share in the ship should be paid for to him by the firm, according to a rate independent of the amount which the firm received from the Government. This was embodied in a memorandum. It was proper to be considered by the jury what this arrangement amounted to, whether it was *bona fide* come to, and whether it was still in force. The jury found, in answer to the 3rd question asked by the Judge at the trial, that the contract was made in the shape in which it was made on behalf of the owners (which would include the defendant), "contrary to the express directions of the defendant," and not only was this finding quite justified by the evidence above briefly stated, but it was not impeached or complained of in the colony, though an ineffectual attempt was made at the bar here to get rid of its effect. It is impossible to hold the defendant bound by a contract, though purporting to be made on his behalf, if made contrary to his express directions. No doubt the defendant might, on becoming aware of it, have ratified the contract, but no evidence was given that the defendant did anything that could amount to a ratification.

It was contended that it was within the scope of the authority of the firm, as general agents for the defendant, to make such a charter-party as this on his behalf with the Colonial Government, and that, no notice having been given to the Agent-General of the restriction on this apparent authority, the defendant was as much bound to the Government as if there had been no such restriction. It is not to be taken that their Lordships express any opinion, either one way or the other, as to whether, if this were made out, it would follow that the defendant was as much disqualified as if the contract had been made by an agent on whose authority there were no restrictions. It is not necessary to consider that question, for there is neither allegation nor evidence here of what would have entitled the Government to hold the defendant bound to them in the same way as if there had been no restriction on the firm's authority.

The principle on which a person, having clothed an agent with apparent general authority, but restricted it by secret instructions, is bound (if the other party chooses to hold him so) to one who, in ignorance of the restrictions, contracts through the agent, on the faith of the agent having the authority he seems to have, is well explained in *Freeman* v. *Cooke* (11). The principal does not actually contract, but the person who thought he did has the option to preclude him from denying that he contracted, if the case is brought within the very accurate statement of the law by Mr. Baron Parke (p. 663), "if the person means his representation to be acted upon, and *it is acted upon accordingly*; and if, whatever a man's real intention may be, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it, and *did act upon it, as true*, the party making the representation would be equally precluded from contesting its truth; and conduct by negligence or omission, where there is a duty cast upon a person by usage of trade or otherwise to disclose the truth, may often have the same effect."

In the present case, there is evidence that the defendant had made the firm his general agents, and that they were still so in all cases to which the restriction did not apply; and there would be a duty cast upon him to inform any one who had dealt with him through the firm as his general agents of the restriction on their authority. But though Mr. McAlister, the Agent-General for the colony, was called and examined as a witness, there is no suggestion whatever made that he knew that the firm were general agents for the defendant, or that Donald Malcolm McEacharn was on the register as managing owner for the owners of the *Scottish Hero*. He knew that, by the terms of the agreement with the firm, they were to procure ships answering a particular description to carry emigrants, and that the firm were bound to the Colonial Government to cause those ships to perform the agreement.

(11) 2 Exch. Rep. 654; 18 Law J. Rep. Exch 114.

It was not part of that agreement that there should be any privity of contract established between the Government and the shipowners (though the firm seem to have thought it was), and in all probability he did not care whether or not there was such privity. If he had asked, he would, no doubt, have been told that one particular part-owner, the defendant, refused to allow any privity to be established between him and the Government, but that that part-owner had chartered his share to the firm, and that they had full authority to employ it, and the colonial agent would in all probability have been satisfied. But it is enough to say that there is no evidence that the Government or their agent ever knew that the firm or any individual of it had general authority to bind the defendant, and acted upon the belief that such general authority continued unrestricted. It is not, therefore, shewn that the circumstances were such that the Government could have held the defendant bound to them.

Their Lordships, therefore, think that the rule was properly refused, on the ground that the judgment for the defendant was right, whether there was or was not misdirection on the question as to what would have amounted to presumption if the answer of the jury to the 3rd question had been the other way.

They will, therefore, advise Her Majesty that the order of the Supreme Court should be affirmed, and the appeal dismissed with costs.

Solicitors—Randolph C. Want, for appellant
Ingledew & Ince, for respondent.

1883. March 8. JOHN ELLIOTT AND OTHERS (*appellants*) *v.* JAMES LORD AND OTHERS (*respondents*).

Ship and Shipping — Demurrage — Prompt Despatch—Delay in Loading—Cargo—Insufficient Supply.

A charter-party provided that the ship should proceed to a port, and there load from the factors of the charterers a cargo of "coal, taking her turn with other steamers," and receive "prompt despatch in loading." The charterers employed the persons at the port of loading who were employed to load other ships, and the ship was loaded in her turn, but, by reason of an insufficient supply of coal, the ship was delayed:—Held, *that the charterers were responsible for the delay.*

This was an appeal from the Court of Queen's Bench for Lower Canada, in the Province of Quebec.

The suit was brought by the appellants to recover damages in the nature of demurrage for the detention of the ship *Gresham* while waiting to load at Sydney, Nova Scotia, whither she had gone under a charter-party dated the 12th of June, 1873, according to which the *Gresham*, then at Liverpool, was to proceed to Sydney, Nova Scotia, "and there load a cargo of coals, taking her turn with other steamers, but taking precedence of sailing vessels, and receive prompt despatch in loading and discharging, and to load and discharge always afloat."

The Judge of the Superior Court decided that the *Gresham* "was unduly detained for seventeen days" at Sydney, and condemned the respondents in 850*l.* damages, with interest and costs. This judgment was reversed by a majority of the Judges of the Court of Queen's Bench.

From this latter judgment the appeal was brought.

The facts are sufficiently stated in the judgment of their Lordships.

Butt, Q.C., and *J. G. Witt*, for the appellants.—According to the terms of the charter-party the appellants were entitled to have the cargo loaded with prompt despatch. The respondents failed to perform their contract in respect of this

condition. The delay in loading was not caused by any regulations of the port, or any defect in the appliances for loading. The charterers had not a supply of cargo ready for loading at the port of loading. The respondents were bound to have a cargo ready to load immediately on the arrival of the ship. Their undertaking to furnish cargo was absolute. They referred to *Kearon* v. *Pearson* (1), *Ashcroft* v. *The Crow Orchard Colliery Company* (2) and *Kay* v. *Field* (3).

Cohen, Q.C., and *W. W. Kerr*, for the respondents. — The order of precedence must be regulated by the custom and practice of each port. The appliances for loading, and the usage concerning them, form part of the custom and practice of the port. The control of such appliances is not in the hands of the charterers. The charterers are not responsible for delay caused by any deficiency of such appliances. The cargo was loaded with prompt despatch, according to the custom of the Port of Sydney. When a contract engages that the merchant shall, with prompt despatch, load a vessel, the contract is fulfilled if he employs the modes of despatch in use at the port. They referred to *Robertson* v. *Jackson* (4), *Tayler* v. *Clay* (5), *Leiderman* v. *Schultz* (6), *Hudson* v. *Ede* (7) and *Postlethwaite* v. *Freeland* (8).

Sir Richard Couch delivered the judgment of their Lordships (9).

This is an appeal from a judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec (Appeal Side), in an action by the appellants against the respondents to recover damages in the nature of demurrage for the detention of the appellants' ship, the *Gresham*, at Sydney, Nova Scotia, whither she had gone to load under a charter-party dated the 12th of June, 1872. Mr. Justice Torrance, as the Judge of the Superior Court for Lower Canada, Province of Quebec, District of Montreal, on the 21st of May, 1880, decided that the *Gresham* was unduly detained for seventeen days, and condemned the defendants in 850*l.* damages, with interest and costs. This decision was reversed on the 21st of March, 1882, by three of the Judges of the Court of Queen's Bench (Appeal Side), one Judge, Mr. Justice Cross, dissenting.

No objection was made in this appeal to the amount of the damages, and it was agreed before their Lordships by the respondents' counsel, that if the appellants are entitled to recover damages, they are to be calculated for seventeen days at the rate of 50*l.* per day, as was adjudged by Mr. Justice Torrance.

The appellants were the owners of a steamship called the *Gresham*, and the defendants were merchants trading at Montreal under the firm of Lord, Magor & Munn. On the 12th of June, 1873, the plaintiffs, through Mr. John G. Sidey, their agent at Montreal, entered into a charter-party with the defendants for the hire of the *Gresham*, then at Liverpool. The material part of it is as follows :—

"It is this day mutually agreed between J. G. Sidey, of Montreal, agent of the good steamship or vessel called the *Gresham*, whereof is master, of the measurement of $\frac{\text{'1801'}}{1162}$ tons, or thereabouts, now in Liverpool, of the one part, and Messrs. Lord, Magor & Munn, of Montreal, that the said ship, being tight, staunch and strong, and every way fitted for the voyage, shall, with all convenient speed, sail and proceed to Sydney or other port, or so near thereunto as she may safely get, and there load from the factors of the said merchant a full and complete cargo of coals, taking her turn with other steamers, but taking precedence of sailing vessels, and receive prompt despatch in loading and discharging, and to load and discharge always afloat."

(1) 17 Hurl. & N. 386; 31 Law J. Rep. Exch. 1.

(2) 43 Law J. Rep. Q.B. 194; Law Rep. 9 Q.B. 541.

(3) 52 Law J. Rep. Q.B. 17; Law Rep. 10 Q.B. D. 241.

(4) 2 Com. B. Rep. 412; 15 Law J. Rep. 28.

(5) 16 Law J. Rep. Q.B. 44; Law Rep. 9 Q.B. 713.

(6) 14 Com. B. Rep. 38; 23 Law J. Rep. C.P. 17.

(7) 37 Law J. Rep. Q.B. 166; Law Rep. 3 Q.B. 412.

(8) 49 Law J. Rep. Q.B. 630; Law Rep. 5 App. Cas. 599.

(9) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

The *Gresham*, under the command of E. G. Bulkeley, the master, proceeded from Liverpool to Sydney, and arrived there on the morning of Saturday, the 19th of July, 1873, when the master, about 9 a.m. on that morning, notified to Messrs. Archibald & Co., of Sydney, the agents of the charterers there, that she was ready to receive and load her cargo under the charter-party. On the 25th of July a few bunker coals were shipped, but no cargo coals were shipped on board the *Gresham* until the 4th of August, on which day she began to take in cargo coals, and finished loading on the 13th. She was then compelled to leave with less than her full cargo by 300 tons, but no question arises as to this.

The appellants in their declaration alleged that the defendants did not, according to the terms of the charter-party, load the *Gresham* with a full and complete cargo of coals, taking her turn with other steamers, but taking precedence of sailing vessels, and afford and give the said steamship prompt despatch in loading her cargo of coals. And the defendants by their plea averred that they complied with the conditions of the charter-party, and that the *Gresham* had her turn with other steamers, taking precedence of sailing vessels, according to the custom and usage of the port of Sydney, and had prompt despatch in loading at Sydney.

The material evidence upon this matter is that of Mr. Frederick N. Gisborne, the only witness called for the defendants, and the entries in a shipping book, of which he produced a copy, and which, he said, contained a complete history of the business done during the period to which they relate. Mr. Gisborne stated that he was the engineer of two or three coal companies at Sydney; that all vessels loading from the mines he was attending to were of necessity reported to him, and no other person had any right to enter reports of vessels. Each vessel was put down in turn in the book at the time it was reported, and they were loaded in that order. None of the steamships that were berthed or reported after the *Gresham* were loaded before her, and the *Hibernia* being reported before the *Gresham* was loaded before her. They gave the *Gresham* coal as fast as they could deliver it—as fast as facilities of the mines would allow; the facilities of the pier were greater than the production of the mines, and the vessels could have been loaded in a shorter time or with more despatch if the facilities at the mines had been better.

The following is a copy of the entries in the shipping book:—

"Extracts from Shipping Book.

"1873.

"S.S. *Kangaroo.* — Telegraph Cable Fleet.

"Commenced loading, 19th July. Completed, 24th. Cargo, 761 tons.

"S.S. *Gresham.*—Reported, 22nd July. Commenced loading, 25th. Completed, 13th August. Cargo, 1,830½ tons.

"Schr. *Heroine.*—Arrived, 22nd July. Loaded, 24th. Cargo, 120 tons.

"Schr. *Fear Not.*—Arrived, 24th July. Loaded, 25th. Cargo, 52 tons.

"Schr. *Trial.*—Reported, 25th July. Loaded, 26th. Cargo, 41 tons.

"S.S. *Hibernia.*—Telegraph Fleet.

"Reported, 19th July. Commenced loading, 30th. Completed, 5th August. Cargo, 1,901 tons.

"Schr. *Rebecca Ann.*—Arrived, 31st July. Loaded, 1st and 2nd August. Cargo, 192 tons.

"S.S. *Alpha.*—Completed discharging, 1st August. Commenced loading, 7th August. Completed, 16th. Cargo, 1,959 tons.

"S.S. *R. M. Hunton*, took 143 tons bunker coal, 6th and 7th August.

"S.S. *Crosby*, took 234 tons bunker coal, 11th and 15th August."

It was explained by Mr. Gisborne that the three schooners *Heroine*, *Fear Not* and *Trial* occupied inside berths where no large steamers could lie, and the loading of them did not interfere with the loading of the larger vessels. But the *Hibernia*, which was reported on the 19th of July, did not commence loading until the 30th, and between the 24th and 30th only three small cargoes of 120, 52 and 41 tons respectively, were loaded—namely, on the 24th, 25th and 26th. No coals were loaded on the three following days, and the loading of the *Hibernia's* cargo of 1,901 tons was completed between the 30th of July and 5th of August. The

loading of the *Gresham's* cargo, 1,830½ tons, was completed between the 4th and 13th of August, only a few bunker coals having been loaded on the 25th of July. These dates shew the time within which it was possible to load the cargoes if the coals had been ready.

The arrival of the *Gresham* having been notified to the defendants' agents on the 19th of July, the plaintiffs were, by the terms of the charter-party, entitled to a full and complete cargo of coals on that day. The respondents' counsel did not dispute that when the ship is ready to load the charterers must have a cargo ready, but he contended that they were not bound to do anything till the ship was in her turn, and it was not shewn that she did not begin to load before the 5th of August because the cargo was not ready. The facts, however, are, that the defendants employed the same person, the agent of the coal companies, to load the *Gresham* as was employed to load the *Hibernia*. In consequence of the delay in getting the coals down from the mines, there was not a sufficient supply at the port by which the loading of the *Hibernia* was delayed. This deficiency of coals, and not the waiting for her turn, was the cause of the *Gresham* not sooner obtaining her cargo.

The defendants undertook that the ship should receive prompt despatch in loading, and their Lordships are of opinion that they are responsible for this delay.

It is not necessary to consider whether the *Gresham* was thus delayed for the whole of the seventeen days, it having been agreed that 850*l.* shall be taken as the amount of the damages. Their Lordships, therefore, will humbly advise Her Majesty to reverse the decree of the Court of Queen's Bench (Appeal Side), and to affirm the judgment of the Superior Court of the 21st of May, 1880, with costs. And the respondents will pay the costs of this appeal.

Solicitors—Pritchard & Sons, for appellants; Simpson, Hammond & Co., for respondents.

1883. March 3. PHILIP ESNOUF (*appellant*) *v.* THE ATTORNEY-GENERAL OF JERSEY (*respondent*).

Jersey—Appeal—Definitive Sentence—Order in Council of the 13th of May, 1572 *—Jersey Code of Laws,* 1741*—Criminal Matter.*

By Order in Council of the 13th of May, 1572, *it is provided "that no appeal in any cause or matter be permitted or allowed before the same matter be fully examined and ended by definitive sentence."*

By the Jersey Code of Laws of 1741, *confirmed by Order in Council of* 1771, *it is provided that "Il n'y aura point d'appel permis dans aucune matière contestée devant la Cour Royale avant qu'elle ait été pleinement entendue et que sentence definitive ait été rendue sur le sujet."*

Proceedings were taken in the Criminal Court of Jersey in the nature of a criminal information against the appellant for libel. The appellant was arrested and ordered to plead; and on appeal to the High Court, that Court affirmed the order of the Court below:—

Held, *on petition for leave to appeal, that there had been no definitive sentence in the High Court.*

This was a petition for leave to appeal from an order of the High Court of Jersey.

The petition stated that the petitioner was the publisher of a newspaper in the island of Jersey. That in October, 1882, a letter was inserted in that newspaper, under the heading of "Amateur Burglaries," and with the signature "Equal Justice to Rich and Poor." That the Attorney-General of the island, being of opinion that this letter was derogatory to the administration of justice in the island, and of a mischievous tendency, requested the petitioner to give him the name and address of the writer. That the petitioner furnished the name and address, which were found not to be correct, and the Attorney-General then made a representation to the Royal Court of the island complaining of the letter, and requesting the Court to order the arrest of the petitioner; and the petitioner was accordingly arrested, but was admitted to bail. That the petitioner appeared in the Royal Court, and pleaded that the pro-

ceedings were irregular and contrary to the Act of 1863, but the Court held that the Attorney-General had a right to institute criminal proceedings by means of a representation to the Royal Court. That the petitioner then pleaded "Not guilty," and demanded to be tried by a jury. The Court, however, refused to allow him a jury. That the petitioner appealed to the High Court of the island, which Court affirmed the orders of the Court below.

The petitioner then prayed for special leave to appeal.

Davey, Q.C., and *Mulligan*, for the petitioner, referred to *In re Ames* (1), *Belson* v. *Belson* (2), *The Credit Foncier of England* v. *Amy* (3) and *The Queen* v. *Bertrand* (4).

LORD BLACKBURN delivered the judgment of their Lordships (5):—

This is a petition for leave to appeal from the island of Jersey. By an Order in Council made as long ago as the reign of Queen Elizabeth—the 13th of May, 1572—it was directed "That no appeal in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence, or other judgment having the force or effect of a sentence definitive." That Order in Council of Queen Elizabeth was subsequently re-enacted, leaving out, however, the last line and a half, and it stands thus: "That no appeal in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence" —leaving out the words "or other judgment having the force or effect of a sentence definitive." Their Lordships, however, do not think that the leaving out of those words really makes any difference.

Now the first question that arises in the case of an appeal from Jersey, before we consider whether the appeal is one which it would be proper to grant, is this. Has the time for granting the appeal come? Has it reached the position of being matter decided by a definitive sentence? Of course, whether an appeal should be granted at all in a criminal matter is quite a different question. The question whether leave to appeal should be granted must depend on the question whether the time has come for it, and whether the matter has been disposed of by a definitive sentence. It appears that the Criminal Court in Jersey, which would have general jurisdiction to try criminal matters, has in this case had the matter brought before them by what would be equivalent or analogous to an information of the Attorney-General in this country, accusing the defendant of what is called the grave offence of having been guilty of libel. The Court, acting upon that, have caused him to be arrested and brought before them and held to bail. The first thing he has complained of is this. He maintained that the proceeding was altogether obsolete, as he said, and as his counsel repeatedly asserted, and moreover had been taken away by the Act of 1863, and that consequently he was not compelled to plead to it at all. The Court, of course, are capable of making a mistake; but they, rightly or wrongly, said that he must plead, that he was brought before them in such a way that according to the laws of Jersey he must plead, and he did plead. He pleaded Not guilty. The first point which he wishes to appeal against is this: he says that they ought not to have directed him to plead. Their Lordships must, in the first instance, see whether it can be said that the matter has ended in a definitive sentence. It seems to be clear that the question whether or not he was guilty of this grave offence by the laws of Jersey was not ended by a definitive sentence; it was put in train to be tried by causing him to plead, but it has not gone further, and it seems therefore impossible to say that there was an end of the matter by a definitive sentence.

It seems to be agreed on all hands that if this had been a matter which had proceeded by arrest and bringing the petitioner before a magistrate who had committed him for trial, then, *prima facie* at least, the case would be tried by a jury.

(1) 3 Moore P.C. 409.
(2) 7 ibid. 34.
(3) Law Rep. 6 P.C. 146.
(4) 36 Law J. Rep. P.C. 51; Law Rep. 1 P.C. 520.
(5) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

It seems to be agreed, or at all events asserted, that by the proceeding of information before the Court it is not so; and that the old practice would be, *prima facie* at least, that the trial should be, not before a jury, but before the Judges. On appeal, the High Court held that both the decisions of the Lower Court were right in holding that he ought to be made to plead, and further that having pleaded not guilty he should be tried without a jury. The Court may have been wrong in their decision, but *prima facie*, and until one sees the contrary, they are to be supposed to be right. The question comes to be this, does that amount to a definitive sentence? Their Lordships do not think it does. There is a great deal more plausibility in this contention than there was in the other. It may very well be that in many offences, and perhaps in the case of libel more than in another case, a man may be convicted before a Judge who tries the case who would not be convicted before a jury. Their Lordships do not think he ought to be convicted before the one and not before the other, but it might make a considerable difference in the probability of his being convicted; and therefore it may be said that sending to the one tribunal instead of to the other to decide a question of mixed fact and law whether he was guilty or not guilty, would make a great difference in the final result; still their Lordships think they cannot say that that is a definitive sentence within the meaning of the words as they understand them to be used in this Order in Council.

It seems that the result is this, that the matter which is to be decided, namely, his guilt or innocence of a crime punishable by the laws of Jersey, is put in train to be decided by the decision of a Court sitting without a jury, instead of the decision of a jury; but in neither case is it finally decided until the verdict of the Court is given on the question which is thus remitted to them. Then the matter will have been finally decided; and then, and not till then, supposing there is no other objection to it, would be the time at which an appeal might be granted.

Then would arise the question of whether or not in criminal appeals at large, and in particular in Jersey, after the matters that have been stated before us, an appeal should be granted at all in a criminal case. As to that, their Lordships think that it would be premature to give any absolute decision. There are strong grounds for saying it would not be right to grant an appeal in a criminal case in Jersey; but at the same time their Lordships bear in mind what Baron Parke said at the end of *Ames's Case* (1). After saying that the law as to criminal appeals in Jersey had been brought to their notice, he says: "We are disposed to say that we ought not to have recommended her Majesty to have allowed the appeal; but we are not disposed to say that we have not the power so to have done, as her Majesty is the head of justice, and we are sitting here, not merely as a judicial body, but as Privy Councillors, and the matter of the former petition was referred to us generally. But we are fully aware of the difficulties which we should entail on ourselves if we were to grant appeals in matters of criminal prosecutions," and then he says that in that particular case they certainly ought not to have done it. Their Lordships now repeat that cautious language. They do not say that in no case whatever, even in an appeal from Jersey in a criminal matter, would it be the duty of this Board to advise her Majesty to grant an appeal; they do not say under what circumstances it might be advisable so to advise her Majesty; but they do say, repeating the language of Baron Parke used many years ago, that it should be done very cautiously, and after great consideration. They are by no means to be taken to say that they would grant it in this case, if the party now petitioning were convicted and he were to apply for leave to appeal. At the same time it is not to be taken as the decision of their Lordships that they would not grant leave if there was a sufficient case put before them. Again it is not to be supposed that their Lordships say, notwithstanding the rules that have been laid down, that leave is only to be granted with reference to a definitive matter, that her Majesty never would be advised to grant an appeal under any circumstances, but that they must wait for

the final disposal of the case. They do not say that it never would be done. That would be rash. All their Lordships do say is that it certainly should not be done in such a case as the present.

Their Lordships will accordingly report to her Majesty that this petition should be dismissed.

Solicitors—Saunders & Co., Hawksford & Co., agents for Francis Hawksford, Jersey, for petitioner; The Solicitor for the Treasury, for respondent.

1883. March 15.

THOMAS EDWARD McELLISTER AND OTHERS (*appellants*) *v.* WILLIAM BIGGS AND OTHERS (*respondents*).

South Australia—Real Property Act, 1861, *s.* 39—*Construction—Registration—Equitable Rights—Fraud.*

The Real Property Act, 1861, *No.* 22, *by section* 39, *provides that "No instrument shall be effectual to pass any estate or interest in any land; but upon registration of any instrument the estate or interest shall pass":*—Held, *that although an unregistered deed would not pass an interest in land, yet it would pass an equitable right to set aside a certificate of title obtained by fraud.*

This was an appeal from a judgment of the Supreme Court of South Australia.

The suit was instituted by the respondents against the appellants to have it declared that Edward McEllister became the registered proprietor of a certain allotment of land through fraud, and that the certificate of title might be delivered up to be cancelled, and that new entries in the register book might be made.

The appellants put in their answer.

The Primary Judge decreed that McEllister became the registered proprietor of the allotment through fraud, and that the certificates of title were void, and that the respondents were entitled to the allotment, except one piece, and that the respondents should have their costs of suit.

The appellants appealed from this decree to the Supreme Court, which Court dismissed the appeal with costs.

From this judgment the present appeal was brought.

Matthews, Q.C., and *Strangways*, for the appellants.—The appellants did not become the registered proprietors of the allotment through fraud, within the meaning of the Real Property Act. The respondents cannot require the certificates of title to be cancelled under the provisions of the Real Property Act. They have not disclosed a title to the land in question which confers upon them a right to the relief claimed. The grant of a certificate of title is a judicial act, and is not liable to be questioned under the proceedings appealed against. The land was under the operation of the Real Property Act. No person could acquire title to such land except under the provisions of the Real Property Act.

Davey, Q.C., and *Hull*, for the respondents, were not heard.

SIR BARNES PEACOCK delivered the judgment of their Lordships (1) :—

This is an appeal from a decree of the Supreme Court of South Australia, which affirmed the decree of the Primary Judge of the same Court, in equity, in a suit in which William Biggs and others were the plaintiffs and Thomas Edward McEllister and others were the defendants. The decree of the first Court was that Edward McEllister, under whom the defendants claim, not as purchasers or for valuable consideration, became registered proprietor of the allotment No. 23, through fraud, within the meaning of the Real Property Act of 1861, and that the certificates of the title registered in respect of that lot "were and are fraudulent and void as against George Guthrie and those claiming under him, and ought to be cancelled so far as regards the said allotment, except McKew's piece in the pleadings mentioned."

The Primary Judge also decreed that the plaintiffs were entitled to the said

(1) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

allotment No. 23, except McKew's piece, and that "the certificates of title be delivered up to be cancelled, and be cancelled accordingly; that the registration and entry in the said register book of the said transfer of the said allotment from Thomas Greaves Waterhouse and George Turline, in the pleadings mentioned, to the defendants Thomas Edward McEllister, Robert McEllister, and Susan Mary Gleeson, be cancelled; that the Registrar-General of the said province cancel the said certificates of title and each of them, and the said registration and entry of the said transfer in the said register book; that the defendants be restrained by the order or injunction of this honourable Court from transferring, mortgaging, charging, encumbering, or otherwise dealing with, or joining or concurring in transferring, mortgaging, charging, encumbering or otherwise dealing with the said allotment No. 23, except McKew's piece or any part thereof."

Both the lower Courts have delivered very clear and elaborate judgments, and it is unnecessary for their Lordships to reiterate the facts, which are stated by the Judges of both those Courts. They have found that Edward McEllister obtained the certificate of title as to lot No. 23, except as regards McKew's piece, by fraud. There are concurrent judgments upon that point, and their Lordships think that those judgments were warranted by the evidence. Guthrie obtained a judgment in ejectment against McEllister. Section 137 of the Colonial Act 22 of 1861 enacts that "Upon the recovery of any land estate or interest by any proceeding at law or in equity from the person registered as proprietor thereof, it shall be lawful for the Court or Judge, in any case in which the proceeding is not hereinbefore expressly barred, to direct the Registrar-General to cancel any certificate of title or other instrument, or any entry or memorial in the register book relating to such land, and to substitute such certificate of title or entry as the circumstances of the case may require; and the Registrar-General shall give effect to such order." The first Court, as already stated, upon the recovery in ejectment, ordered the certificate of title to McEllister as to lot No. 23, with the exception of McKew's piece, to be cancelled.

It was contended on the part of the appellants that the deeds under which the plaintiffs derived title from Guthrie, not having been registered in pursuance of section 39 of the Act to which allusion has already been made, passed no interest in the lands. That section enacts that "No instrument shall be effectual to pass any estate or interest in any land under the provisions of this Act, or to render such land liable as security for the payment of money; but upon the registration of any instrument in manner hereinbefore prescribed the estate or interest specified in such instrument shall pass." Their Lordships are of opinion that, although the deeds did not pass an interest in the land, still they passed to the plaintiffs the equitable right which Guthrie had to set aside the certificate of title to McEllister upon the ground of fraud. By section 114 it was provided that "Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to enquire or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered." But the case of fraud is excepted; and fraud has been found by both the Courts upon the evidence before them.

Then it was contended that the plaintiffs did not come under clause 4 of section 124. That clause enacts that "No action of ejectment or other action for the recovery of any land shall lie or be sustained against the registered proprietor under the provisions of this Act for the estate or interest in respect to which he is so registered, except in any of the following cases." Then one of the cases excepted is "The case of a person deprived of any land by fraud, as against the person registered as proprietor of such land through fraud." Guthrie was a person who fell within that exception, and he therefore had a right to maintain the action of ejectment. Their Lordships are of opinion that, by reason of that judgment, the equitable right to

rely upon which has been transferred to the present plaintiffs, they had a right to come into Court and ask to have the certificate of McEllister set aside upon the ground of fraud; and the Courts below, having found fraud, were right in decreeing for the plaintiffs that the certificate should be set aside.

A further objection was made by the learned counsel for the appellants to the form of decree, which orders the certificates of title to be delivered up to be cancelled, and to be cancelled accordingly, but does not order the Registrar-General to substitute such certificate of title or entry as the circumstances of the case might require. Section 137 says: "Upon the recovery of any land estate or interest by any proceeding at law or in equity from the person registered as proprietor thereof, it shall be lawful for the Court or Judge, in any case in which such proceeding is not hereinbefore expressly barred, to direct the Registrar-General to cancel any certificate of title or other instrument, or any entry or memorial in the register book relating to such land, and to substitute such certificate of title or entry as the circumstances of the case may require, and the Registrar-General shall give effect to such order." If when the decree of the Primary Judge was pronounced the objection had been made, the decree might have been rectified; but no such objection was then made, nor was it made on the appeal. Their Lordships, therefore, think that it is now too late for the appellants to object to the form of the decree. When the decree is carried out, and the certificates are delivered up to the Registrar-General to be cancelled, and are cancelled accordingly, an application may be made to the Registrar-General to obtain the proper certificates of title.

Under these circumstances their Lordships think that the judgment of the Supreme Court was correct, and they will humbly advise her Majesty to affirm that judgment. The appellants must pay the costs of this appeal.

Solicitors—O. E. Dawson, agent for W. R. Cullen, Adelaide, for appellants; Johnson, Farquhar & Leech, agents for Bundy & Dashwood, Adelaide, for respondents.

1883. Feb. 21. THE HEIRS OF MARTIN (*appellants*) *v.* MARIE BOULANGER AND OTHERS (*respondents*).

Mauritius—Code de Procédure Civile, Article 474*—Award—Tierce Opposition—Judgment Creditor.*

The judgment creditor of a party to a reference and award is bound by such award, and cannot, in the absence of collusion or fraud, impeach it; for, though not a party to it, he derives his rights under it within the meaning of Article 474 *of the Code de Procédure Civile.*

This was an appeal from a judgment of the Supreme Court of Mauritius.

The action was brought by the respondents, claiming to be creditors of an association called the Distillerie or Guildiverie Centrale, against the appellants and others. The object of the action was to re-open accounts between that association and one Martin, which had been dealt with by the award of one Chauvin given in a former action in the Supreme Court of Mauritius in the year 1865, and to debit Martin with certain sums, on the ground of certain errors and fraudulent entries alleged by the respondents to exist in his accounts. The matter was referred to the Master, who made his report, finding a balance against Martin. The appellants excepted to this report; but the Court on the 12th of September, 1878, gave judgment confirming the Master's report.

From this judgment the appeal was brought.

Cohen, Q.C., and *F. Pollock*, for the appellants.—The award in the former action is under the terms of the reference *res judicata* not only as against all the parties to that action and the directors of the Guildiverie Centrale personally, but as against the Guildiverie Centrale as a *corps moral* and all parties claiming under it. The respondents claim solely as creditors of the Guildiverie Centrale. They cannot impeach the award by way of *tierce opposition* or otherwise. Even if *tierce opposition* were admissible, the claim of the respondents standing in the place of the Guildiverie Centrale is barred

by the law of prescription in force in Mauritius. The respondents have not established any ground for relief against the appellants. They referred to *Code de la Procédure Civile*, art. 474; *Pothier, Traité de la Procédure Civile*, pt. 3. s. 2; *Merlin, Repertoire de Jurisprudence, Opposition Tierce*, s. 2. art. 2. pt. 9; *Dalloz, Dict. Gen. Jurisprudence, Tierce Opposition; Troplong, Droit Civile Expliqué*, art. 1832. pts. 12 and 13.

The respondents did not appear.

LORD BLACKBURN delivered the judgment of their Lordships (1):—

The great difficulty in this case has been to gather from the complicated record what the facts were upon which the Court below decided, so as to understand the judgment, which, of course, ought to be thoroughly understood before we could say that it was not right. Now that it has been explained, it is pretty clear what it was. The first thing to look at is the declaration of the now respondents. On the 9th of June, 1870, they brought an action for a large sum—more than 12,000 dollars—which they claimed to be due. They claim from the Court "Judgment condemning you, the said defendants, in your above-named capacity of members of the committee of management, control, and supervision of the said 'Guildiverie Centrale,' to pay to plaintiffs the sum of 12,439 dollars and 70 cents." This claim is made against the defendants as representatives of the Guildiverie Centrale, and they claim judgment against that company.

This is made still more clear by the pleas. One of the defendants, Rochecouste, makes his appearance, and avers that, as far as the Guildiverie Centrale is concerned, he has nothing to say; but he points out that they cannot touch the portion of the land on which this distillery is built. He says they cannot take that, because it is held on lease under himself, and that the lease will expire in a year. He objects that they cannot take that, and that they cannot touch him personally. The replication to this plea is:—"That, without in any way admitting the several allegations contained in the said pleas, the plaintiffs reply that they have merely asked a condemnation against the above-named defendant"—that is, Rochecouste—"in his capacity of member of the committee of management, control and supervision of the Guildiverie Centrale, and that the issue whether the said De Rochecouste is personally liable for the amount claimed is not before the Court." So that it is clear that they are claiming against the Guildiverie Centrale, and against the Guildiverie Centrale only. The other parties plead, in their capacity of managers of the Guildiverie Centrale, that there is no debt, which, of course, is a different issue altogether.

Then come Daniel Martin, Daniel Pelicier, to whom Martin had mortgaged his claims against the Guildiverie, and Henry Ryder, who was trustee for Martin's creditors. They seek to intervene, and are permitted to do so by order of the 2nd of August, 1870. In December, 1871, Martin dies, and afterwards his heirs ask that Pelicier and Ryder may be put out of the cause, and that the heirs of Martin may continue his intervention. Pelicier and Ryder were put out by order of the 12th of March, 1872, but it does not distinctly appear when the heirs of Martin were permitted to intervene in his place. That this permission was granted at a subsequent time is certain.

Then, on the 7th of October, 1872, comes the judgment, stating that "Saving and excepting the land on which the Guildiverie is built"—that is, the land mentioned in the plea of the first defendant—"and any personal liability of the defendants"—that, again, is what had been mentioned by him, and these points are put out of the question, the Court deciding nothing as to them:—"the Court, to this extent, and no further, gives judgment for the plaintiffs against the said Guildiverie Centrale." That, clearly, is a judgment against the Guildiverie Centrale. Whether the heirs of Martin had as yet been permitted to intervene is not clear; but the Court goes on to say:—"And inasmuch as Daniel Martin, under a judgment of reference made a rule of this Court dated the 12th day of December,

(1) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

1865, was in his lifetime in possession of the Guildiverie Centrale, possession of which has been retained by his widow and representatives to enable them to work off Martin's debt, the Court makes a remit to the Master to examine the accounts of Martin in presence of plaintiffs, and to state the balance, whatever it may be, as at the present date; other questions of costs reserved."

So far what the Court does seems to their Lordships to be, in every point of view, perfectly right. They give judgment against the firm the Guildiverie Centrale to take the firm's property; and as the Court had been informed that Martin or Martin's representatives were in possession of this property, not having sold it, but holding it to work off Martin's debt, they say an account must be taken to see for how much Martin's heirs are entitled to hold this land. That was intelligible and right, and that went before the Master. But here there is some confusion, though it certainly appears that the heirs of Martin were permitted to be parties to the reference before the Master. It is better to take the statement in the preamble to the judgment appealed against for what happened; it is in the following terms:—"Guibert, of counsel for the defendants, contended on the other hand that the accounts anterior to the award of Chauvin, the umpire, had been fully examined by the arbitrators, their correctness affirmed by the latter, and sanctioned by the umpire, whose award was subsequently affirmed without any reservations by the Supreme Court, and made a rule of Court; that the Supreme Court never intended to reopen the discussion upon the accounts anterior to Chauvin's award, but merely wished to know, after examination of the new accounts furnished by widow and heirs Martin since the award, the final balance which may be due as at the present date to widow and heirs Martin, who have been allowed to retain possession of the 'Guildiverie Centrale,' to work off Martin's debt, fixed by the above award and judgment.

"The Master ruled in the sense advocated by Guibert, and accordingly examined the new accounts furnished by the widow and heirs Martin, two in number, from the date of the judgment of the 12th of December, 1865, and arrived as best he could at a certain balance in favour of the widow and heirs Martin. Against the finding of such balance the plaintiffs raised certain objections, which the Master declined entertaining for the reasons assigned by him, and the plaintiffs were directed to bring the present action before the Court, to obtain from us a judgment which might warrant the Master to travel into the examination of the accounts anterior to Jules Chauvin's award, along with the later accounts since such award."

Who directed the plaintiffs to bring the present action does not appear. It could not have been the Court which directed, because, as far as the proceedings shew, they had not gone to the Court. It hardly could have been the Master who directed them, because he was not entitled to do so. They did, however, in fact, commence this further proceeding, and this further proceeding is the one the judgment in which is attacked.

They give their reasons in their pleadings why they should have this award opened and the matters gone into prior to the award as well as what passed since. Their Lordships remark that there is no assertion or attempt to shew that the award was obtained by collusion; there was no collateral fraud, no fraud that would have enabled any one to say that this was a collusive judgment which ought to be set aside.

Upon that the case came before the Court, and now we have to see what is the judgment which the Court gives. Passing by the preliminary inducement, the Judge says: "The facts above stated clearly shew the parties to the suit leading to the arbitration and final adjudication by the umpire were not the same as in this action." Now, in one sense, that is quite true. Robert had instituted the suit in order to have the account stated as between Martin and the Guildiverie Centrale; and the persons who represented the Guildiverie Centrale had intervened; and no doubt it is true that the parties in the suit commenced on the 5th of June, 1870, are the present respondents and the

Guildiverie Centrale, and those in the proceeding in which the judgment appealed against is given are the respondents and the heirs of Martin, and that the parties are not the same in that sense. The Court goes on to say:—"The action filed on the 9th of October, 1863, was brought by Richard Ambroise Robert against one Daniel Martin, and the object thereof was to obtain from the latter an account of the sums received by Daniel Martin from the sale of a large quantity of rum consigned to him by the said Robert from the Guildiverie Centrale Mahebourg, in payment of certain advances made by Martin to the said Robert for the working of the Guildiverie Centrale, upon the condition, secondly, of accounting to Robert for any surplus over and above the repayment to Daniel Martin of all his advances to Robert." Their Lordships think the claim was that he was to account to Robert for the Guildiverie Centrale, so that it was really the Guildiverie Centrale that was suing. Then the order of reference was made, and the four members of the committee were in that capacity admitted as intervening parties. The Court goes on to say:—"The parties to that suit were therefore the plaintiff Robert and the defendant Martin, *plus* the intervening parties just mentioned. They were the parties who appeared before the arbitrators and umpire, and were heard by them. Whatever was decided by the arbitrators, and finally affirmed by the umpire, and subsequently by the Court, can apply to and be binding on no one but the parties to the reference." It certainly seems to their Lordships that this is not quite accurate. What was found on the reference is binding, not only on the parties to the reference, but also on every one who would, in English law, by claiming through or under them, be privy to it. The same thing seems to be the law in France, and in truth the law must be in every country the same. It is not merely that a judgment shall be binding on the parties who are the actual parties to the suit, but it must be binding upon all who claim under or through the party to it in respect to the property in dispute. Otherwise there would be interminable litigation, and every judgment would be opened again and again, and the maxim "*Interest reipublicæ ut sit finis litium*," to say nothing of justice and convenience between parties, would be completely lost sight of. The Judge then adds:—"It is not possible that the rights of the plaintiffs in the case now before us, who are perfect strangers to the reference, should be affected by the proceedings before the arbitrators and umpire, though made a rule of this Court. There is undoubtedly *res judicata* as to the parties to the reference, but certainly not as to the plaintiffs and defendants in the action now before the Court." This seems to their Lordships to be a mistake. The plaintiffs were, no doubt, in one sense hostile to the Guildiverie Centrale until they obtained their judgment. They were saying, "We are entitled to a judgment, under which judgment we are entitled to take your property." But when they obtained that judgment, and were seeking to take the property, they were claiming distinctly under the debtor against whom they had obtained the judgment. This proposition is obvious, and it is borne out entirely by the authorities from the French law which have been cited to their Lordships. The Judge then says:—"The correctness of the accounts before the arbitrators, and affirmed by the umpire, could only be so found and affirmed as to the parties to the arbitration, who alone had the right and opportunity of criticising those accounts, a right which could not be by any possibility exercised by the plaintiffs in this case." Certainly it could not; but the plaintiffs claim under the Guildiverie Centrale, who could and did exercise those rights. He then proceeds to say:—"This action, therefore, though not so in terms, is in fact and in law neither more nor less than a tierce opposition to the judgment arbitral which is sought to be enforced against the plaintiffs so as to shut them out of the possibility of examining or criticising the accounts furnished by the defendant in a quite different suit between the defendant Martin, Robert and other parties, to which suit, however, as already observed, the plaintiffs were no parties in person, nor were they, nor could they be, represented on the reference by any of the parties thereto, whose interests were in the first

place adverse to those of the plaintiffs in the cause now before the Court; and, secondly, the plaintiffs in this cause do not derive their rights under any of the parties to the reference"—referring to the article 474 in the *Code de Procédure Civile*, in which it is said that those who derived their rights under the parties to the reference, or those who represented them, were as much bound as if they were themselves parties. The learned Judge does not cite any authority at all upon this point; but the reason of the thing, as well as the authorities which have been brought to the notice of their Lordships, shews strongly that though, as has been truly said, the creditor is not a party up to the time when he has obtained judgment and is hostile up to the judgment, yet when he has obtained judgment against his debtor he acquires the rights of the debtor, and when he takes property of the debtor is claiming under him within the meaning of the phrase that has been used. Their Lordships think that the Judge has made a mistake on that part of the case, and that he ought to have said that the Master was perfectly right in considering that this was *res judicata*; that it was settled as between the firm and Martin by Chauvin's award, and was consequently settled as between Martin and any one claiming under or through the firm; that the plaintiffs, being creditors, claimed under the firm within the meaning of that decision; and that consequently the award ought to be considered *res judicata* against them, and that they should start from the fixed basis that the account stated at that time was right and was not to be departed from, nothing in the nature of collusion or fraud which would enable it to be set aside being alleged. That being so, the judgment given in this case that it should go back to the Master to open up that account was wrong, and the subsequent proceedings ending in the final judgment were wrong also.

Their Lordships will therefore humbly advise her Majesty to reverse the judgment of the Supreme Court of Mauritius of the 11th of February, 1874, and the judgments consequent thereupon. The suit in which that judgment of the 11th of February, 1874, was given will be dismissed with costs, and the respondents will be ordered to pay the costs of this appeal.

Solicitors—Francis Howse, for appellants.

1883. Feb. 13.

FREDERICK HENRY MOORE (*appellant*) *v.* ROWLAND MANSFIELD SHELLEY AND ANOTHER (*respondents*).

New South Wales—Mortgagor and Mortgagee—Default in Payment—Demand—Reasonable Time—Trespass—Damages.

A mortgage-deed provided that, in case the mortgagor should make default in payment on demand of the money advanced, the mortgagee should be at liberty to enter upon and seize the mortgaged property. The mortgagee demanded payment of the wife of the mortgagor in his absence through an agent, who, as the money was not immediately paid, seized the property: —Held, *that the mortgagor was entitled to a reasonable time to make payment, that there was no default to justify seizure, and that the mortgagor was entitled to substantial damages.*

This was an appeal from a judgment of the Supreme Court of New South Wales.

The action was brought by the respondents against the appellant to recover damages for trespass on certain lands, and the seizure of sheep, and damages for detention of the same.

The appellant pleaded, amongst other pleas, not guilty; leave and licence; and that the lands were not the respondents'.

The respondents joined issue upon these pleas.

The facts are stated in their Lordships' judgment.

The case came on for hearing before the Chief Justice, and a verdict was found for the respondents on the trespass count for seizing the sheep, with 750*l.* damages.

The appellant afterwards moved for a new trial, on the ground that the damages were excessive, and on the ground of

misdirection—the Chief Justice having directed the jury that the mortgages impliedly gave the respondents the right to undisturbed possession of the sheep until they made default; that "on demand" meant that there should be reasonable time for the mortgagors to pay the money demanded; that what was reasonable would depend upon circumstances, but that to demand and forthwith take possession was not reasonable—that the seizure was unlawful, and that the only question remaining was one of damages.

The motion was refused with costs.

From this judgment the appeal was brought.

MacLeod, Q.C., and *T. W. Wheeler*, for the appellant.—No demand was necessary to entitle the appellant to enter into possession of the mortgaged property. If any demand was necessary, it was not a condition precedent to the right to seize and take possession, but only a condition precedent to the right of selling. Abundant time was given for payment after demand before any sale took place. The demand in fact made, satisfies the requirements of the indentures of mortgage, and payment was thereupon immediately due. There is nothing in the language of the indenture from which a covenant for quiet enjoyment could be implied. The damages were excessive. They referred to *Sheppard's Touchstone*, 8th ed. p. 272, *Coote on Mortgages*, 4th ed. p. 705, *Doe d. Roylance* v. *Lightfoot* (1), *Rogers* v. *Grazebrook* (2), *Toms* v. *Wilson* (3), *Keech* v. *Hall* (4), *Fenn* v. *Biddleston* (5) and *Massey* v. *Slater* (6).

Davey, Q.C., and *Horne Payne*, for the respondents.—The appellant had no right to seize the respondents' sheep or ewes until default had been made. The respondents were not in default at the time of seizure. The seizure immediately upon the demand for payment, without giving any opportunity of complying with the demand, was wrongful, and wholly unjustifiable. It was the appellant's duty, before seizing, to wait a reasonable time to enable the respondents to comply with the demand. The damages were not excessive. They referred to *Doe* v. *Day* (7), *Bradley* v. *Copley* (8), *Johnson* v. *Stear* (9) and *Wheeler* v. *Montefiore* (10).

Sir Barnes Peacock delivered the judgment of their Lordships (11):—

This is an appeal from an order of the Supreme Court of New South Wales, refusing a rule *nisi* for a new trial in an action in which the respondents were plaintiffs, and Frederick Henry Moore, the appellant, was the defendant.

The action was an action of trespass brought by the plaintiffs against the defendant and his partner, since deceased, for breaking, entering, seizing and taking possession of a certain run, called the Wallah Wallah station, in the Lachlan district, in New South Wales, and seizing and taking possession of certain cattle, sheep, and other things which were on the run, and also for seizing other sheep belonging to the plaintiffs which were not on the run, and for converting them to their own use. The defendants pleaded that the plaintiffs were not possessed of the property; they also pleaded leave and licence, and that the lands were not, nor was any part thereof, the property of the plaintiffs.

It appears that on the 10th of December, 1878, Suttor mortgaged the run and 3,000 wethers, more or less, and all other sheep, cattle or live stock then upon or belonging to, or which should thereafter, during the continuance of the security, be acquired by or purchased for or be upon the run, to the defendant and his partner, Mr. Blackwood, to secure the sum of 7,000*l.* advanced and 1,000*l.* to be advanced, with compound

(1) 8 Mee. & W. 553; 11 Law J. Rep. Exch. 151.
(2) 8 Q.B. Rep. 895.
(3) 4 B. & S 442.
(4) Sm. L.C. 8th ed. p. 590.
(5) 7 Exch. Rep. 152; 21 Law J. Rep. Exch. 41.
(6) 38 Law J. Rep. Exch. 34; Law Rep. 4 Exch. 13.
(7) 2 Q.B. Rep. 147.
(8) 1 Com. B. Rep. 685; 14 Law J. Rep. C.P. 222.
(9) 15 Com. B. Rep. N.S. 330; 33 Law J. Rep. C.P. 630.
(10) 2 Q.B. Rep. N.S. 133; 11 Law J. Rep. Q.B. 44.
(11) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

interest thereon at nine per cent., to be calculated by half-yearly rests.

On the 19th of February, 1879, an agreement was entered into between Suttor and the plaintiffs for the sale to the plaintiffs of the sheep run, together with 8,000 wethers, nine horses, stores and ration cart, then on the run, for the sum of 9,000*l.* It was arranged that 2,000*l.* of the 9,000*l.* was to be paid in cash, and 2,000*l.* by a bill at nine months, and that 5,000*l.* should remain on mortgage to the defendants. It was further stipulated that, in addition to the 9,000*l.*, the plaintiffs should bring on to the run about 10,000 good ewes of mixed ages, and that, until the cash payments were made, the 10,000 ewes to be placed upon the station, and the station and stock, should remain as a security to the defendants, but that afterwards Suttor's liability to the defendants' firm in respect of 5,000*l.* should cease.

That arrangement was come to with the knowledge of the defendant, and he drafted the agreement. It seems to have been signed in his office. He says after that agreement was signed Suttor and the plaintiffs left his office. He never objected nor stated that the plaintiffs were purchasing for 9,000*l.* that which was not worth that amount, and evidently it was considered at that time that the plaintiffs were making a reasonable bargain with Suttor in agreeing to purchase the run and the sheep which were then on the station for 9,000*l.*, and to bring 10,000 more sheep on to the run. The object of bringing on the 10,000 more sheep at that time was to make the property an ample security. But the arrangement having been altered, another mortgage was entered into on the 5th of July, 1879, and by which the plaintiffs mortgaged to Suttor the sheep run and all the sheep on it and all the sheep then lately purchased by them from Oliver Brothers, then on their way to the station, and all sheep or cattle which should thereafter be purchased for or be upon the station, as a security for the 9,000*l.* Speaking of that mortgage, the defendant says: "I asked for security over the balance of the Melrose sheep,"—those were a portion of the sheep which the plaintiff had purchased to put on the run.—"It had been represented to me that 6,000 had been sold,"—that was the fact—"They said they could not give security, because there was a lien over them to some one else. Eventually they told me they had got over the difficulty, and it was arranged that they should give security over the balance of the Melrose ewes and Swift and Hann, and that was to be a mortgage to Suttor, to be assigned to me." The defendant, in order to get a security beyond that which he had got from Suttor, prepared the deed, or got it prepared, as a security to Suttor, which was to be assigned by Suttor to him, and which was subsequently assigned to him by a deed of the 10th of July, 1879.

Now the question is whether, by virtue of that mortgage and assignment, the mortgage being not a mortgage of lands but of a sheep run, and also of certain chattels and sheep, the intention was that the mortgagee was to have immediate possession of the chattels, or whether the plaintiffs were to remain in possession until they should make default upon demand in paying the 9,000*l.* It should be observed that no time was fixed by the mortgage for the payment of the 9,000*l.* It was merely stipulated that if the plaintiffs should pay the 9,000*l.*, with interest, upon demand, Suttor would reassign the mortgage; that in case the plaintiffs should make default in payment of the 9,000*l.* and interest, then the mortgagee should be at liberty to enter. There were also several covenants in the deed which lead their Lordships to the conclusion that it was the intention of the parties that, until default should be made in payment of the amount upon demand, the plaintiffs were to remain in possession. Amongst others of these covenants there is one at page 15, in which it is stated that the mortgagors will "from time to time, and at all times hereafter during the continuance of this security, take, or cause to be taken, due and proper care of, and also do, or cause to be done, all such acts, deeds, matters and things as may be necessary for beneficially or properly carrying on the said mortgaged property, and also will and shall, from time to time, and at all times during the continuance of this security, keep the whole of the said

sheep, horses and stock hereby assigned, and the increase and progeny thereof, well and sufficiently branded or marked." That was a covenant for the performance of which it was necessary for the plaintiffs to remain in possession, and it appears to their Lordships that although, as contended by the defendant, it was not a re-demise by Suttor, it was a stipulation that the plaintiffs should remain in possession until default should be made on demand.

It was argued that it was the intention of the defendant that the plaintiffs were to remain in possession, and take care of the sheep and manage the property, merely as bailiffs or servants of the mortgagee. It appears to their Lordships that that is not the case. There was no stipulation that the mortgagee should make the payments which were necessary for carrying on the business on the sheep run, or that he was to be liable for anything which the plaintiffs might do in carrying on that business, which there would have been if the plaintiffs had been the agents or bailiffs of the mortgagee in retaining in possession. It also appears clear that, in case the plaintiffs should make default in payment of the 9,000*l.* upon demand, it was to be lawful for the mortgagee "to enter upon and seize the mortgaged property, and to take possession thereof, and in his discretion to assume and continue the management thereof, and immediately thereupon, or at any time thereafter, and whether in or out of possession, and whether he shall or shall not have so taken possession, of his own accord absolutely to sell and dispose of the said mortgaged property." Such a stipulation is not at all consistent with the fact that the plaintiffs were all along and before the defendant's entry considered as holding possession and managing the property as the agents or bailiffs of the mortgagee. Their Lordships are of opinion that it was part of the terms of the deed that the plaintiffs were to remain in possession on their own account and manage the property, until they should make default in payment of the 9,000*l.* upon demand, or some other default. It is not proved that they made any other default, and the only question now is whether they did make default in payment of the 9,000*l.* upon demand. Now the defendant having prepared and got the mortgage of the 5th of July executed, and having got that mortgage assigned to him by Suttor on the 10th of July, sends an order to Mr. Campbell on the 18th of that month to take possession of the station, together with wether sheep, cattle and horses thereon. Surely when the plaintiffs purchased the property and mortgaged it to Suttor on the 5th of July, they never anticipated or expected that it was to be seized by the mortgagee on the 18th for non-payment of the 9,000*l.* on demand. That was not the intention of the parties, although it might have been within the strict legal right of the defendant to make a demand of payment at any time, and to seize in case of default. But he gives this authority to Mr. Campbell on the 18th of July, 1879, within a fortnight after he had obtained the assignment. That was a mere authority, however, to take possession of the property which had been mortgaged by the deed of the 10th of December, 1878; but it was not an authority to Campbell to take possession of the ewes which had been placed by virtue of the contract on the estate, nor to seize the ewes which were travelling and to be brought upon the estate. Campbell, in fact, seized all the sheep that were upon the station. He says he could not help it; he never intended to seize the ewes, but they were seized with the wethers because they mixed with them, and he could not help seizing them as well as the wethers. He never intended to seize them, and he did not substantially seize them, for the benefit of the defendant. A letter was written on the 26th of July, 1879, by the plaintiff (George W. Shelley) to the defendant with reference to this seizure of the property; but this letter had no relation to the seizure of the 10,000 ewes, but only to the seizure of the Wallah Wallah station and the 8,000 wethers and other property which were upon the run, and which had been mortgaged by the mortgage of 1878. He says, "I received intimation from Mr. Campbell last night that he had instructions from you to take possession of Wallah Wallah, stating that it was under the original mortgage that

the place was seized, and that if I was to see you some arrangement might be made. I am not in a position to take a trip to Sydney at once; the little money I had is exhausted, for I have been keeping the station going for five months. So by this mail I have written to my brother to see you and know what can be done in the matter. My letter cannot reach him before next Wednesday or Thursday. So it will be the end of next week before he can communicate with you. In the mean time, please be kind enough to let me know whether it is your intention to sell the station, or if you would be willing to effect an arrangement." That was merely asking whether he intended to sell the station under the seizure which Campbell had made by virtue of the mortgage of 1878, not of the sheep under the mortgage of the 5th of July, 1879.

The defendant sent an answer on the 31st of July, 1879, and on the 27th of August, 1879, he sent up Mr. Thomas Berrie with a written demand for the 9,000*l.*, which the bearer was authorised to receive. The deed of mortgage specified as follows how the demand of payment was to be made. "It is hereby declared that such demand as aforesaid shall be made in writing for and on behalf of the said mortgagee, and delivered either personally to the said mortgagors or either of them, or left at their or his usual or last known place of abode in the said colony of New South Wales, or on the said station or run, or sent through the medium of any post-office addressed to them or either of them as aforesaid." The demand in writing was made on the 27th of August, 1879; it was left at the station. But the question is, Was there a default upon that demand? The plaintiff (George W. Shelley) was not there; he had no opportunity to judge whether the alleged authority to Berrie to receive the 9,000*l.* was genuine or not. His wife had no authority to enter into that question; but because the 9,000*l.* were not then paid immediately to Berrie, the plaintiff (George W. Shelley) being absent from the station, and his wife being there alone, Berrie immediately seized all the sheep which were on the station, namely, the 4,500 or 5,000 ewes which had been purchased by the plaintiffs and brought on to the station. Was the non-payment of the money when the notice was served upon the wife a default?

The case of *Toms* v. *Wilson* (3), cited in the Court below, is an authority to shew that there was no default to justify the seizure. It may therefore be well to refer to what Lord Chief Justice Cockburn says in that case. "We are all of opinion," he says, "that by the terms of the bill of sale the plaintiff was under an obligation to pay immediately upon demand in writing; and if he did not, then the defendants were entitled to take possession of and sell the goods. Here such a demand was made. The deed must receive a reasonable construction, and it could not have meant that the plaintiff was bound to pay the money the very next instant of time after the demand, but he must have a reasonable time to get it from some convenient place. For instance, he might require time to get it from his desk, or to go across the street or to his banker's for it. There are other circumstances in the case. When, as here, the person making the demand is not the person entitled to the money, but his attorney, the person on whom the demand is made must have a reasonable opportunity to enquire into the authority of the person making the demand. The attorney may send a bailiff to make the demand, and authorise him to receive the money, but the mere demand by that bailiff does not intimate to the plaintiff that payment to him will suffice; that fact, at least, ought to have been communicated to the plaintiff, and even if that fact had been communicated to the plaintiff, still, if he *bona fide* doubted the truth of the statement, he would have been entitled to some opportunity to enquire into its truth before the defendants would be entitled to seize his goods."

Here the plaintiff (George W. Shelley) had no opportunity to enquire into the truth of Berrie's statement. He was not at the station when the demand was served upon his wife, but he had gone down to look after the sheep, which the defendant, on the 31st of July, 1879, told him he ought to do. Their Lordships, therefore, are of opinion that there was not a default which justified the defendant in entering

upon the possession of the plaintiff and seizing the property.

The defendant not only seized the 4,500 or 5,000 sheep which had been brought upon the run, but he also seized about 5,000 sheep which had been purchased by the plaintiffs and which were travelling on the road. It seems that the plaintiff (George W. Shelley) had purchased two lots of sheep. From Swift and Hann he purchased 5,000 at 8*s.* 6*d.*, and sent them, or 4,500 of them, on to the station. Those were on the station, and those were seized by Berrie. He had also purchased 11,000 at 5*s.* 6*d.* a head from Oliver Brothers; he sold 6,000 of those at 7*s.* 6*d.*, and the remaining 5,000 were the travelling sheep. Those sheep were subsequently seized, in September, by a man who was authorised by the defendant to seize them, and they were sold by or on account of the defendant at 7*s.* 6*d.* a head. The plaintiff (George W. Shelley), however, in his evidence said that these sheep were worth 10*s.* 6*d.* a head, and not 7*s.* 6*d.*

It is admitted that a man who has got merely an equity of redemption in property is not entitled to recover the full value; he is entitled to recover only the damage which he has sustained. Considering the price which the Shelleys were willing to give in December, 1878, and the additional sheep brought on to the premises, the equity of redemption may fairly be taken as worth a substantial sum of money. The defendant seized the station and the sheep before he was entitled to do so. He had no right to seize them until default had been made, and no default had been made; he was therefore liable to pay to the plaintiffs damages for the seizure. In the case of *Massey* v. *Slater* (6), referred to in the argument at the bar, it was held that the plaintiff was entitled to substantial damages. In this case it appears that the defendant seized the 4,500 or 5,000 sheep which had been brought on to the station as well as those which were off the station, and that he sold those 5,000 which were off the station for 7*s.* 6*d.* a head, the plaintiffs having said that they were worth 10*s.* 6*d.* The jury assessed the damages at 750*l.*, but they did not state the grounds upon which they found their verdict. Upon a motion being made for a new trial, upon the ground that the jury had given excessive damages, the Chief Justice, who heard the evidence and who tried the cause, upheld the verdict, and did not think it right to grant a new trial. Sir William Manning, who was also one of the full Court before whom the case came, gave his reasons for thinking that there was no cause shewn for disturbing the verdict. Now, the jury having found the verdict, and the Chief Justice, who tried the case, and Sir William Manning having come to the conclusion that the verdict ought not to be disturbed, we are asked in England to say that they were wrong. They were Judges who may naturally be supposed to know more of matters relating to stations and runs, and the value of sheep in the colony, than we do; and the jury having thought that the plaintiffs had sustained substantial damage to the extent of 750*l.*, those learned Judges refused to disturb the verdict.

Their Lordships cannot say that there was no evidence to support the verdict, and they think that they ought not under the circumstances to advise her Majesty to say that the jury who found the verdict, the Chief Justice who upheld it, and Sir William Manning who supported it, were all wrong in the conclusions at which they arrived; and under these circumstances their Lordships will humbly advise her Majesty to affirm the judgment of the Court below. The appellant must pay the costs of this appeal.

Solicitors—Randolph Want, agent for Want, Johnson & Scarvell, Sydney, for appellant; Morley & Sherriff, agents for Ernest F. Stephen, Sydney, for respondents.

1883. April 4. HENRY BARLOW WEBB (*appellant*) *v.* HENRY BOSCAWEN WRIGHT (*respondent*).

Griqualand West—Land Grant—Terms of—Indefeasible British Title.

The appellant, claiming under a grant of land in Griqualand West made prior to British rule, obtained the judgment of the Land Court directing the issue of a title to

the land in question:—Held, *that the appellant was entitled to an indefeasible British title containing no condition inconsistent with the original grant.*

This was an appeal from a judgment of the High Court of Griqualand West.

The appellant was the claimant of a farm called Alexandersfontein, situate in the district of Kimberley, under a grant from the President of the Orange Free State, and registered on the 3rd of December, 1862.

The respondent was the Civil Commissioner of Kimberley.

The action was brought in the Land Court of the province, and judgment was given for the claimant, directing a title to issue in favour of the claimant.

A grant of the land in question was tendered to the appellant containing conditions not contained in the original grant.

The appellant appealed to the High Court, which Court ordered that the land should be granted by the respondent in the form tendered by the respondent.

From this judgment the present appeal was brought.

Romer, Q.C., and *Northmore Lawrence*, for the appellant.—The appellant is entitled, under the judgment of the Land Court, to receive an indefeasible British title to the land, on the basis of the Free State Presidential grant. The title issued to the appellant is not in the terms or on the basis of the Presidential grant. It contains important conditions and reservations which are not contained in the Presidential grant. They referred to *Webb* v. *Giddy* (1).

The Solicitor-General (Sir F. Herschell, Q.C.), and *Beaumont*, for the respondent.—The High Court of Griqualand West has jurisdiction to hear or determine any action or claim against the Government. The respondent has no duty or authority to issue a title to land, as claimed by the summons in the action. The grant made is an indefeasible grant. They referred to *Palmer* v. *Hutchinson* (2).

(1) 47 Law J. Rep. P.C. 71; Law Rep. 3 App. Cas. 908.

(2) 50 Law J. Rep. P.C. 62; Law Rep. 6 App. Cas. 619.

LORD BLACKBURN delivered the judgment of their Lordships (3):—

This is an appeal by the plaintiff below against the judgment of the High Court of Griqualand West.

The action in which this judgment was pronounced was commenced by a summons against George Hudson (for whom his successor in office, Henry Boscawen Wright, was afterward substituted), in his capacity as Civil Commissioner for the district of Kimberley, to answer Henry Barlow Webb, in his capacity as the duly authorised agent and resident managing director of the London and South African Exploration Company, Limited, the plaintiff in this suit, in an action to compel him, the defendant, in his aforesaid capacity, to grant and issue to the said company an indefeasible British title under the seal of this province to the farm "Alexandersfontein," situate in the division of Kimberley, in terms of the judgment of his Honour Andries Stockenstrom, Esq., Judge of the Land Court of this province, provisionally pronounced by him on the 16th day of March, 1876, and, in the absence of an appeal, finally confirmed by him on the 16th day of June then following.

The declaration concludes,—"Wherefore the plaintiff, in his said capacity, prays that this Honourable Court will, by its judgment, order the defendant in his said capacity forthwith to grant and issue to the said London and South African Exploration Company, Limited, an indefeasible British title, under the seal of this province, to the farm "Alexandersfontein," in terms of the judgment of the said Land Court, and on the basis of the said grant of his Honour James Allison, the Acting President of the Free State, whereon such judgment is founded and annexed hereto as aforesaid; and that the plaintiff, in his said capacity, may have such other and further relief in the premises as to this Honourable Court may seem meet, together with costs of suit."

It is convenient here to dispose of an objection to this appeal, not raised in the Courts below.

The statutable right which is given to

(3) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier and Sir Arthur Hobhouse.

those who have obtained a judgment in the Land Court is "to demand and receive from the Governor of the Province of Griqualand West, and under the seal of the said province," a title. It was said that the Civil Commissioner of Kimberley was not the officer on whom this duty was imposed, and that he had not, as far as appears, any control over either the Governor or the seal of the province, nor any authority from those who have such control, to appear on their behalf. In short, not only that there were defects in the declaration which might perhaps be amended, but also that the writ was against the wrong party. Their Lordships do not express any opinion either one way or the other as to the validity of this objection if raised in the Court below either at an earlier stage of the proceedings or a later one, for they think that it cannot prevent the right of the plaintiff by appeal to try to get rid of the judgment which has been obtained by the defendant for the benefit of those who have the control of the affairs of the province, who would have been brought before the Court if the writ had been against the right party, whoever that may be. For not only did they appear in the name of the defendant and defend the action, but they have supported, and, even after making this objection, continue to support that judgment as a valid judgment against the plaintiff. And the plaintiff could not bring any new action whilst the present judgment stands, for, if he did, and this judgment were pleaded against the plaintiff, it would scarcely lie in his mouth to say that the judgment was void because he had made a mistake as to the mode in which he had commenced the action.

Their Lordships, therefore, proceed to consider the question raised on its merits. It is one of considerable importance, as it appears that much land in Griqualand West is held on similar titles.

The present plaintiff had, shortly before this action was tried, brought an action against the Civil Commissioner of Kimberley in respect of a farm called Bultfontein. The judgment in that case was not the same as that now appealed against. Against it there was an appeal, which has been, for convenience' sake, distinguished as *Webb* v. *Wright* No. 1, the appeal in the present case being *Webb* v. *Wright* No. 3. [There was another appeal, *Webb* v. *Wright* No. 2, which was dismissed by the Privy Council for non-prosecution.] The judgment of this Committee in *Webb* v. *Wright* No. 1 throws no light on the point now before their Lordships, but some of the documents, printed at full length in the record of *Webb* v. *Wright* No. 1, are not printed at full length in the record in *Webb* v. *Wright* No. 3; instead of doing so, a reference is made to them as already printed in the record of *Webb* v. *Wright* No. 1.

The evidence in the present case was very meagre.

"5th September, 1879.

"Mr. Advocate Hoskyns (with him Mr. Advocate Lange) of counsel for plaintiff. Attorney-General of counsel for defendant. Defendant pleads the general issue.

"William Pepperrell Hutton sworn:—

"I am Master of the High Court, and also Custodian of Records in the late Land Court. I produce schedule, which was put in in Bultfontein case, marked A.

"Manuscript judgment delivered by Judge, C, in Bultfontein case. I also produce original judgment paper, A 1. The document B 1 is the Presidential grant, which is referred to in the judgment, and which was filed in the Land Court. A sworn translation of the grant is attached to the summons.

"No cross-examination.

"Letter of demand same as in Bultfontein title. Reply 21st October. To be considered as part of record in the case.

"Plaintiff admits letter from Graham, 29th August, 1881, C 1. Reply 30th August, D 1. 5th September. Graham to plaintiff's attorney, G 1. Attorney-General puts in grant E 1, as tendered, also diagram F 1.

"Attorney-General calls no witnesses.—*Cur. adv. vult.*

"30th September, 1879.

"Mr. Advocate Hoskyns (with him Mr. Lange) of counsel for plaintiff. The Attorney-General of counsel for defendant."

Immediately after this statement follows the judgment now appealed against, which is in the following words:—

"Judgment for plaintiff.

"Title tendered to be title to be granted.

Defendant to pay all costs incurred by plaintiff prior to date of tender of title. All costs incurred subsequent to date of tender to be paid by plaintiff."

The document marked A was an extract from the *Government Gazette*, dated Saturday, the 4th of December, 1875, containing a schedule of a very large number of "claims to land transmitted by His Excellency the Governor to the Land Court of Griqualand West, in terms of Ordinance No. 3, 1875, s. 15."

The schedule is divided into eight columns, with headings. The portion which relates to the present question is as follows:—

No.	Name of Claimant	Division	Name and Extent of Farm	Foundation of Claim	Grantor and Date of Grant	Grantee	Seller, Date of Sale and Purchase Amount	
365	London and South African Exploration Company	Kimberley	Alexandersfontein	Purchase	Orange Free State, 3rd Dec. 1862	J. J. Coetzee	J. J. Coetzee, 22nd April, 1869, to P. R. and W. G. Well 2. Nell to L. & S. A. Ex. Company, 6th Dec. 1871	Quit-rent

The judgment of the Land Court is a very elaborate document, dealing with the claims which had been transmitted to the Land Court, rather more, apparently, than 1,500 in number, and explaining why some were disallowed; but it contains nothing explanatory of the judgment given as to this claim, which is merely, "Name of claimant, London and South African Exploration Company; name of farm, Alexandersfontein. Allowed 16th March, 1876."

Their Lordships do not doubt that this is a judgment entitling the party in whose favour it was pronounced to demand and receive from the governor of the province, and under the seal of the province, a title to the land. But the judgment of the Land Court does not in any way throw light on the question now in dispute—namely, what should be the effect of that title?

The Presidential grant, or rather the translation from the Dutch, is as follows:—

"A.

"No. 34. Book A, folio 50.

"Jacobsdal. W. C. No. 52, B. F.

"By His Excellency the President of the Orange Free State, in South Africa, in the name and on the behalf of the Government of the said State.

"Hereby is given and granted on perpetual quit-rent to Johannes Cornelius Coetzee certain farm or piece of land named 'Alexandersfontein,' land certificate No. 52, situate in the district of Bloemfontein, Field Cornetcy Onder Modder Rivier, in extent by guess 4,000 morgen, further fixed and bounded, as will appear in the annexed copy of Inspection Report, dated 23rd November, 1857, and 6th August, 1860, and fifty-nine, and subscribed to by C. A. S. Nauhaus, Ja. A. Serfontyn, P. S. N. Swaart, members of the Land Commission, with sketch annexed.

"This grant is made on condition that all roads passing over this land, or which may hereafter be made upon lawful authority, shall remain free and unhindered; that this land shall be subject to a public outspanning and pasture for the cattle of travellers, under such stipulations thereto as have already or may hereafter be made by the Legislature; that the said land shall be further subject to all duties and regulations as already are, or may in future be, established concerning land granted upon the like conditions; and finally that the owner shall be bound for the punctual payment of an annual quit-rent of the sum of 3*l.* 10*s.*; three pounds ten shillings sterling.

"Given under my hand and the public seal of the Orange Free State, at Bloemfontein, on the third day of December, in the year of our Lord one thousand eight hundred and sixty-two.

"(Signed) J. ALLISON,
"Acting President of the Orange
"Free State.

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"Registered at the office of the Registrar of Deeds, at Bloemfontein, on the third day of December, eighteen hundred and sixty-two.

"WILLIAM COLLINS, Registrar of Deeds, Orange Free State."

[Here follow five indorsements of sales and mortgages.]

The title tendered, which, according to the judgment appealed against, the plaintiffs are to take, is as follows:—

"In the name and on behalf of Her Majesty Queen Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and Empress of India.

"I do hereby grant on perpetual quitrent unto the London and South African Exploration Company, their administrators or assigns, that certain plot or parcel of land known as 'Alexandersfontein,' and situated in Ward No. 1, in the division of Kimberley, being in extent five thousand seven hundred and eighty-eight morgen and square roods, or thereabouts, and bounded north by Bultfontein, south-west by Mauritzfontein, east by Karee Boom and the boundary of the province, and west by Spytfontein, as will more fully appear by the hereunto attached plan framed by the Government land surveyor, upon the following conditions—namely:—

"That the said London and South African Exploration Company, their administrators or assigns, shall punctually pay or cause to be paid, on the first day of January in each year, to the civil commissioner of the division wherein the said land now is or may hereinafter be situated, the sum of five pounds sixteen shillings sterling (5*l.* 16*s.*). This quit-rent being payable from the first day of January, 1872, taking a receipt therefor, and paying all stamp duty required by law.

"That all roads and thoroughfares now existing on the said land shall remain free and uninterrupted, and that the Government reserves the right to make, or cause to be made, on or across the said land, for the public benefit, such roads, railways, railway stations, paths, aqueducts, dams, drains, reservoirs, watercourses, or other public works, as may be required, as also to conduct telegraphs over the said land, and to establish convenient outspans for the use of travellers.

"That the Government reserves also the right at all times to enter upon the said land, and to take, excavate, dig or quarry all such stones, earth, gravel or other materials as shall or may be required for any such public works, as in the preceding condition specified, without compensation to the proprietor, provided that compensation shall be made on such portions of said land as have been improved by cultivation, irrigation or otherwise, and that all public officers employed by Government as surveyors, engineers or the like, shall have the right to travel over and remain upon the said land, with their servants, horses, cattle and equipages.

"That the land thus granted shall be brought in such a state of cultivation as it is or may be capable of, and that its owners shall have and keep its beacons, or landmarks and boundaries, properly erected and traced out.

"That the issue of this title without the express reservation to Government of its rights to all precious stones, gold or silver found on or under the surface of the said land, shall in no degree prejudice the position of the said Government in regard to the same.

"And, lastly, that the said lands shall be subject to all such duties, rules, and regulations as either now are or may hereafter be in force with regard to lands granted on similar tenure, and also to any rights acquired by the Government or the public by reason of the creation of mining area or areas on the said land.

"Given under my hand and the public seal of the province of Griqualand West, at Kimberley, this fifth day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

"(Signed) CHARLES WARREN,
"Acting Administrator.

"By His Excellency's command.

"(Signed) FRANCIS H. S. ORPEN,
Surveyor-General."

It is much to be lamented that the company did not put on record a draft of the title which they were willing to take. It would then have appeared what was the real question between the parties.

Neither the Court below nor this Committee would have raised any objection to what both agreed upon; and possibly the points on which they differed might then have been raised in such a manner as to enable their Lordships to decide them finally. This has not been done; and their Lordships think that the plaintiff was to blame for this. The substantial question is whether the London and South African Exploration Company, Limited, are bound to accept a title expressed in such terms as that tendered.

That title in express terms makes some provisions which may or may not be implied on the construction of the grant from the President of the Orange Free State, but are not expressly provided for therein. Their Lordships do not mean to say that it may not be shewn that those provisions may not be implied from the nature of the law existing in the Orange Free State at the time the grant was made, or from ordinances made after the grant and before the annexation of the territory by the British. But no such matters are stated. And, in the absence of any explanation, their Lordships think that the plaintiff company may reasonably object to the clause "that the issue of this title without the express reservation to Government of its rights to all precious stones, gold or silver found on or under the surface of the said lands shall in no degree prejudice the position of the said Government in regard to the same," on the ground that it is likely to have some effect in prejudicing the case of the London and South African Exploration Company, Limited, if hereafter the questions raised, and to some extent at least decided, in *Webb* v. *Giddy* (1) were again brought into litigation between them or their successors and the Government of the province.

Their Lordships think that the existence of one reasonable objection to the title tendered is enough to prevent them from affirming the judgment, whether that was really what the plaintiff objected to or not. From the reasons given by the Judge it would appear that he did not understand this to be what the plaintiff objected to; but, owing to the plaintiff not having stated what the title was which he was willing to take, their Lordships cannot tell how this was.

Their Lordships have not before them the materials to enable them to frame a deed such that they could say that both parties should take it. That will be better done by the consent of both parties, as far as they can agree, and, in the first instance, by the Courts of the Cape on those points on which the parties cannot agree.

But their Lordships think that they ought to advise her Majesty to declare:—

1. That upon the passing of the judgment of the Land Court of the 16th of June, 1871, in the pleadings mentioned, the London and South African Exploration Company, Limited, became entitled, and still are entitled, to demand and receive from the governor of the province of Griqualand West, and under the seal of the said province, an indefeasible title to the lands adjudicated on the above-mentioned judgment.

2. That the title should be by a grant confirming the grant from the Orange Free State of the 3rd of December, 1862, by which the land shall be subject to all such duties and regulations as have been already established, either by the Orange Free State before the annexation, or by the British authorities since the annexation, or shall in future be established by the British authorities concerning lands granted upon the like conditions.

3. And inasmuch as it appears that the title tendered to the London and South African Exploration Company, Limited, as in the pleadings mentioned, and which, by the judgment appealed against, the company are required to accept, contains conditions which are not expressed in the said grant of the 3rd of December, 1862, and which have not been shewn to be incidents implied in that grant, nor to be duties or regulations since established concerning land granted upon the like conditions, the judgment above appealed against be reversed and the cause remitted to the High Court of Griqualand, to do what is just and right in the premises, having regard to the above declarations, all other questions being reserved for the Court below.

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Their Lordships will humbly advise her Majesty accordingly. There should be no costs of this appeal.

Solicitors—Sydney & Son, for appellant; Bircham & Co., for respondent.

1883. April 18. JOHN THOROLD CARTER (*appellant*) *v.* ALEXANDER MOLSON (*respondent*).

Lower Canada—Consolidated Statutes of Lower Canada, c. 87. *ss.* 12 *and* 18—*Civil Code, Art.* 2274—*Code of Civil Procedure, Arts.* 766 *and* 1360.

The Code of Civil Procedure of Lower Canada, by article 1360, *provides that, "The laws concerning procedure in force at the time of the coming into force of this Code are abrogated in all cases in which express provision is made by this Code upon the particular matter to which such laws relate. The Civil Code of Lower Canada came into force a few months prior to the Code of Civil Procedure:*— Held, *first, that the object of the Legislature was that the two Codes should be construed together; secondly, that a provision on any subject contained in the Civil Code is not repealed by a provision on the same subject in the Code of Civil Procedure, unless the latter is wholly inconsistent with the former; and, thirdly, that the provisions contained in article* 2274 *of the Civil Code are not repealed by article* 766 *of the Code of Civil Procedure.*

This was an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec reversing an order of the Superior Court.

The order of the Superior Court was made in the course of proceedings taken by the appellant against the respondent by the issue of a writ of *capias ad respondendum*, under the provisions of the Code of Civil Procedure for Lower Canada, in order to enforce a judgment recovered by the appellant against the respondent for the sum of $32,072 : 98.

The Civil Code of Lower Canada, by article 2274, provides that, "Any debtor imprisoned or held to bail, in a cause wherein judgment for a sum of eighty dollars or upwards is rendered, is obliged to make a statement under oath and a declaration of the abandonment of all his property for the benefit of his creditors, according to the rules and subject to the penalty of imprisonment in certain cases."

The Code of Civil Procedure of Lower Canada, by article 766, provides that, "A debtor who has been admitted to bail is bound to file a statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested. Any person condemned to pay a sum exceeding eighty dollars, exclusive of interest from service of process and costs, for a debt of a commercial nature, is likewise, after such moveable and immoveable property as he appears possessed of have been discussed, bound, upon being required to do so, to file a similar statement."

Article 1360 provides that, "The laws concerning procedure in force at the time of the coming into force of this Code are abrogated—1. In all cases in which this Code contains any provision having expressly or impliedly that effect. 2. In all cases in which such laws are contrary to or inconsistent with any provision of this Code, or in which express provision is made by this Code upon the particular matter to which such laws relate."

On the 17th of April, 1877, the appellant obtained a judgment in his favour in an action brought by him as plaintiff against the respondent in the Superior Court for Lower Canada, whereby the respondent was ordered to pay to the appellant the sum of 31,125 dollars, with interest thereon.

On the 2nd of June, 1877, the appellant prayed the Court for a writ of *capias ad respondendum* against the respondent, and the respondent was arrested, but was afterwards, upon the execution of a bail bond, released.

On the 3rd of September, 1880, the appellant filed a petition in the Superior Court, alleging that the judgment remained wholly unsatisfied, and that the respondent had neglected to file the statement of his property in accordance with

the provisions of article 2274 of the Civil Code, and prayed that the respondent might be imprisoned.

The respondent pleaded to this petition.

On the 17th of September, 1880, the Superior Court gave judgment, and ordered that the respondent should be imprisoned for one year.

From this judgment the respondent appealed to the Court of Queen's Bench for Lower Canada, which Court reversed the judgment of the Superior Court.

From this judgment the present appeal was brought.

Kenelm Digby, on behalf of the respondent, objected to the hearing of the appeal, no special leave having been given, and referred to *Goldring* v. *La Barque D'Hochelagg* (1).

Gibbs, Q.C., and *Bargrave Deane*, contended that his objection was too late, and referred to *Sauvagean* v. *Ganthier* (2).

Their Lordships intimated that no appeal lay as of right under article 1170 in such a case, but that in the present case they would give leave to appeal.

Gibbs, Q.C., and *Bargrave Deane*, for the appellant.—The provisions of article 2274 of the Civil Code have not been repealed by the provisions of article 1360 of the Code of Civil Procedure. Article 766 of the Code of Civil Procedure does not make provision upon the particular matter mentioned in article 2274 of the Civil Code. The penalty, therefore, is not abrogated by the article 766 of the Code of Civil Procedure. They referred to *Henderson* v. *Lamoureux* (3), and to the Consolidated Statutes of Lower Canada, c. 87; to the Civil Code of Lower Canada, article 2274, and to the Code of Procedure of Lower Canada, articles 763, 764, 766 and 1360.

Kenelm Digby, for the respondent.—The provisions contained in article 2274 of the Civil Code of Lower Canada are repealed by article 1360 of the Code of Procedure. The latter Code contains no provision authorising the imprisonment of the respondent. The respondent did not neglect to file a statement within the meaning of article 766 of the Code of Civil Procedure.

LORD BLACKBURN delivered the judgment of their Lordships (4):—

This is an appeal from a judgment of the Court of Queen's Bench for Lower Canada, in the Province of Quebec, by which that Court, by a majority of three to two, reversed a judgment of the Superior Court of Lower Canada.

The judgment is in the following terms:—

"March 6, 1882.

"Present: The Honourable Sir Antoine Aimé Dorion, Knight, Chief Justice; the Honourable Mr. Justice Monk, the Honourable Mr. Justice Ramsay, the Honourable Mr. Justice Tessier, the Honourable Mr. Justice Baby.

"The Court of our Lady the Queen, now here, having heard the appellant and respondent by their counsel respectively, examined as well the record and proceedings had in the Court below, as the reasons of appeal filed by the appellant, and the answers thereto, and mature deliberation on the whole being had;

"Considering that the appellant, arrested on a *capias ad respondendum* at the suit of the respondent, has been discharged, by giving security, under article 825 of the Code of Civil Procedure, that he will surrender himself into the hands of the sheriff, when required to do so by an order of the Court or Judge, within one month from the service of such order upon him or upon his sureties, and that in default such sureties will pay the amount of the judgment in principal, interest and costs; And considering that, by article 766 and the following articles of the Code of Civil Procedure, express provision has been made concerning the matters provided for by chapter 87 of the Consolidated Statute of Lower Canada and article 2274 of Civil Code, as to the obligation of a debtor who, having been arrested on a *capias ad respondendum*, has been admitted to bail, to file a statement of all the property, real and personal, of which he is possessed, and that the

(1) 49 Law J. Rep. P.C. 82; Law Rep. 5 App. Cas. 371.

(2) Law Rep. 5 P.C. 494.

(3) 17 Law Cas. Rep. 414.

(4) Lord Blackburn, Sir Barnes Peacock, Sir Richard Couch and Sir Arthur Hobhouse.

provisions of sections 12 and 18 of the said chapter 87 of the Consolidated Statutes and article 2274 of Civil Code have thereby been repealed under the provisions of article 1360 of the Code of Civil Procedure;

"And considering that, although by the first paragraph of the above-mentioned article 766 of the Code of Civil Procedure, a debtor who has been admitted to bail is bound to file the statement and declaration of all the property of which he is possessed, according to article 764 of the said Code, within thirty days from the judgment rendered in the suit in which he was arrested, it is not provided in the said article, nor in any other article of the said Code, nor in any provision of law now in force, that, in default of filing such statement and declaration, such debtor shall be imprisoned or be subject to any penalty whatsoever;

"And considering that the judgment of the Superior Court sitting at Montreal on the seventeenth day of September, one thousand eight hundred and eighty, by which it was ordered that the said appellant should be imprisoned in the common gaol of this district for one year, is not, under the allegations of the petition on which said order was made, justified by law, and that there is error in the said judgment;

"This Court doth reverse the said judgment of the seventeenth day of September, one thousand eight hundred and eighty, and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the petition of the said respondent presented to the said Superior Court on the third day of September, one thousand eight hundred and eighty. And doth condemn the said respondent to pay to the appellant the costs incurred in the said Superior Court on the said petition, as well as those incurred on the present appeal.

"(The Honourable Justices Ramsay and Baby dissenting.)"

The question, which their Lordships have found to be one of considerable difficulty, depends on the true construction of the two Codes of Lower Canada—the Civil Code, more particularly article 2274 and articles 2613 and 2614, and the Code of Civil Procedure, more particularly article 766 and those following it, and article 1360. There were careful and elaborate provisions for framing the two Codes in question; but, notwithstanding all the precautions taken, there may be, and in fact in the present case there are, doubts as to what is the meaning of the language employed. And the Civil Code of Lower Canada, article 12, is "that when a law is doubtful or ambiguous it is to be interpreted so as to fulfil the intention of the Legislature and to attain the object for which it was passed."

It is therefore material to enquire how and why the two Codes were enacted, so as to ascertain what was the intention of the Legislature, and what the object for which they were enacted.

First, by statute 20 Vict. c. 43, which afterwards became the second chapter of the Consolidated Statutes of Lower Canada, commissioners were appointed, who were directed (sections 4, 5 and 6) to reduce into one Code, to be called the Civil Code of Lower Canada, those provisions of the laws of Lower Canada which relate to civil matters, and are of a general and permanent character, whether they relate to commercial cases or others, but excepting the laws relating to seigniorial or feudal tenure, and to reduce into another Code, to be called the Code of Civil Procedure of Lower Canada, those provisions which relate to procedure in civil matters and cases, and are of a general and permanent character. They were directed to embody therein such provisions only as they held to be then actually in force. They might suggest such amendments as they thought desirable, but were to state them separately. And they were directed to follow, as far as might be, the arrangement of the Code Civil of France. It was provided that, as the commissioners proceeded with their work from time to time, there should be an opportunity given to the Judges to review their work, and make suggestions to the commissioners, who were to consider, but were not bound to adopt, their suggestions. And by section 13 the commissioners were required from time to time to incorporate with the proper portions of the said codes such amendments as the Governor

in Council thinks it right to recommend for adoption by the Legislature after considering the reports of the Commissioners, and those of the Judges, if any, but such amendments shall be carefully distinguished from the actual law. And then by section 14, "When the said codes or either of them are completed, with such amendments as last mentioned, printed copies thereof, and of the reports of the commissioners, and of the Judges, if any, shall be laid before the Legislature, in order that such code or codes may be made law by enactment; and if it be found advisable that either of the said codes be completed and submitted to the Legislature before the other, the Civil Code of Lower Canada shall be the first so completed and submitted.

"2. Either House may propose any amendments to either code, but such amendments shall be proposed by resolutions, which may be passed by the one House and sent to the other for its concurrence, and shall be subject to amendment by the other, and be dealt with as a bill might be until finally agreed to by both Houses, and shall then be communicated to the commissioners, who shall with all possible despatch incorporate the substance of the amendments so agreed to with the proper code, which may then be passed as a bill at the same or any other session."

The Civil Code was the first completed and submitted to the Legislature, and it was amended by resolutions agreed to by both Houses, but the Legislature did not quite pursue the course indicated by the latter part of section 14, sub-section 2. By 29 Vict. c. 41. s. 2, the commissioners were directed to incorporate the amendments with the Civil Code, adapting their form and language (when necessary) to those of the said code, but without changing their effect, inserting them in their proper places, and striking out of the said code any part thereof inconsistent with the said amendments.

Power was also given to the Governor to select any Acts and parts of Acts passed during the last and present sessions, and cause them to be incorporated. And power was given to the commissioners to make verbal and formal amendments, and so soon as the said work of incorporation was completed the amended code was to be submitted to the Governor, who may cause a correct printed copy thereof, attested by his signature and that of the Provincial Secretary, to be deposited in the office of the clerk of the Legislative Council.

Then by section 6: "The Governor in Council may, after such deposit of the roll last mentioned, declare by proclamation the day on and after which the said code, as contained in the said roll, shall come into force and have effect as law, by the designation of 'the Civil Code of Lower Canada,' and upon, from, and after such day the said code shall be in force accordingly." The Governor in Council, by proclamation, named the 1st of August, 1866, as that day.

A precisely similar course was taken as to the Code of Civil Procedure of Lower Canada, the statute 29 & 30 Vict. c. 25, being in the same words as those of 29 Vict. c. 41, except that "Code of Civil Procedure of Lower Canada" is throughout substituted for "Civil Code of Lower Canada." The day fixed by the proclamation for this code coming into force is the 28th day of June, 1867.

So that there was a period of nearly ten months, during which the Civil Code was in force, before the Civil Code of Procedure came into force.

It seems implied in that part of the judgment which states "that there are express provisions in the Code of Procedure as to these matters," and that "the provisions of sections 12 and 18 of the Consolidated Statutes and article 2274 of the Civil Code have thereby been repealed under section 1360 of the Code of Civil Procedure," that the majority of the Court of Queen's Bench put the construction on article 1360 of the Code of Civil Procedure, that it repealed not only all laws in force before the passing of either code, but also all parts of the Civil Code which touched procedure.

The literal meaning of the words "laws in force at the time of the coming into force of this code" includes, the Civil Code, for, as already pointed out, the Civil Code came into force some months before the Code of Civil Procedure did; but their

Lordships are scarcely prepared to hold that the intention and object of the Legislature was that when a matter is included in the Civil Code which might without impropriety have been included in the Code of Procedure, and an express provision is made in the Code of Procedure upon that particular matter, the provisions of the Civil Code are abrogated as being laws concerning procedure in force at the time when the Code of Procedure came into force. The two subjects from their nature overlap, and in the Code Civil of France, as well as in the Canadian Codes, much which might well be put into the one code is placed in the other. There seems nothing to prevent laws in both codes relating to the same subject from standing together, unless they are from their nature so inconsistent that the later enactment must be taken to repeal the earlier.

The 20th title of the Canadian Civil Code, relating to imprisonment in civil cases, is one which might have been placed under the head of procedure; and so might the 16th title of the French Code Civil, entitled, "De la Contrainte par Corps en Matière Civile," have been placed in the "Code de Procédure Civile." But in neither the Canadian Codes nor in the French Code has this been done.

The general intention and object of the Legislature seem to have been that the two codes should stand together, and be construed together, and it may well be doubted whether the majority of the Queen's Bench have not given too much effect to the accident that the codes did not come into force on the same day.

It is not, however, necessary to decide this, as, by a different chain of reasoning, the same result may be come to.

The preamble to the Statute 20 Vict. c. 43, which afterwards became the Consolidated Statutes, chap. 2, is this:—

"Whereas the laws of Lower Canada in civil matters are mainly those which at the time of the cession of the country to the British Crown were in force in that part of France then governed by the custom of Paris, modified by provincial statutes, or by the introduction of portions of the law of England in peculiar cases; and it therefore happens that the great body of the laws in that division of the province exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin: And whereas the laws and customs in force in France at the period above-mentioned have there been altered and reduced to one general code, so that the old laws still in force in Lower Canada are no longer reprinted or commented on in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them: And whereas the reasons aforesaid and the great advantages which have resulted from codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the codification of the civil laws of Lower Canada."

From this preamble and the whole scheme of the legislation, their Lordships think that it was one main object of the Legislature to make the codes, as one may say, self-contained. This object, however, has been apparently lost sight of in several places, and, amongst others, in the article 2274 of the Civil Code, which is in the following words:—

"Any debtor imprisoned or held to bail in a cause wherein judgment for a sum of 80 dollars or upwards is rendered, is obliged to make a statement under oath and a declaration of abandonment of all his property for the benefit of his creditors, according to the rules and subject to the penalty of imprisonment in certain cases provided in chap. 87 of the Consolidated Statutes for Lower Canada, and in the manner and form specified in the Code of Civil Procedure."

This cannot be understood without reading and construing the statute referred to in order to see what rules and what penalties of imprisonment were provided by that statute, and then determining which of them were kept alive by this article; for, though this article does contain an express provision on at least part of chap. 87, and so by articles 2613 and 2614 of the Civil Code does abrogate at least so much of chap. 87, yet it seems impossible to deny that the Legislature did intend, at

all events until the Code of Civil Procedure should come into force, to re-enact, by reference to the abrogated statute, some penalties, and apply them to the things specified in article 2274. And there is great difficulty in doing this. For though chap. 87, s. 12 (1) does, in certain cases included in article 2274, but not quite co-extensive with it, require a debtor, against whom judgment for 80 dollars or upwards has been rendered, to file a statement of his property and creditors, and a declaration of his willingness to abandon the property in his statement mentioned to his creditors, and by section 12 (2) does impose penalties on a defendant neglecting to file such statement, yet there are no penalties co-extensive with article 2274, and there certainly are many penalties which, by chap. 87, s. 18, are imposed upon debtors who have not been arrested, against whom a judgment has gone in a commercial cause, which cannot on any construction be kept alive by article 2274. Those difficulties are all removed if article 2274 is read as meaning "according to the rules and subject to the penalty provided in certain cases in chap. 87, *until the Code of Civil Procedure comes into force, and then* in the manner and form specified in the Code of Civil Procedure."

It is not to be denied that this is introducing words not to be found in the enactment, and so far is objectionable. But their Lordships think that article 2274 of the Civil Code shews an intention on its face to hand over the whole of its subject-matter to be dealt with by the provisions of the Civil Code of Procedure, or if that intention cannot be found on its face, then that the law contained in that enactment is "doubtful and ambiguous," and, though not without some doubt and difficulty, they think that the object and intention of the Legislature is such as to justify this construction.

If it is adopted, all difficulty vanishes. The articles of the Code of Civil Procedure do impose many penalties, but they do not impose the penalty of imprisonment for a year on the person refusing to perform that duty which he is by the express terms of article 766 bound to perform.

The question how he is to be compelled to do so does not arise on this appeal. It is enough to say that he is not liable to imprisonment for a year.

Their Lordships think that the appeal must be dismissed. They will so humbly advise her Majesty.

The appellant must pay the costs of this appeal.

Solicitors—Wilde, Berger, Moore & Wilde, for appellant; Freeman & Bothamley, for respondent.

1883. March 7. JOSEPH PHILLIPS AND OTHERS (*appellants*) *v.* THE HIGHLAND RAILWAY COMPANY (*respondents*).

Victoria—Admiralty Court—Merchant Shipping Act, 1852, *section* 189—*Interpretation—Order in Council, 27th June*, 1832—*Seamen—Joint Action.*

By an Order in Council, made pursuant to the 2 *Will.* 4. *c.* 51, *it was provided that any number of seamen, not exceeding six, may join in an action in a Vice-Admiralty Court to recover their wages.*

The Merchant Shipping Act, 1854, *by section* 189, *provides that "No suit or proceeding for the recovery of wages under the sum of* 50*l. shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty":*—Held, *that a suit may be instituted under this section by seamen, not exceeding six, provided the total amount of wages due is* 50*l., although the amount due to each is less than* 50*l.*

This was an appeal from a decree of the Vice-Admiralty Court of Victoria, dismissing a suit brought by the appellants for the recovery of their wages, and compensation for damages and expenses caused by the seizure of their ship.

The suit was brought according to the rules and regulations made by an Order in Council, dated the 27th of June, 1832, pursuant to the Act 2 Will. 4. c. 51. These rules provide that in suits for seamen's wages the seaman may proceed against the ship, freight and master; and any

Phillips v. *The Highland Rail. Co.*

number of mariners, not exceeding six, may proceed jointly in one action.

The suit was entered shortly before the 24th of August, 1881. The ship, *The Ferret*, was arrested on the 24th of August, 1881. On the 26th of August an appearance was entered on behalf of the owners.

The libel of the appellants was brought in on the 14th of October, 1881.

The facts are stated in the judgment of their Lordships.

The Judge dismissed the suit on the ground that in no case did the amount allowed to an appellant reach 50*l.*

From this judgment the present appeal was brought.

Jeune and *Wyke*, for the appellants.—The Court had jurisdiction to give judgment for the sums awarded to each of the appellants. Each appellant claimed a sum exceeding 50*l.* Suits for seamen's wages can be entertained by a Vice-Admiralty Court. Several seamen may join to make up the claim; the words are "any seaman or apprentice." The singular number includes the plural.

They referred to the interpretation clause of the 13 & 14 Vict. c. 21, and to *Rossi* v. *Grant* (1), *The Fairy Anchor* (2), *Hollingworth* v. *Palmer* (3) and *The Queen* v. *The Judge of the City of London Court* (4).

Cohen, Q.C., and *Hollams*, for the respondents.—The amount due to each of the appellants was less than 50*l.* The action was a suit or proceeding for the recovery of wages under the sum of 50*l.*, within the meaning of the statute 17 & 18 Vict. c. 104. s. 189. The section says that no suit shall be instituted by "any seaman or apprentice." The Act does not contemplate the joinder of several seamen as plaintiffs. It was not shewn by the appellants that any of the excepted circumstances referred to in the statute existed.

They referred to *Melville* v. *De Wolf* (5).

(1) 5 Com. B. Rep. N.S. 699.

(2) 3 Ir. In. 283.

(3) 4 Exch. Rep. 267; 18 Law J. Rep. Exch. 409.

(4) 51 Law J. Rep. Q.B. 305; Law Rep. 8 Q.B. D. 609.

(5) 4 E. & B. 844; 24 Law J. Rep. Q.B. 200.

Sir Barnes Peacock delivered the judgment of their Lordships (6):—

This was a suit brought by six seamen, in the Vice-Admiralty Court of Melbourne, to recover wages and compensation for wrongful dismissal. The suit was brought by the six seamen jointly, the amount claimed for each being a larger sum than 50*l.*; but the Judge reduced the amount due to each of the plaintiffs to a sum less than 50*l.*, the total, however, amounting to 203*l.* 19*s.* 8*d.*

The first question to be considered is, whether the Judge had jurisdiction. That depends upon the 189th section of the Merchant Shipping Act of 1854. Previously to the passing of that Act, his late Majesty King William IV., by an Order in Council made under the authority of an Act of Parliament passed in the second year of his reign, ordained certain rules and regulations to be acted upon by the Vice-Admiralty Courts abroad. One of those rules was contained in section 15. It stated that any number of seamen, not exceeding six, may join in one action in a Vice-Admiralty Court to recover their wages. It was, therefore, at the time of the passing of the Merchant Shipping Act of 1854, lawful for six seamen, if they pleased, to join in one action in the Vice-Admiralty Court to recover their wages; and compensation falls under that rule. The 188th section of that Act enacted that "Any seamen or apprentice, or any person duly authorised on his behalf, may sue in a summary manner before any two Justices of the Peace acting in or near the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, for any amount of wages due to such seaman or apprentice, not exceeding 50*l.* over and above the costs of any proceedings for the recovery thereof." Section 189, which is the section relied upon, enacted that "No suit or proceeding for the recovery of wages under the sum of 50*l.* shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or any Court of Session in Scotland, or in any

(6) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier and Sir Richard Couch.

Superior Court of Record in her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court as aforesaid, or unless any Justices acting under the authority of this Act refer the case to be adjudged by such Court, or unless neither the owner nor the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore." The question, then, is whether this enactment prevents several seamen from joining in one suit in a Vice-Admiralty Court to recover wages when the total amount of the wages claimed exceeds 50*l.* and the wages of each is less than 50*l.* Having reference to the Interpretation Act, 13 & 14 Vict. c. 21, which was in force when the Merchant Shipping Act of 1854 was passed, and by which it is enacted that words in the singular number shall include the plural, their Lordships are of opinion that they may read section 189 as if it had said, "No suit or proceeding for the recovery of wages under the sum of 50*l.* shall be instituted by or on behalf of any seaman or seamen."

It was contended that the section could not be read in that way, inasmuch as it speaks of actions brought in any of Her Majesty's Courts of Record, in which six seamen cannot join; but it does not follow that, because six seamen cannot join in a suit in one of Her Majesty's Courts of Record, they are not to join in a suit in the Vice-Admiralty Court under the provisions of the rules to which allusion has already been made. Their Lordships think that the 189th section must be read *reddendo singula singulis*, and that if six seamen join in a suit in a Vice-Admiralty Court, where six seamen may join, and the total amount of the wages due to the six exceeds 50*l.*, they may proceed in that suit, although the wages of each included in the amount sought to be recovered are less than 50*l.*

It was agreed that the Judge, instead of sending the matter to the Registrar to assess the amount, should himself ascertain it; and he found with regard to each of the six that the wages and compensation due was a sum less than 50*l.*, but that the total amount due to the six was 203*l.* 19*s.* 8*d.* Their Lordships think that the Judge had jurisdiction, under the rule and the section to which allusion has already been made, to award that sum of 203*l.* 19*s.* 8*d.*, partly for wages and partly for wrongful dismissal.

In the first place, there was a contract entered into by Watkins, who was the duly authorised master of the owners at Cardiff. He entered into a contract with the seamen, and they were hired, at certain fixed amounts, for a period of three years, for a certain voyage. It appears that the master left the ship at the Cape, and that a man named Wright, who was then the mate, took possession and ran away with it for the purpose of stealing it. When the ship arrived at Melbourne, on the 22nd of April in the year 1881, the Government seized it, on behalf of the owners, upon the ground that it was in the possession of men who had stolen it, and they put the seamen ashore. Three days afterwards, on the 25th of April, the ship was delivered up by the Government to the agent of the owners. The agent took possession, and the owners must be bound by his act; by taking possession of the ship they ratified what the Government had done in taking possession of it on their behalf and putting the seamen ashore.

The seamen contended that they were entitled, not only to their wages up to the time of the seizure, but to compensation for being turned out of the ship after it arrived at Melbourne. If the seamen had been *participes criminis*, if they had joined Wright in endeavouring to steal the ship, of course they would not have been entitled either to wages or to compensation; but that defence was never made. The seamen, although they were at first arrested, were never tried for the offence of complicity. They were discharged, and no defence was set up in the suit in the Vice-Admiralty Court that the plaintiffs were not entitled to their wages upon the ground of complicity. A sum, not including compensation, was tendered to them for their wages up to the date of the seizure of the ship. Nothing was offered by way of compensation for the wrongful dismissal. The learned Judge who tried the

case said: "In consequence of information received by the Government, the steamer had been seized by the officers of customs. The master and mate were arrested, and the seamen removed from the vessel, some of the crew being kept under the surveillance of the police as witnesses awaiting the trial of the master and mate. The seamen required as witnesses were paid by the Government; the others were placed in the Sailors' Home, and offered a certain allowance. Several accepted this allowance, and were engaged as seamen on board vessels in the port. The promoters refused the amount offered them, and instituted the present proceedings."

Their Lordships are of opinion that, under the circumstances (no defence having been set up that the plaintiffs were guilty of complicity), they were entitled to recover their wages and a reasonable and proper amount for compensation. The Judge fixed the amount which he would have awarded if he had had jurisdiction at 203*l.* 19*s.* 8*d.*; but he dismissed the suit upon the ground that he had no jurisdiction, inasmuch as the suit was for wages under the amount of 50*l.* Their Lordships ought to give the same judgment as the Judge would have given if he had considered that he had jurisdiction, and had referred it to the Registrar to assess the amount, and the Registrar had fixed it at 203*l.* 19*s.* 8*d.*, and the Judge had confirmed the report of the Registrar.

Several other points were made, and amongst others that Wright was the substituted master, notwithstanding he took the command after Watkins left for the purpose of stealing the ship; and that although in gaol for stealing the ship, he was residing within twenty miles of the place where the seamen were discharged within the meaning of the 189th section. Their Lordships consider that the point on which the judgment has already been pronounced is sufficient to decide the case, and that it is not necessary to express an opinion upon the other points.

Under these circumstances their Lordships will humbly advise her Majesty that the judgment of the Judge be reversed, and that instead thereof a decree be given in the suit for the plaintiffs for the sum of 203*l.* 19*s.* 8*d.*, to be distributed amongst the several plaintiffs in the manner in which the learned Judge has divided the total amount amongst them, with costs, in the Lower Court. The respondents must pay the costs of this appeal.

Solicitors—J. S. Hepworth, for appellants; Hollams, Son & Coward, for respondents.

1883. March 14.

CHARLES WILLIAM HUTTON (*appellant*) *v.* WILHELM AUGUST LIPPERT (*respondent*).

Cape of Good Hope—Act 11 *of* 1863—*Sale of Realty—Duties.*

An agreement "guaranteed" real estate for a fixed price, and gave all the rights of a vendor to one party, and all those of a purchaser to the other party:—Held, *that this agreement constituted a sale, and was liable to the duties payable on a sale of realty.*

This was an appeal from a judgment of the Supreme Court of the Cape of Good Hope. The action was brought by the appellant, in his capacity as treasurer-general, to recover from the respondent the sum of 360*l.*, for duty payable to the Government upon a sale to the respondent of certain freehold property in the colony.

The respondent, by his plea, denied that he was liable to pay such duty.

The duty was claimed by the appellant under the Colonial Act No. 11 of 1863.

The facts and the material sections of the Act are fully set out in the judgment of their Lordships.

The Supreme Court gave judgment for the respondent.

The appellant obtained special leave to appeal.

The Attorney-General (*Sir H. James*) and *R. S. Wright*, for the appellant.—The transaction was in effect a sale of the estate to the respondent, within the meaning of the Act No. 11 of 1863, section 2.

Davey, Q.C., and *Aspland*, for the re-

spondent.—The agreement was not a sale to the respondent. It was merely an authority to sell the estate. There was no transfer of the property.

They referred to *The Yorkshire Waggon Company* v. *Maclure* (1) and to *Rein* v. *Lane* (2).

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (3):—

This is a suit brought by Mr. Hutton, in his capacity as treasurer-general of the colony of the Cape of Good Hope, to recover from the defendant a sum of 360*l.*, together with interest, which he declares to be due from the defendant under the provisions of Act 11 of 1863, of which provisions the following only are material:—Section 2. "For and in respect of every sale, whether private or public, made after this Act shall come into effect, of any freehold property or property held of Government upon quit-rent or other leasehold tenure, or of any opstal of a loan place, there shall be chargeable upon and payable by the purchaser a duty of four per cent. upon the price or purchase-money paid or to be paid for the said property." Section 3. "A duty as aforesaid shall be payable upon the value of any such property as aforesaid by every person becoming entitled to the same by way of exchange, donation, legacy, testamentary or other inheritance, or generally in any manner otherwise than through the medium or by the means of purchase and sale."

The declaration in the action contained two counts, respectively relying upon these two clauses of the Act; but with respect to the second count no question now arises. The question arises solely upon the first count, which relies upon the second section of the Act; and the question is whether there was or was not a sale of a certain property from Ekstein to Lippert. The law of the Cape with respect to the contract of sale is thus stated by the Chief Justice: "Under our law, as under the Roman law, a sale may be defined as a contract in which one person promises to deliver a thing to another, who on his part promises to pay a certain price." In *Van Leeuwen*, cap. 17, section 1, is this passage:—"The purchase is understood to be accomplished as soon as the price and the mutual condition has been fixed, although the money had not been paid, nor the delivery of the article made, unless a real misunderstanding had taken place in the articles sold." Mr. Justice Blackburn, in his treatise on the Contract of Sale, at page 177, quotes *Pothier* thus:—"In general a contract of sale is considered to have become perfect so soon as the parties are agreed upon the price for which the thing is to be sold. This rule has its operation when the sale is of an ascertained thing, and is pure and simple: *Si id quod venierit appareat quid quale quantum sit et pretium et pure venit perfecta est emptio.*" It may be observed that, even if our law governed the case, which it does not, the definition given by Mr. Justice Blackburn in his treatise on the Contract of Sale, which is quoted by the Chief Justice, would apply.

Such being the law applicable, it remains to be seen what the real transaction between Ekstein and Lippert was. The Chief Justice quotes a passage from the *Digest*,—"*In emptis et venditis potius id quod actum quam id quod dictum sequendum est*," a passage enunciating a principle which is probably common to the laws of all civilised countries.

We have, therefore, to look to what was the real transaction between the parties, and not to what they have called it. That transaction is contained in three documents, and it appears to their Lordships enough for the determination of this case to deal with those documents apart from any oral evidence which has been given. The first is an agreement of the 21st of September, 1880, which runs thus:—"For the consideration after mentioned, Wilhelm August Lippert hereby guarantees to the said Dirk Gysbert Ekstein the sale, in whole or by lots," of an estate, describing it "for the sum of 9,000*l.*, by or before the 31st day of December, 1881, Wilhelm August Lippert to have the sole control and management of the aforesaid

(1) 51 Law J. Rep. Chanc. 857; Law Rep. 21 Ch. D. 309.

(2) 35 Law J. Rep. Q.B. 81; Law Rep. 2 Q.B. 144.

(3) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

property and of the said sale or sales; and for that purpose the said Dirk Gysbert Ekstein shall grant unto him an irrevocable power of attorney, granting him the fullest power over the said property, so as to enable him to deal with it as he thinks fit; and Dirk Gysbert Ekstein shall be bound and obliged to pass the necessary transfer or transfers at the expense of the purchaser or purchasers. Wilhelm August Lippert also guarantees the payment of the interest at the rate of six per centum per annum, to commence from the 1st of January, 1881, on the said sum of 9,000*l.*, or so much thereof as shall remain from time to time due and owing; and he further guarantees, agrees and undertakes that, if the said ground is not sold in lots entirely or by lots, or if any part thereof shall remain unsold by the said 31st day of December, 1881, that he shall be bound himself to take over the said ground for the said sum of 9,000*l.*, or any portion thereof remaining unsold at a proportionate value, so that the said Dirk Gysbert Ekstein shall receive the said sum of 9,000*l.* in full, with interest due. In consideration whereof it is hereby agreed that the said Dirk Gysbert Ekstein shall pay, and the said Wilhelm August Lippert shall receive or be entitled to account for the moneys coming into his hands, whatever surplus and balance shall remain after payment to the said Dirk Gysbert Ekstein of the said sum of 9,000*l.* and interest, as his commission on and recompense for said guarantee." On the 28th of the same month "it was further agreed that the proceeds of the sale shall be handed over to Ekstein on passing transfer until the whole amount of 9,000*l.* shall be paid." Then comes a power of attorney, by which Ekstein nominates and appoints Lippert his lawful attorney to transfer all and singular the aforesaid estate, and so on, unto the various purchasers from time to time, and to give good and valid and effectual receipts, &c.

It thus appears that the price which Ekstein was to receive was ascertained, namely, 9,000*l.*, and it was to be paid on the 31st of December, 1881, unless (and this appears to their Lordships to make no real difference in the transaction) some portions of it had been paid before, which portions were, if Lippert sold, as he might have done, but was not bound to do, to be paid over to Ekstein. As far as Ekstein was concerned, it appears to their Lordships that he sold the property. Now, did Lippert buy it? Lippert obtained the complete control of it, not only such control as would have been necessary for him if he acted as agent, or guarantor (as it is here called) to sell portions of the property to other people, but the full possession and control of it. There could not be wider words than these—"deal with it as he thinks fit." Lippert might sell or let any portion of it, or he might retain the whole in his own hands; he might cultivate it or let it run to waste; he might sell any portions of the woods and copse; in fact, he was, to all intents and purposes, the owner of it, and this in consideration of a fixed price to be paid on or before a fixed day.

Under these circumstances it appears to their Lordships that the Chief Justice was justified in saying that the effect of the transaction was to give Ekstein every right which a vendor could legally claim, and to confer upon the defendant every right which a purchaser could legally demand. Does it make any difference that the parties have called this transaction by the name of a guarantee? It appears to their Lordships that, because the parties have used this term "guarantee" in a sense which is unusual, and not applicable to this case—for Lippert really guaranteed nothing—the nature of the transaction is not thereby changed; and because they have said that Lippert was to be entitled to whatever surplus or balance shall remain on the re-sale of portions of the property, if any were re-sold, "as commission and recompense for the said guarantee," this expression does not convert him from a purchaser into an agent. The object of the parties seems to have been to obtain all the benefits of a sale without subjecting themselves to the duty on it, by giving a contract of sale the colour of a contract of guaranty or agency. Their Lordships agree with the Chief Justice that, notwithstanding these devices, the true character of the transaction sufficiently appears. They will humbly advise Her Majesty that the judgment of the Supreme Court of the colony

be reversed, and that the plaintiff do receive judgment for the amount which he claims. The plaintiff will have the costs in the Court below and the costs of this appeal.

Solicitors—Watney, Tilleard & Freeman, for appellant; Venning, Sons & Mannings, for respondent.

1883. June 30.

WILLIAM BIRD AND OTHERS (*appellants*) *v.* THOMAS GIBB AND OTHERS (*respondents*).

THE DE BAY.

Salvage — Assessment — Rules of Admiralty.

In the assessment of salvage regard must be had to the value of the property saved. If the value is ample, losses voluntarily incurred by the salvor should be transferred to the owner of the property saved; and, in addition to this, the salvor should receive compensation for his exertion and for the risk of not receiving any compensation in the event of the service proving ineffectual.

This was an appeal from a judgment of the Judge of the Vice-Admiralty Court of the island of Malta, delivered in an action in which the present respondents were the plaintiffs, and the present appellants were the defendants.

The action was for salvage services rendered to the steamship *De Bay* and her cargo by the steamship *Mary Louisa*, her master and crew, in December, 1881, in the Mediterranean.

The facts of the case and the nature of the services are set out in the judgment of their Lordships.

On the 30th of June, 1882, the learned Judge delivered judgment, and awarded the *Mary Louisa* for demurrage, cancellation of charter-party, destruction of stores and provisions, and for costs of repairs, with other incidental expenses, 2,035*l.* 1*s.* 6*d.*, and for depreciation of the *Mary Louisa*, taken at five per cent. on 30,000*l.*, being her estimated value, 1,500*l.* And he further awarded the sum of 5,000*l.* for salvage services.

From this judgment the present appeal was brought.

Webster, Q.C., *Phillimore*, and *J. G. Alexander*, for the appellants.—The amount awarded is excessive and unreasonable. The learned Judge in making up the amount has included items which ought not to be included, and has allowed too large a sum. Many of the items are not proper to be allowed as substantive claims in actions for salvage. They referred to *The Martha* (1), *The Cybele* (2), *The Enchantress* (3), *The Star of India* (4) and *The Ellora* (5).

Cohen, Q.C., and *Aspinall*, for the respondents.—The respondents rescued the *De Bay*, her cargo, freight and passengers from total loss. The services of the *Mary Louisa* were well and efficiently performed. They were attended with much labour to her master and crew. The sum awarded was arrived at by the learned Judge after careful consideration of all the facts of the case. They referred to *The Lancaster* (6), *The Kenmure Castle* (7), *The Amerique* (8), *The Cuba* (9), *The Chetah* (10) and *The Saratoga* (11).

SIR JAMES HANNEN delivered the judgment of their Lordships (12):—

The *Mary Louisa*, a new steamer of 1,287 registered tonnage, with engines of 200-horse power, and a crew of twenty-six hands, left Marseilles on the 11th of December, 1881, in ballast, bound for Girgenti, in Sicily, under charter-party, to

(1) 3 Hag. Adm. 434.
(2) 47 Law J. Rep. P., D. & A. 13; Law Rep. 2 P. D. 224.
(3) Lush. 93; 30 Law J. Rep. P., D. & A. 15.
(4) 45 Law J. Rep. P., D. & A. 102; Law Rep. 1 P.D. 466.
(5) Lush. 550.
(6) Law Rep. 8 P.D. 65.
(7) Law Rep. 7 P.D. 47.
(8) Law Rep. 6 P.C. 468.
(9) Lush. 14.
(10) 38 Law J. Rep. Adm. & Eccles. 1; Law Rep. 2 P.C. 203.
(11) Lush. 318.
(12) Sir Barnes Peacock, Sir Robert P. Collier, Sir James Hannen, Sir Richard Couch and Sir Arthur Hobhouse.

load from that and other ports a cargo of fruit for New York or Baltimore. At 8 p.m. of the 13th, Cape Granitola, in Sicily, was sighted, and at 10 p.m. three vertical red mast-head lights of a steamer were seen on the starboard bow, the signals indicating that she had broken down, and rockets were also being fired from her. This steamer proved to be the *De Bay*, which had lost her propeller, and was heading towards the coast of Sicily, at a distance of about ten miles.

The *De Bay* was a screw-steamer of 1,085 tons register, of 160-horse power, and a crew of thirty-seven hands, with a general cargo, and five adult passengers and three children, bound for Rangoon. The master of the *De Bay* requested to be towed to Malta. The master of the *Mary Louisa* hesitated, as he would thereby be deviating from his voyage to Girgenti, then nearly accomplished, and might forfeit his charter-party; but in consideration of the risk to the *De Bay*, and the lives of those on board of her, if assistance were not given, he ultimately consented to take the *De Bay* in tow to Malta.

At 2.30 a.m. of the 14th the towage commenced, a steel hawser from the *De Bay*, and a new thirteen-inch Manilla rope of the *Mary Louisa*, being used. The wind gradually increased to a gale, causing great difficulty in the towing; and, ultimately, at 3.20 p.m. of the 14th, the steel hawser parted, and soon after the Manilla tow-rope also gave way, and great danger arose of the propeller of the *Mary Louisa* becoming fouled in the hawsers. It was impossible to renew the towage that afternoon, and the *Mary Louisa*, at the request of the *De Bay*, endeavoured to remain by her during the night; but, in consequence of the violence of the storm, the vessels lost sight of one another. At 9 a.m. on the 15th the *Mary Louisa*, which had been in search of the *De Bay*, again sighted her, and at 10.45 came up with her. The steel hawser and Manilla rope were again made fast, and the towage was resumed; the steel hawser, however, parted, and the towage was continued with the Manilla hawser throughout the rest of that day and the following night; and on the 16th, at 5 p.m., the two vessels arrived at Valetta.

The services thus rendered to the *De Bay* lasted altogether during a period of sixty-two hours. In the earlier part of this time these services were rendered in circumstances of great difficulty and some danger, and during the twenty hours in which they were interrupted the *Mary Louisa* shewed great perseverance in standing by the *De Bay*, and seeking her in order to renew the efforts for her assistance.

The agreed value of the *De Bay*, her cargo and freight, is 67,000*l.*

A suit for salvage was instituted by the *Mary Louisa* in the Admiralty Court at Malta against the *De Bay*. The Court was assisted by two experts, Captain Keston, chosen by the plaintiffs, and Captain Dyer, by the defendants.

Captain Keston places a much higher estimate than Captain Dyer does on the value of the services rendered by the *Mary Louisa* to the *De Bay*, but Captain Dyer stated that in his opinion "the service rendered by the *Mary Louisa* to the *De Bay* was most important and valuable, being conducted with much perseverance." He further says, "The captain and crew of the *Mary Louisa* should be well considered, for they shewed much perseverance in sticking by the *De Bay*, and they had a most trying and anxious time throughout." Captain Bird, in a declaration made before a notary on the 21st of December, stated that the "*Mary Louisa* prolonged her voyage and suffered considerable damages consequent on the services rendered," and that his own vessel was in a perilous condition, being unmanageable and near the land and reefs." Upon this and other evidence in the cause their Lordships think that the Judge was well warranted in finding that the *De Bay* and her cargo, crew and passengers were "rescued from a serious danger of total loss, though without any serious danger incurred by the *Mary Louisa*." For these services the learned Judge awarded the sum of 8,535*l.* 1*s.* 6*d.*

It was objected on behalf of the defendants that this sum is excessive, and the decision of the learned Judge was specially impugned, on the ground that he has allowed the specific amount of 3,535*l.* 1*s.* 6*d.* for the damage, losses and expenses

alleged to have been incurred by the *Mary Louisa*, to which he has added 5,000*l.* for salvage services.

It was contended that some of these items ought not to be taken into consideration at all, as, for instance, the loss on charter; and it was further contended that in no case ought the items of loss or damage to the salving vessel to be allowed, as "moneys numbered," but that they should only be generally taken into account when estimating the amount to be awarded for salvage remuneration.

Their Lordships are of opinion that this objection is not well founded. It was argued that, by allowing the several items of the account, and then a further sum for salvage, the salvors would receive payment for their losses twice over; but this is only on the supposition that the Court below, after giving the amount of the alleged losses specifically, has considered them again generally in awarding 5,000*l.* for simple salvage services. It is not to be presumed that the learned Judge has fallen into such an error, and, indeed, it appears that he has not done so, but that he considered the 5,000*l.* a reasonable amount for salvage reward, wholly irrespective of damage and expenses.

Their Lordships are of opinion that it is always justifiable and sometimes important, when it can be done, to ascertain what damages and losses the salving vessel has sustained in rendering the salvage services. It is frequently difficult and expensive, and sometimes impossible, to ascertain with exactness the amount of such loss, and in such cases the amount of salvage must be assessed in a general manner upon so liberal a scale as to cover the losses, and to afford also an adequate reward for the services rendered. In the assessment of salvage, regard must always be had to the question whether the property saved is of sufficient value to supply a fund for the due reward of the salvors, without depriving the owner of that benefit which it is the object of the salvage service to secure to him. If, as in the present case, the fund is ample, it is but just that the losses voluntarily incurred by the salvor should be transferred to the owner of the property saved, for whose advantage the sacrifice has been made, and, in addition to this, the salvor should receive a compensation for his exertion, and for the risk he runs of not receiving any compensation in the event of his services proving ineffectual; for, if no more than a *restitutio in integrum* were awarded, there would be no inducement to shipowners to allow their vessels to engage in salvage services. If there be a sufficient fund, and the losses sustained by the salvor are ascertained, it would be unreasonable to reject the assistance to be derived from that knowledge when fixing the amount of salvage reward, and their Lordships are unable to appreciate the argument that that which is known may be taken into account generally, but not specifically.

There are several reported cases in which the Court of Admiralty has, besides awarding salvage services, decreed payment of damage and losses sustained by the salvor, and has directed them to be ascertained and reported on by the registrar and merchants—*The Salacia* (13), *The Oscar* (14), *The Watt* (15) and *The Saratoga* (11).

Their Lordships are therefore of opinion that the learned Judge below has not adopted an erroneous principle in first estimating the amount of loss sustained by the *Mary Louisa*, and then adding to it an amount for salvage services; but their Lordships are not prepared to accept all the items of loss which have been allowed in the Court below.

For example, their Lordships do not consider that the loss on charter-party was established by the evidence. This item as to 200*l.* appears to have been arrived at by simply deducting the difference of freight payable under the substituted charter-party which the *Mary Louisa* obtained, from that which she would have received under the one which she lost. But these charter-parties were for different voyages and under different conditions. The sum to be paid under the original charter-party included remuneration for proceeding from Marseilles to Girgenti in ballast, which the *Mary Louisa* had not to do under the second charter-party. With the exception

(13) 2 Hag. Adm. 270.
(14) Ibid. 201.
(15) 2 W. Rob. 72.

of the loss of commission on the freight under the first charter-party, which is alleged to have been paid, though the proof of this loss is not very satisfactorily established, there is nothing to shew that the second charter-party was not as profitable as the first.

Their Lordships think that the item of interest ought not to have been admitted, and there are other items in the account which their Lordships would feel disposed to disallow if the matter were now being investigated for the first time before them; but no objection appears to have been taken to these in the Court below, and they do not in their aggregate amount to a sufficient sum to warrant the variation of the judgment appealed from. It is only where the amount awarded is grossly in excess of what appears to be right that their Lordships would feel justified in overruling the decision of a Court below on a question of salvage.

There is one item, however, of the claim for losses which calls for special notice; it is the sum of 1,500*l.* for general depreciation of the *Mary Louisa*. Their Lordships consider this a very large amount to allow for the depreciation of the vessel beyond the damage actually ascertained and repaired at Malta. This sum was arrived at on the assumption that the overstraining of the vessel and racing of the engines during the towage would be equivalent to six months' ordinary wear and tear of the vessel.

Captain Keston was disposed to fix it at a higher amount. Mr. Hinchcliffe, a surveyor, called for the plaintiff, fixed the amount of general depreciation at five per cent. Captain Baines, another surveyor, stated that the general depreciation would amount to four or five months' wear and tear, or, at the utmost, six months. Captain Dyer ultimately joined with Captain Keston in reporting that the explanation given at a conference they had with the surveyors allowed them to come to the conclusion that the wear and tear might amount to five per cent., which, upon the estimated value of 30,000*l.*, would give 1,500*l.*

It appears, therefore, that it was not disputed by the defendants, and it seems probable, that some depreciation of the ship beyond the damage which could be actually seen would arise from straining; and, upon the evidence before the Court at Malta, their Lordships are not in a position to hold that the sum of 1,500*l.* awarded was grossly excessive, still less to hold that the claim for general depreciation should be altogether disallowed.

But, while their Lordships are of opinion that the learned Judge has not erred in the principle upon which he has based his judgment, and that the amount which he has allowed for loss and damage is not so excessive as in itself to call for an alteration of the judgment, it is obvious that when the claims of loss, damage and expenses have been ascertained and allowed, as in this case, with assumed exactness, the rate of salvage remuneration pure and simple to be allotted in addition must be estimated on a more moderate scale than where the amount of losses, &c., cannot be fixed with precision; and their Lordships are of opinion that, in awarding the sum of 5,000*l.* in addition to the estimated losses, the learned Judge has adopted too high a standard of remuneration, and that the amount ought to be reduced. Their Lordships have the less hesitation in diminishing the amount awarded as they are able to see that the learned Judge has proceeded upon what their Lordships consider an erroneous view of the evidence with regard to this sum of 5,000*l.*

The *Mary Louisa* arrived in Valetta on the 14th of December. On the 17th she was surveyed by Messrs. Hinchcliffe & Stacey for the plaintiffs, and they gave a written report, in which, in addition to the specific damages they pointed out, they state that the vessel was much strained and damaged in decks and upper works by the heavy work she had done. After this survey the two captains had a conversation, in which Captain Bird, the captain of the *De Bay*, asked Captain Gibb, the master of the *Mary Louisa*, "what he thought would be a reasonable compensation for what he had done." Captain Gibb replied, "Do you think 5,000*l.* remuneration would be unreasonable?" Captain Bird said, "Not at all, I think it very fair indeed"; and on the 20th of December he telegraphed to his owners:—"*Mary*

Louisa amicably demands 5,000*l.*; considering important salvage rendered, amount reasonable. Wire instructions."

The learned Judge observes upon this evidence that he thinks that this must have been meant to be only for the reward and not including the expenses, because it does not appear that on the 21st, when the conversation took place and the telegram was forwarded, they had any knowledge of what the expenses would come to, and that he cannot believe they would have seriously made to their respective owners a proposal of 5,000*l.* intended to cover a loss exceeding 3,500*l.*, leaving for apportionment a sum less than 1,500*l.* Their Lordships are of opinion that although the captains did not know the exact amount of the damages, they knew their general nature, and that they did intend the 5,000*l.* to include the whole claim. As this was never agreed to, it was not binding either on the parties or on the Court; but the learned Judge appears to have taken it as a fair amount to be awarded for salvage in addition to expenses, because, he says, he "did not think that there was reason for reducing the sum which Captain Bird declared in his opinion was a fair and reasonable proposal."

Their Lordships think that this is not the true construction of Captain Bird's language and telegram, and therefore that undue weight has been given to the supposed agreement of the captains.

Taking all the circumstances into consideration, their Lordships are of opinion that 6,000*l.* is a sufficient amount to award, and they will humbly advise Her Majesty that the judgment should be varied by reducing it to that amount.

Each party will bear his own costs of the appeal.

Solicitors—Thos. Cooper & Co., for appellants; Pritchard & Sons, for respondents.

1883. June 30. } MOTT AND OTHERS *v.* LOCKHART AND OTHERS.

Nova Scotia—Land Act, ss. 33, 35 *and* 42*—Construction—Priority of Application.*

The appellants applied for a licence over land in an unproclaimed district, under section 35 *of the Land Act,* 1879, *and made the statutory payments, and began to work the land. A few days afterwards, the respondents made application for a lease of the same land, under section* 33 *of that Act, and they staked it out:*—Held, *that occupation and staking do not constitute a condition precedent to the granting a lease, and that the appellants, being the first applicants, were entitled to a lease of the land.*

This was an appeal from a judgment of the Supreme Court of Nova Scotia. On the 2nd of September, 1880, the appellants applied to the Commissioner of Mines for prospecting licences over certain blocks of land in an unproclaimed district. The application was recorded, and the statutory payments made. No licences were issued, but the appellants worked the land. On the 9th of September the respondents applied for a lease of part of the same block.

By the Revised Statutes, c. 9, 4th series, it is provided by section 14 that "all applications for areas shall be made to the Deputy Commissioners for the districts in which the areas are situated, if there be deputies for such districts; and where there are no deputies for such districts, or where the areas applied for are not within any proclaimed district, the applications shall be made to the Commissioner; and no such applications shall be received for areas already applied for, or under licence or lease."

Section 15 provides that "every application shall be in writing, defining the area or areas applied for, and shall be accompanied by a payment of two dollars for each and every of such areas; and the Commissioner of Mines or Deputy Commissioner, as the case may be, receiving such application, shall indorse thereon the precise time of such receipt."

Section 33 provides that "applications

may be made for a lease of a mine upon lands not lying within any proclaimed gold district, and in such case the rights of parties and the proceedings to be taken with reference thereto shall be governed, as far as possible, by the spirit and provisions of this chapter. Parties occupying and staking off areas corresponding in size with those prescribed hereby, shall be entitled to priority in the order of their making application. Every such applicant shall be entitled to one week, and thereafter to twenty-four hours' time for making his application, for every fifteen miles' distance of the mine applied for from the office of the Commissioner at Halifax. In case the lands so applied for shall afterwards be included within any gold district, and laid off as hereinbefore prescribed, the rights of the occupants shall be respected so far as is consistent with the terms of this chapter, on adjusting the boundary lines between the parties in occupation."

Section 35 provides that "the Commissioner of Public Works and Mines may issue licences to search for gold, to be called 'Prospecting Licences,' which shall be subject to the rules prescribed by this chapter."

Section 42 provides that "within the period for which the licence, or renewed licence, is granted, the party holding the same shall be entitled to select any area or areas, comprised therein, of the size and form described in this chapter; and shall be entitled to a lease of the areas selected upon the terms imposed herein."

The Commissioners of Public Mines decided that the appellants were entitled to the leases. On appeal the Supreme Court reversed this decision, on the ground that the appellants had not occupied under section 33, and, not having occupied, had shewn no rights under which a lease could have been granted.

From this judgment the present appeal was brought.

The Solicitor-General (*Sir F. Herschell, Q.C.*) and *Bray*, for the appellants.—The applications of the appellants for licences were regular, and were accepted at the Mines Office, and the statutory payments were made by them. They were followed by applications for leases, which the appellants were entitled to have granted to them. They were therefore entitled to leases.

Cohen, Q.C., and *G. Wood Hill*, for the respondents.—The respondents first applied for leases of the mining areas within the meaning of section 33 of the Revised Statutes. The respondents are therefore entitled to a lease of the land, under the provisions of section 33, both by the spirit and letter of the statute. The appellants had not, before applying for a lease, occupied and staked out the areas, whereas the respondents had done so.

Sir Arthur Hobhouse delivered the judgment of their Lordships (1):—

The proceedings which gave rise to this appeal were commenced in the Court of the Commissioner of Public Works and Mines, who gave judgment, on the 19th of May, 1881, in favour of the appellants. On the 1st of May, 1882, the Supreme Court of Nova Scotia reversed that judgment, and their decision is now under appeal.

The appellants and respondents are rival applicants for leases of blocks of land which to a certain extent overlap one another, and the point to be decided is, which of the claims has priority over the other. There have been some changes of interest since the dispute began; but they are not material to the present question, and in stating the facts it will suffice to speak of the appellants and respondents as though there had been no change of interest or person.

On the 2nd of September, 1880, the appellants applied to the Commissioner for prospecting licences over six blocks of land in a district not proclaimed as a gold district. No prior application had been recorded for any part of these blocks. The applications of the appellants were received and recorded, and the statutory payments were made by them. No licences were issued, but on the 6th of September the appellants, acting as though they were licensed, began to work the ground. On the 18th or 19th of October they discovered the lead or lode of gold. In the month of November they

(1) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier and Sir Arthur Hobhouse.

applied to the Commissioner for leases of three of the blocks. Again their applications were received and recorded, and their money taken, but no lease was actually issued. In the same month they applied for a renewal of licence over another of the blocks, and on the 1st of March, 1881, for a lease of the same block; and the proceedings on these applications were the same as the proceedings on the former applications. Two of the six selected blocks have been abandoned. But as regards the other four, the appellants worked them without interruption or question until about the end of March, 1881, and got a substantial quantity of gold from them.

It appears from the evidence of Mr. Carman, chief clerk in the Mines Office, that the non-issue of licences was a common thing. As to the non-issue of leases, that, Mr. Carman says, was due to the pressure of business in the office.

On the 9th of September, 1880, the respondents went to make application for a lease of a block of land covering portions of the appellants' block. What passed on that occasion may be stated from the cross-examination of Mr. Lockhart:—

"Next morning I appeared at the Mines Office. Watson Eaton and his son William went with me. I went to put in an application for the ground I had staked. If the ground we had staked was not taken, we were going to apply for a prospecting licence. If it was taken, we were going to put in our application under the 33rd section. I did not then have a copy of the Mines Act with me, but for some years back have known of the 33rd section. We were going to apply for a lease under the 33rd section. Mr. Eaton was writing out the application. No application was at that time written fully out. I asked Carman, when I went in office, if any claims were taken at Salmon River. He said there was. I asked if Archibald had taken them. He said, 'No.' His name was not in the office in connection with them. I asked who had taken claims there. He said Mr. Mott had taken 600 acres. He shewed us the application, and told us where it was described. I told him we were going to put in application for part of that ground we had staked, under section 33, and I told him the reason why. He said he would not be justified in taking the application for that ground under that section, and would not do it. He did not understand that section himself, and did not think anybody else did. He was decided not to take our application unless we would guarantee that it would not go on that ground of Mr. Mott's. I judged from the quantity of ground he had taken and the locality that Mott's application covered my ground, and I would not guarantee that mine would not cover it. The paper was not written out and completed, because Carman would not take it. That was the only reason."

The respondents did nothing further until the 31st of March, 1881, when their solicitor Mr. Eaton wrote to the Commissioner as follows:—

"Hon. Samuel Creelman, Commissioner of Public Works and Mines.

"Halifax, March 31, 1881.

"Sir,—The applications hereto annexed are made under section 33 of the Mines Act, and are a repetition of applications made by the same applicants on the 9th day of September last and then rejected. I am instructed that they then distinctly claimed the benefit of the provisions of section 33, and that they were the original discoverers of gold-bearing quartz on the areas embraced in the annexed applications; that they were the first occupants thereof, and that their applications were made within the time allowed by said section. Their applications were rejected, as they instruct me, on the ground that said areas had already been applied for; and so positive was the refusal of their applications, and so confident and emphatic was the assurance of the chief clerk, to whom said applications were handed, that they had no claim or right to apply for the ground in question under the Mining Act, that the said applicants, until quite recently, were led to believe that they had lost all claim to said areas. Hence their delay in repeating the applications. Under the facts, however, which they have given me, and which they are prepared to substantiate, shewing, besides those already mentioned, that they had been fraudu-

lently overreached by the applicant whose applications were received, I have advised them that their applications, in my opinion, ought to supersede those of all others in respect of said areas.

"Without further statement of facts at this time, I beg, on behalf of these applicants, that you will grant them an opportunity to testify and be heard in support of their claims, and that in the mean time you will withhold any lease or licence of said areas from other parties now claiming.

"I have the honour to be, Sir,
"Your obedient servant,
"(Signed) B. H. EATON,
"Solicitor of Applicants."

The applications sent with this letter were two in number, each dated the 28th of March. Mr. Carman refused to receive them, writing on each that it was "refused, as it was stated by Mr. Eaton that it covered ground under application by Charles F. Mott." The Commissioner then tried the case, and decided that the lease of the areas in dispute should issue to the appellants.

The respondents have urged at their Lordships' bar many grounds why the Commissioner should issue the lease to them. They say they were the earlier discoverers; but, if they were, the statute does not annex any right to earlier discovery. They say that the appellants stole a march upon them, and violated some understanding with them; but if the fact were so, the Commissioner could pay no attention to it. He is the creature of the statute, and has no jurisdiction given him to enforce equities entirely outside of the statutory proceedings. They say that the appellants could not receive a licence, because they never gave a bond as required by the 39th section. But though it may be a breach of duty on the Commissioner's part to grant a licence without the bond, it does not follow that such a licence is void. And the appellants are not bound to shew that they were licensees. If they were applicants, that is sufficient to defeat a subsequent application by the respondents.

The Supreme Court decided in favour of the respondents on two main grounds: First, they held that the appellants obtained no title because the district was unproclaimed, and the appellants were not explorers for minerals, and did not occupy under section 33, or acquire under the clauses relating to unproclaimed districts. Secondly, they held that the respondents did acquire title because they occupied and staked off areas, and applied on the 9th of September in good time under section 33.

Their Lordships cannot quite follow the reasoning on which it is held that the appellants obtained no title. As they read the statute, it contemplates the grant of both licences and leases in all districts, whether proclaimed or unproclaimed. The appellants were not tied down to apply for a lease under section 33. They might apply, and did apply, for licences under section 35 and the subsequent sections. Nor is occupation and staking off a condition precedent to all leases in an unproclaimed district. Section 42 clearly confers upon licensees the right to have leases. The provision in section 33 as to parties occupying and staking off is evidently intended to lay down a rule of priority between persons resting their rival claims on the ground that they had occupied and staked off.

As regards the title of the respondents, there are fatal objections. The Supreme Court have decided that they ought to succeed on their application of the 9th of September, 1880. But in the first place no application at all was made on that day. Application must be in writing, and must be made to the Commissioner or Deputy Commissioner (sections 14 and 15); whereas all that the respondents did was to mention their wishes to the clerk in the office, and to take his assurance that they were too late. If, however, there was an application, there was also a rejection of it, and then the respondents should have appealed. An appeal must, by section 84, be presented within twenty days. In effect the Supreme Court have entertained an appeal six months or more after the decision complained of.

The only effective application by the respondents was that of March, 1881. At that time the appellants were occupants of the disputed ground. Either they were

lessees in substance and right, though not in form, which their Lordships think to be the sounder view; or their applications for leases were still pending. In either case the applications of the appellants could not, by the terms of section 14, be received.

The result is that their Lordships will humbly advise Her Majesty to reverse the decision of the Supreme Court, and to dismiss with costs the appeal from the Commissioner. The respondents must pay the costs of this appeal.

Solicitors—Hill, Son & Rickards, for appellants; Dawes & Son, for respondents.

1883. July 11. CHARLES DUDLEY ROBERT WARD (*appellant*) *v.* THE NATIONAL BANK OF NEW ZEALAND (*respondent*).

New Zealand—Principal and Surety—Several Surety—Release—Contribution.

Where it is no part of the contract of suretyship that another person shall join in it, the creditor does not break the contract by releasing another several surety.

The appellant became surety for advances made by a bank to K. Such advances had been already partly secured to the bank by another surety. The bank released the latter:—

Held, *that the appellant was not thereby released from liability.*

This was an appeal from a judgment of the Court of Appeal in New Zealand. The action was brought by the respondent against the appellant to recover a sum of money due on the guarantee of the appellant. The appellant pleaded to the respondent's declaration that the plaintiff had released one Macintosh, who was also a surety for the debt. The action was tried, and a verdict was entered for the appellant. A rule was afterwards obtained to enter the verdict for the respondent. The Supreme Court made this rule absolute. From this judgment the present appeal was brought. The facts are stated in the judgment of their Lordships.

Davey, Q.C., and *B. B. Rogers*, for the appellant.—By releasing the other surety the liability of the appellant on his guarantee was discharged. The whole current of authority is to this effect. The surety is discharged by the creditor making any change in the contract with the principal. This is so even if the change is for the benefit of the surety, as when time is given to the principal, or when an unfavourable agreement with the principal is substituted for a less onerous one. The law will not tolerate any variance in the contract between the debtor and the principal to which the surety is not a party. So when a creditor releases one of several sureties, all are discharged.

They referred to *Samuel* v. *Howarth* (1), *Holme* v. *Brunskill* (2), *Polak* v. *Everett* (3), *Bonser* v. *Cox* (4), *Whitcher* v. *Hall* (5), *Pledge* v. *Buss* (6), *Duncan* v. *The North and South Wales Bank* (7), *Mayhew* v. *Crickett* (8), *Rees* v. *Berrington* (9) and *The Croydon Gas Company* v. *Dickinson* (10).

Cohen, Q.C., and *Pollard*, for the respondent.—The guarantee was a continuing guarantee for any ultimate amount or balance that might be owing. The appellant at the time of giving the guarantee was not aware of any other guarantee. The guarantee expressly provided for what happened. It contained a clause enabling the respondent to take any additional security. This was intended to enable the bank to substitute one guarantee for another. No doubt

(1) 3 Mer. 272.
(2) 47 Law J. Rep. Q.B. 610; Law Rep. 3 Q.B. D. 495.
(3) 45 Law J. Rep. Q.B. 369; Law Rep. 1 Q.B. D. 669.
(4) 4 Beav. 379.
(5) 5 B. & C. 269.
(6) Johnson, 663.
(7) 50 Law J. Rep. Chanc. 355; Law Rep. 6 App. Cas. 1.
(8) 2 Swanst. 185.
(9) 2 Ves. 540.
(10) 46 Law J. Rep. C.P. 157; Law Rep. 2 C.P. D. 46.

the surety is entitled to contribution from an unknown co-surety, but the contract is not vacated.

They referred to *Deering* v. *Winchelsea* (11), *Craythorn* v. *Swinburne* (12), *Polak* v. *Everett* (3), *Rainbow* v. *Juggins* (13), *Strong* v. *Foster* (14), *Capel* v. *Butler* (15), *Petty* v. *Cooke* (16) and *Farebrother* v. *Woodhouse* (17).

Sir Robert P. Collier delivered the judgment of their Lordships (18).

This is an appeal from a judgment of the Supreme Court of New Zealand in an action brought by the National Bank of New Zealand against Charles Dudley Robert Ward. The declaration set out the following agreement, in writing, between the plaintiff and defendant:—

"To the National Bank of New Zealand, Limited, incorporated under 'The Companies Acts, 1862 and 1867, and the New Zealand Act I., 1873.'

"Guaranty:—

"In consideration of your making any advances to John King, auctioneer, &c., Timaru, either by discounting bills or notes, or otherwise, I hereby guarantee you the due payment of all such advances not exceeding in the whole the sum of one thousand pounds, and further agree that you may advance any amount beyond such sum of 1,000*l.* to the said John King, and that no payment received by you from the said John King shall be taken in reduction of my liability on this guarantee, and that this guarantee shall always be a continuing and standing guarantee for the amount due to you from the said John King, and that you may give any time to and take any security from the said John King, and accept any composition from or release or discharge the said John King or any of the parties to any bills or notes so discounted by you as aforesaid, without prejudice to your claim upon me under this guarantee.

"Timaru, 29th of March, 1879."

It averred,—

"That the plaintiff, after the making and giving of the said guarantee and promise of the said defendant, and in reliance thereon, did from time to time make divers advances of money, and discount bills and notes to, for, and at the request of the said John King, in the ordinary course of business, by permitting the said John King to overdraw a banking account which he kept with the plaintiff at Timaru aforesaid, and by honouring his drafts and orders when the said account was overdrawn.

"The advances made by the plaintiff to the said John King on the security of the said guarantee up to the ninth day of May, 1879, when the plaintiff, by notice in writing, demanding payment of the sum of one thousand pounds under the said guarantee, determined the further continuance thereof, and which the said John King was unable and neglected and refused to pay, amounted to a sum far exceeding the sum of one thousand pounds, of all which the said defendant had notice.

"The plaintiff has demanded of the defendant payment of the said sum of one thousand pounds, and has done all things necessary to entitle the plaintiff to maintain this action, yet the defendant has not paid to the plaintiff the said sum, or any part of it."

To this declaration the defendant pleaded the following plea:—

"That at the time of the making and giving of the guarantee set out in the declaration, one John Macintosh was a co-surety with the defendant for the payment of the advances which the first guarantee was given to secure by virtue of a certain other guarantee for the payment of such advances made and given by the said John Macintosh to the plaintiff on the 17th of May, 1878."

A guarantee of that date by Macintosh was then set out identical in its terms with that before set out, except that the sum guaranteed was 600*l.* The plea proceeded:—

"And that afterwards, and prior to the twenty-ninth day of March, 1879, the date

(11) 1 Cox, 318.
(12) 14 Ves. 160.
(13) 49 Law J. Rep. Q.B. 718; Law Rep. 5 Q.B. D. 138.
(14) 17 Com. B. Rep. 201; 25 Law J. Rep. C.P. 106.
(15) 2 S. & S. 457.
(16) 40 Law J. Rep. Q.B. 281; Law Rep. 6 Q.B. 790.
(17) 23 Beav. 18.
(18) Lord Watson, Sir Barnes Peacock, Sir Montague E. Smith and Sir Robert P. Collier.

on which the guarantee set out in the declaration was made and given by the defendant, the plaintiff received from the said John King bills of exchange drawn by the said John King, and payable to his order, and accepted by the said John Macintosh, for the sum of one thousand four hundred pounds, and to the value of one thousand four hundred pounds, and that the before-mentioned guarantee of the said John Macintosh, and the said bills of exchange accepted by the said John Macintosh as aforesaid, were on the said twenty-ninth day of March, 1879, and up to and on the third day of April, 1879, held by the plaintiff as security for the payment of such advances as aforesaid.

"That on the said 3rd day of April, 1879, it was arranged and agreed by and between the plaintiff and the said John King and John Macintosh, that the said John Macintosh should be released from liability on his before-mentioned guarantee, and the bills of exchange for one thousand four hundred pounds accepted by him as aforesaid, in consideration of a new guarantee being given by the said John Macintosh to the plaintiff in the words and figures following:—

"To the National Bank of New Zealand, Limited, incorporated under 'The Companies Acts, 1862 and 1867, and the New Zealand Act I., 1873.'

"Guaranty:—

"In consideration of your making any advances to Mr. John King, auctioneer, &c., Timaru, either by discounting bills or notes, or otherwise, I hereby guarantee you the due payment of all such advances not exceeding in the whole the sum of two thousand pounds, and further agree that you may advance any amount beyond such sum of two thousand pounds to the said John King, and that no payment received by you from the said John King shall be taken in reduction of my liability on this guarantee, and that this guarantee shall always be a continuing and standing guarantee for the amount due to you from the said John King, and that you may give any time to and take any security from the said John King, and accept any composition from or release or discharge the said John King or any of the parties to any bills or notes so discounted by you as aforesaid, without prejudice to your claim upon me under this guarantee.

"John Macintosh.

"And the said new guarantee was then made and given by the said John Macintosh to the plaintiff, the latter previously agreeing with the said John Macintosh that if he, the said John Macintosh, would give such new guarantee, the plaintiff would not press him, the said John Macintosh, for payment of the moneys secured by the new guarantee, in the same way as if the bills of exchange were still held by the plaintiff, in respect of such advances as aforesaid, and the new guarantee not made and given; and in consideration of the making and giving of the said new guarantee by the said John Macintosh, as aforesaid, the plaintiff then released and discharged the said John Macintosh from all liability on the said old guarantee, and the before-mentioned bills of exchange, on and in respect of which he was previously liable to the plaintiff.

"That the transactions narrated in the two last preceding paragraphs of this plea as having taken place on the third day of April, 1879, took place without the knowledge or consent of the defendant."

All the material allegations in the plea were denied by the defendant in his replication.

A number of issues were settled, and the cause went to trial before a jury, whose findings on such of the issues as were deemed material appear to have been taken by consent, and may be shortly described as amounting to findings in favour of the defendant of all the allegations in the plea.

A verdict having been entered by consent for the defendant, a rule was obtained by the plaintiff to shew cause why the verdict should not be entered for him, notwithstanding the verdict for the defendant; it was argued in the Court of Appeal of New Zealand on the following grounds stated by consent:—

"1. That the matters alleged in the third plea are no answer to the declaration in this action.

"2. That the defendant was not released from liability, under the guarantee set out in the declaration, by the release from liability of the said John Macintosh on the guarantee, and the bills of exchange, in

the first paragraph of the plea referred to.

"3. That the defendant was not, by the giving by the said John Macintosh of the guarantee in the second paragraph of the third plea referred to, and set out in substitution for the guarantee of the 17th day of May, 1878, and for the said bills of exchange, released from liability on his said guarantee.

"4. That under the guarantee given by the defendant to the plaintiff, the plaintiff was entitled to release the said John Macintosh from liability, under the said guarantee of the 17th day of May, 1878, and on the said bills of exchange, and was entitled to take the said new guarantee from the said John Macintosh without releasing the defendant from liability on his said guarantee.

"5. That it appears from the facts alleged in the said plea that the arrangement made between the plaintiff, the said John King, and the said John Macintosh, for the release from liability of the said John Macintosh on the said guarantee, and the said bills of exchange, and for the giving by the said John Macintosh of the said new guarantee, was unsubstantial, and one which could not be prejudicial to the defendant.

"6. That it appears from the declaration that the amount advanced to the said John King, and owing by him to the plaintiff, was a sum far exceeding the sum of 1,000*l.*, and that the defendant has notice of the said amount so advanced and owing."

After argument, the rule *nisi* was made absolute, and from the judgment making it absolute the present appeal is preferred.

The question is, whether the plea, if proved, is an answer to the action.

Their Lordships' attention has been called to this provision in the guarantee, "you may give any time to and take any security from the said John King," and it has been argued that inasmuch as those words would be unnecessary to enable the plaintiff to take additional security from King, they must, if they have any meaning, refer to some security or change of security which might be to the prejudice of the guarantor, and would comprise the substitution of the second security of Macintosh for the first. This argument is not without force, but their Lordships prefer deciding the appeal on broader grounds.

A long series of cases has decided that a surety is discharged by the creditor dealing with the principal or with a co-surety in a manner at variance with the contract, the performance of which the surety had guaranteed.

In pursuance of this principle, it has been held that a surety is discharged by giving time to the principal, even though the surety may not be injured, and may even be benefited thereby. The reason of this rule is thus given by Lord Eldon in the case of *Samuel* v. *Howarth* (1):—

"The surety is discharged for this reason, because the creditor in so giving time to the surety has put it out of the power of the surety to consider whether he will have recourse to his remedy against the principal or not. . . . . It has been truly stated that the renewal of bills might have been for the benefit of the surety, but the law has said that the surety shall be the judge of that. . . . . The creditor has no right, it is *against the faith of his contract*, to give time to the principal, even though manifestly for the benefit of the surety, without the consent of the surety."

A recent decision of the Court of Appeal in *Holme* v. *Brunskill* (2) is based on the same principle. The defendant gave the plaintiff a bond that the tenant of his farm should, on the expiration of his tenancy, redeliver a flock of sheep on the farm in good order and condition. By an agreement between the plaintiff and the tenant, the tenant gave up a field on the farm, and held the remainder at a reduced rental. The jury, at the trial, having found that the surety was not prejudiced by this agreement, it was held by Lords Justices Cotton and Thesiger (Lord Justice Brett dissenting) that, notwithstanding the finding of the jury, the surety was released.

Lord Justice Cotton observes:—"The true rule, in my opinion, is that, if there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and that, if he has not consented to the alteration, although in cases where it is without enquiry evident that the alteration is unsubstantial, and one which cannot be pre-

judicial to the surety, the surety may not be discharged; yet that, if it is not self-evident that the alteration is unsubstantial, or one that cannot be prejudicial to the surety, the Court will not, in an action against the surety, go into an enquiry into the effect of the alteration." The *ratio decidendi* is thus stated:—"The plaintiff attempts to substitute for the contract that the flock shall be given up in good condition with the farm as then demised, a contract that it should be delivered up in like condition with a farm of different extent. . . . . The surety ought to have been asked to decide whether he would assent to the variation. He never did assent, and, in my opinion, was discharged from liability." To the same effect is *Polak* v. *Everett* (3), where there being a stipulation that half the book debts of the debtor should, under certain circumstances, be made over to the creditor, he released the book debts, and accepted in lieu thereof a supposed equivalent. The ground of the decision is thus stated by Mr. Justice Quain:—"The contract of the surety should not be altered without his consent, and the creditor should not undertake to alter the contract and then say, 'Although the contract has been altered, and I have put it out of my power to carry it out by a voluntary act, I now offer you an equivalent.'"

On the same principle it has been held that, when the creditor releases one of two or more sureties who have contracted jointly and severally, the others are discharged, the joint suretyship of the others being part of the consideration of the contract of each. In *Bonser* v. *Cox* (4), where the defendant agreed to become a surety for Richard Cox in a joint and several bond to be executed by Richard Cox and himself, and the execution of the bond by Richard Cox was not obtained, Lord Langdale observes, "The surety has a right to say, The arrangement was that Richard Cox, as well as myself, should be held bound by bond to the creditor; that arrangement never was carried into effect"—and the decision would obviously have been the same if Richard Cox had executed the bond and had been afterwards released.

But where it is no part of the contract of the surety that other persons shall join in it—in other words, where he contracts only severally—the creditor does not break that contract by releasing another several surety; the surety cannot therefore claim to be released on the ground of breach of contract.

It is true that he is entitled to contribution against other several sureties to the same extent as if they had been joint, but the right of contribution among such sureties depends, not upon contract, but on principles established by Courts of equity.

This right of contribution was established in the case of *Deering* v. *Lord Winchelsea* (11), affirmed by Lord Eldon in *Craythorn* v. *Swinburne* (12), and is thus explained by Lord Redesdale in *Stirling* v. *Forrester* (19):—"The principle established in the case of *Deering* v. *Lord Winchelsea* (11) is universal, that the right and duty of contribution is founded on doctrines of equity: it does not depend upon contract. If several persons are indebted, and one makes the payment, the creditor is bound in conscience, if not by contract, to give the party paying the debt all his remedies against the other debtors. . . . It would be against equity for the creditor to exact or receive payment from one, and to permit, or by his conduct to cause, the other debtors to be exempt from payment."

In pursuance of this doctrine it has been held that a surety is entitled to the benefit of all securities in the hands of the creditor, whether, when he became a surety, he knew of them or not. Thus in *Pearl* v. *Deacon* (20), where the plaintiff was surety in a promissory note for a sum lent by the defendants to their tenant, and a mortgage was subsequently taken by the defendants on the tenant's furniture for the same debt, they afterwards, under a distress, took the same furniture for arrears of rent. It was held by Sir John Romilly that, inasmuch as the produce of the furniture was first applicable to the payment of the promissory note, the landlords could not, as against the surety, apply it to the payment of their rent, and that the surety was discharged, not, it is to be observed, absolutely, but *pro tanto*; and the decision was confirmed on appeal. It has been held in other cases that, where the creditor wastes

(19) 3 Bligh, 59.

(20) 24 Beav. 186; 26 Law J. Rep. Chanc. 761.

or improperly deals with a security, the surety is released *pro tanto*. The claim of a several surety to be released, upon the creditor releasing another surety, arises not from the creditor having broken his contract, but from his having deprived the surety of his remedy for contribution in equity. The surety, therefore, in order to support his claim, must shew that he had a right to contribution, and that that right has been taken away, or injuriously affected.

Applying these principles to the construction of the plea, it is to be observed that, although the defendant avers that "Macintosh was a co-surety with him for the payment of the advances which the guarantee was given to secure," he does not aver that the liability of Macintosh and himself was joint, and it may be inferred from the instruments set out that it was not, or that he became surety on the faith of Macintosh's co-suretyship, or that he even knew of it. He does not aver that any right of contribution against Macintosh was injuriously affected, or even that any right to contribution ever arose, nor does he set out any facts from which it can be necessarily or reasonably inferred that he had suffered any damage or injury by the substitution described in the plea. The guarantee was for a floating balance; if that balance at the time when he was called upon to pay under his guarantee exceeded the amount guaranteed by himself and Macintosh, there would be no contribution between them; he does not negative that it exceeded that amount. The substituted guarantee of Macintosh of the 3rd of April was as available for him as the original guarantee for all subsequent advances to King. Under the first document Macintosh guaranteed the debt of King up to 600*l.*, and was liable to the bank on bills which were given by him as security for the debt of King up to 1,400*l.* The defendant, upon paying the whole debt of King, and on that condition only, might have had recourse to the bills, but only for the purpose of obtaining the same contribution from Macintosh which he was entitled to under his second guarantee. It follows that he could only be damnified if a portion of the claim of the bank against him had consisted of advances to King made between the 29th of March and the 3rd of April, and he does not aver that there were any such advances.

Their Lordships are therefore of opinion that all the allegations in the plea, which must be taken to have been proved, constitute no defence to the action, and that the plaintiff is entitled to judgment notwithstanding the verdict. Their Lordships will therefore humbly advise Her Majesty that the judgment appealed against be affirmed, and the appeal dismissed. The appellant must pay the costs of the appeal.

Solicitors—Longbourne, Longbourne & Stevens, for appellant; Freshfields & Williams for respondent.

1883. July 11. EDWARD MACDONALD (*appellant*) *v.* GEORGE WHITFIELD (*respondent*).

Lower Canada—Province of Quebec—Action "en Garantie"—Surety—Contribution—Promissory Note—Indorsers—Liability of.

The appellant and respondent, being directors of a company, agreed, in consideration of advances by a bank to the company, to become personally liable to the bank, and they indorsed a promissory note in favour of the bank, the appellant being the first indorser. The note not being paid, the bank recovered judgment for the amount due:—Held, *in an action by the respondent against the appellant "en garantie," that the ordinary rule as to the liability of indorsers did not apply; that the Court ought to look, not at the form, but at the substance of the transaction between the parties; and that the appellant and the respondent were co-sureties for the company.*

This was an appeal from a judgment of the Court of Queen's Bench for Lower Canada, Province of Quebec.

The appellant and respondent were directors of a company, carrying on business at St. John's.

The company, being indebted to a bank, agreed to give certain promissory notes of the company to the bank by way of security

for the debt and further advances, and the appellant and respondent agreed personally to guarantee the payment of the notes, and they indorsed the notes accordingly, the appellant being the first indorser.

On the 9th of January, 1878, the money due on the notes not having been paid, the bank brought an action to recover the amount due, and recovered judgment against the appellant and the respondent.

The respondent then instituted an action *en garantie* in the Superior Court of the Province of Quebec against the appellant, as first indorser of the promissory notes, claiming to be indemnified by the appellant, as such prior indorser, against the claims made by the holders of such notes.

On the 1st of September, 1879, the Judge of the Superior Court dismissed the action.

An appeal was brought from this judgment by the respondent to the Court of Queen's Bench, which Court reversed the judgment of the Superior Court, and condemned the appellant to pay the amount payable to the holders of the notes.

From this judgment the present appeal was brought.

Matthews, Q.C., and *Fullarton*, for the appellant.—If there were no express contract between the directors to be liable as co-sureties, yet, in the absence of an express agreement, the indorsers are liable only to contribution, *inter se*, as co-sureties. They are not liable as ordinary indorsers. The form of the instrument and the order of execution is immaterial. The appellant, although his indorsement stood first, was as much a stranger to the notes as the respondent.

No doubt the liability of the successive indorsers of a bill or note is governed by certain rules, but all the surrounding circumstances at the time when the obligation was incurred will be considered. In the present case, the appellant and respondent were co-sureties only, and are only equally liable. The ordinary rule does not apply in such a case.

They referred to *Reynolds* v. *Wheeler* (1), *Deering* v. *Winchelsea* (2), *Denton* v. *Peters* (3), *Whiting* v. *Burke* (4), *Gray* v. *Seckham* (5), *Wilkinson* v. *Unwin* (6).

H. Cowie, Q.C., and *Chalmers*, for the respondent.—The action instituted by the respondent ought not to have been dismissed. The respondent is entitled to be indemnified by the appellant. Successive indorsers of a promissory note are sureties each for the other, and are not to be regarded as co-sureties. According to article 1935 of the Civil Code, suretyship cannot be presumed, but must be express. It cannot be extended beyond the limits within which it was contracted.

Indorsement, whether for accommodation or for value, imports a several and successive, and not a joint, obligation. There is no evidence of any agreement that the liability of the appellant and respondent, *inter se*, should be that of co-sureties, or different from that implied from the relative position of their respective indorsements on the notes. According to Article 1234 of the Civil Code, evidence cannot in any case be received to contradict or vary the terms of a written instrument.

They referred to *Jansen* v. *Paxton* (7), *Macdonald* v. *Magruder* (8), *Craythorn* v. *Swinburne* (9), *Strong* v. *Foster* (10).

LORD WATSON delivered the judgment of their Lordships (11).

Edward Macdonald and George Whitfield, who are respectively appellant and respondent in this appeal, were, in the year 1875, directors of a trading corporation known as the St. John's Stone China Ware Company, which carried on business at St. John's, in the district of Iberville and Province of Quebec. At that time the concern was not in a very prosperous condition, and in the month of July, 1875, the

(1) 10 Com. B. Rep. N.S. 561; 30 Law J. Rep. C.P. 350.
(2) 2 Bos. & P. 260.
(3) Law Rep. 5 Q.B. 475.
(4) Law Rep. 6 Chanc. 342.
(5) 41 Law J. Rep. Chanc. 281; Law Rep. 7 Chanc. 680.
(6) 50 Law J. Rep. Q.B. 338; Law Rep. 7 Q.B. 636.
(7) 28 C.P. 439. U.C.
(8) 3 Peters, 470.
(9) 14 Ves. 160.
(10) 17 Com. B. Rep. 201; 25 Law J. Rep. C.P. 106.
(11) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier and Sir Arthur Hobhouse.

balance due by the company in its account current with the Merchants' Bank of Canada was upwards of 17,000 dollars. The appellant was president and chairman of the board of directors; and he had indorsed the company's promissory notes, for its accommodation, to the Merchants' Bank, to the amount of 65,000 dollars. It appears that he had also given his personal guarantee to the bank, for the overdrafts of the company upon its account current, to the extent of 10,000 dollars.

In July, 1875, the company, being in want of funds, applied to the bank, through the appellant, for further credit; and, on the 24th of that month, the agent of the bank at St. John's sent a written answer to the application, addressed to the late Mr. Lavicount, the secretary of the company, in these terms:—

"Dear Sir,—Respecting your president's application to the bank for further extension of your credit, I have the pleasure to inform you that you have been allowed an extension of four or five thousand dollars in case of need. The bank, however, requires that the present advances, as they mature, be secured by the personal guarantee of your directors, should renewals be required, which could be done by their indorsation of the notes. Your account current is now overdrawn seventeen thousand six hundred and fourteen dollars and fifty-four cents; and by giving me the company's note, indorsed as required, for 8,500 dollars, you will reduce your overdrawn account, leaving a balance of 700 dollars of above loan.

"I enclose a letter of guarantee along with a note, for signature by your directors, as required by the bank, to take the place of Mr. Edward Macdonald's personal security for the like amount."

Along with this communication there was sent to the secretary of the company the letter of guarantee, and also the note therein mentioned.

The letter in question, which was dated the 24th of July, 1875, and addressed to the agent of the bank, was expressed as follows:—

"Dear Sir,—In consideration of the Merchants' Bank of Canada allowing the St. John's Stone China Ware Company to overdraw their account to the extent of ten thousand dollars, we herewith deposit with you, as collateral security for the due payment of such overdraft, the demand note of the company, indorsed by the following directors individually. . . . . And we hold ourselves liable without prejudice to the ordinary legal remedies.—Subscribe ourselves, your obedient servants."

The note which accompanied the foregoing form of letter for signature by the directors was a promissory note by the company for 10,000 dollars, payable on demand to the order of the appellant at the office of the Merchants' Bank of Canada, in St. John's.

Having regard to the pecuniary relations then subsisting between the company and the bank, the arrangements thus proposed by the latter are sufficiently intelligible. The bank had made large advances by discounting, or in other words purchasing, the paper of the company indorsed for its accommodation by the appellant, and had also advanced upwards of 17,000 dollars on current account, which was only secured, to the extent of 10,000 dollars, by the personal guarantee of the appellant. In these circumstances the bank was willing to make a further advance of from 4,000 to 5,000 dollars, provided the company complied with these three conditions:—In the first place, advances upon current notes which had been discounted by the bank were, in the event of renewals being required at maturity, to be secured by the personal guarantee of the directors of the company, such guarantee to be given by their indorsation of the renewal notes. In the second place, the note of the company for 8,500 dollars, duly indorsed by the directors as aforesaid, was to be delivered to the bank in payment and extinction *pro tanto* of the advances on current account, so as to reduce the debit balance of the company to nine thousand odd dollars. And, in the third place, the demand note for 10,000 dollars, when duly signed and indorsed by the directors, was to be deposited with the bank as a collateral security for overdrafts on account current, and was to be substituted for the appellant's personal security for the like amount.

No mention is made, in the bank's letter,

of the manner in which the additional advance, or extended credit, of four to five thousand dollars was to be allowed to the company. It is obvious, however, that the bank was not prepared and did not agree to give the extended credit without security; and also that the result of carrying out the conditions upon which it was to be given would be to reduce the balance due on current account about 700 dollars only below the amount of the demand note covering that account. It, therefore, seems matter of reasonable inference that the additional advance was to be made by the bank discounting the promissory note or notes of the company, duly indorsed by its directors.

On the 5th of August, 1875, the directors of the St. John's Stone China Ware Company met for the purpose of considering the answer returned by the bank to the application, made through the appellant, for an extension of the company's credit. At that meeting all the directors of the company, five in number, were present—namely, the appellant, the respondent, and Messrs. Marler, Coote and Macpherson. The minute of the meeting of the 5th of August, 1875, as entered in the minute-book of the company, bears that "the letter of the agent of the Merchants' Bank of the 24th ultimo was submitted, and the directors agreed to give the personal indorsation asked for by the bank, and the secretary was instructed to have the said notes drawn out, signed as required, and handed over to the Merchants' Bank."

In pursuance of that resolution the secretary of the company drew out two notes, for 8,500 and 4,500 dollars respectively, which he signed as promisor on behalf of the company, the name of the appellant being inserted as payee, just as it had been in the demand note for 10,000 dollars sent by the bank for signature and indorsation. Mr. Marler, one of the five directors of the company, was also the manager of the Merchants' Bank of Canada, in St. John's, and was precluded from signing any of these promissory notes by the regulations of the bank. All the other directors indorsed the demand note for 10,000 dollars (after it had been signed by the secretary for the company) in the following order—1st, the appellant, 2nd, the respondent, 3rd, Mr. Coote, 4th, Mr. Macpherson. It does not clearly appear whether Mr. Macpherson did or did not become a party to the two notes for 8,500 and 4,500 dollars; but these were certainly indorsed by the other three directors, in the same order in which their signatures were put on the 10,000-dollar note. Neither does it appear at what dates these two bills for 8,500 and 4,500 dollars were made payable; but it appears to their Lordships to be established that they were new discount bills, and that they were renewed on more than one subsequent occasion, the last renewal of the first of these notes having been made on the 21st of March, and the last renewal of the second upon the 26th of March, in the year 1877. These renewal bills were not signed by Macpherson, but they were indorsed by the appellant, by Mrs. Whitfield, per procuration of her husband the respondent, and by Mr. Coote, in the same order as before.

The letter of guarantee sent by the bank was subscribed by the appellant as well as by Messrs. Coote and Macpherson, and their names were inserted in the blank left for that purpose; but it was not signed by the respondent, nor was his name entered therein. When thus completed, the letter was handed to the bank along with the 10,000-dollar demand note.

On the 27th of December, 1877, the Merchants' Bank of Canada instituted a suit against the appellant, the respondent and Mr. Coote, in the Court of Queen's Bench for Lower Canada, for the recovery of the sums then due to the bank, as holder for value of the said demand note for 10,000 dollars, dated the 24th of July, 1875, and of the two renewal notes for 8,500 and 4,500 dollars, dated the 21st and 26th of March, 1877. The demand of the bank was not resisted either by the appellant or by Mr. Coote, but the respondent appeared and defended the action. After a variety of proceedings, which it is unnecessary for the purposes of this case to notice in detail, Mr. Justice Chagnon, on the 1st of September, 1879, ordained the three defendants, jointly and severally, to

pay to the bank the contents of the two notes of the 21st and 26th of March, 1877; and also ordained the appellant and Mr. Coote, jointly and severally, to make payment to the bank of the contents of the demand note for 10,000 dollars.

On the 7th of January, 1878, the respondent, availing himself of the provisions of Article 1953 of the Civil Code, brought an action *en garantie*, before the same Court, against the appellant, concluding to have the appellant condemned, to acquit and relieve him of any sum of principal and interest, for which decree might be given against him in the suit at the instance of the bank. In the declaration filed by him in that action, the respondent treated the three promissory notes in question as if they had been ordinary commercial paper. His allegations, in regard to each of these notes, were in substantially the same terms, and, after reciting the making of the note by the company payable to the appellant, thus proceeded:—

"Lequel billet la dite St. John's Stone China Ware Company remit au dit défendeur Edward Macdonald, qui là et alors signa et endossa le dit billet et le remit au dit Demandeur en garantie, George Whitfield, qui là et alors signa et endossa le dit billet et le remit au dit Isaac Coote, qui là et alors signa et endossa le dit billet et le remit à la dite Merchants' Bank of Canada qui en est encore porteur et propriétaire."

The plea founded by the respondent on that allegation was to the effect that the defendant,

"Etant, ainsi qu'il appert par les allégués ci-dessus, endosseur précédent et antérieur au dit demandeur en garantie, sur tous et chacun des trois billets plus haut mentionnés, est obligé et tenu en loi de rembourser, garantir et indemniser le dit demandeur en garantie de tous troubles et de toute condamnation qui pourrait intervenir contre lui, sur et à raison des dits billets, et dans et à raison de la dite action institutée par la dite Merchants' Bank of Canada."

In this action of warranty judgment was given by Mr. Justice Chagnon on the 1st of September, 1879. The learned Judge held that the evidence given by the respondent himself, with regard to the circumstances in which these notes were made and indorsed, shewed that the property of the notes was not passed by the indorsations, and that there was, in point of fact, no delivery by one indorser to another. And inasmuch as that testimony, in his opinion, contradicted the allegations upon which the respondent's claim of indemnity was based, he dismissed the action as laid, reserving to the respondent any recourse which might be competent to him against the appellant.

An appeal was taken by the Merchants' Bank of Canada against the judgment of Mr. Justice Chagnon of the 1st of September, 1879, in so far as it absolved the respondent from liability to the bank in respect of the demand note for 10,000 dollars. The respondent also appealed against the judgment of the same date, in his action *en garantie*. On the 18th of June, 1881, the two actions were consolidated by an order of the Queen's Bench.

Thereafter, on the 23rd of September, 1881, the Court of Queen's Bench gave judgment in the conjoined causes. The Court, in the suit at the instance of the bank, reformed the judgment of Mr. Justice Chagnon, and condemned the respondent in payment to the bank of the 10,000-dollar demand note, with interest and costs. In the action at the respondent's instance, the Court reversed the judgment appealed from, and condemned the appellant to guarantee, acquit and indemnify the respondent from all the condemnation in principal, interest and costs pronounced against him by the judgment in favour of the bank, and further condemned the appellant to pay to the respondent the whole costs incurred by him in the suit at the bank's instance. The present appeal has been brought against the judgment, in the action *en garantie*, of the 22nd of September, 1881, by Edward Macdonald, the defendant in that action.

The learned Judges of the Court of Queen's Bench were of opinion that the two promissory notes for 8,500 and 4,500 dollars, dated the 21st and 26th of March, 1877, were mere renewals of notes which the company had, prior to the 24th of July, 1875, discounted with the bank, upon the indorsation of the appellant; and a finding to that effect is set forth as one of the considerations on which the formal judg-

that all the directors of the company, including the respondent, put their signatures upon the notes, in August, 1875, in pursuance of a mutual agreement to be co-sureties for the company. And, in the opinion of their Lordships, that is the proper legal inference to be derived from the circumstances of the present case.

Their Lordships construe the bank letter of the 24th of July, 1875, as preferring a direct request that the directors should become bound to the bank as co-sureties for the company. The bank did not require that the appellant should become surety for the company, that the respondent should then become surety for the appellant, and that Mr. Coote, in his turn, should guarantee the solvency of the respondent. What the bank asked was "the personal guarantee of your directors," and what the directors agreed to give at their meeting on the 5th of August, 1875, was "the personal indorsation required by the bank." Apart from the mere circumstance of the order in which the indorsements were made, the *res gestæ* of the meeting of the 5th of August, as disclosed in evidence, make it perfectly plain that the directors were asked and agreed to become co-sureties for the company, without any stipulation whatever as to their becoming *inter se* sureties for each other, or as to the order of their indorsing. Their Lordships attach no weight to the terms of the so-called letter of guarantee which was returned to the bank along with the demand note for 10,000 dollars, or to the fact that it was not signed by the respondent. The letter contains no obligation of guarantee, and simply explains, what would otherwise have sufficiently appeared from the bank's own letter, that the 10,000-dollar note was not for immediate discount, but was to be held by the bank as a collateral security for the company's debit balance in account current.

But the respondent insists, and the Court below seem to have held, that in determining the rights and liabilities *inter se* of these indorsers for the accommodation of the company, regard must be had, not to the contract in pursuance of which they became indorsers, but to the order of their indorsements, as evidencing the terms of their contract. That doctrine appears to their Lordships to be at variance with the principles of the English law. In a case like the present, the signing of their names on the note, by way of indorsement, in order to induce the bank to discount it to the promisor, is not, as between the indorsers, *pars contractus*, but is merely the performance by them of an antecedent agreement. The terms of that previous contract must settle their liabilities *inter se*, irrespective altogether of the rules of the law-merchant, which will nevertheless be binding upon them in any question with parties to the note who were not likewise parties to the agreement. The law upon this point was correctly laid down by the Court of Common Pleas in *Reynolds* v. *Wheeler* (1). In that case, one Cheeseman drew a bill, and asked Reynolds to accept it for his accommodation, which Reynolds did. The bank refused to discount, whereupon Wheeler, at the request of Cheeseman, indorsed, and the bill was then discounted, Cheeseman receiving the proceeds. The bill was renewed at maturity, Reynolds on this occasion being drawer and Cheeseman acceptor, whilst Wheeler indorsed it as he had done before. Reynolds paid the renewal bill, and claimed contribution from Wheeler as a surety with him for the same debt. Wheeler resisted the claim on the same plea which is put forward by the respondent in the present case—namely, that, in the circumstances, he had only agreed to undertake the liability evidenced by the indorsement, and consequently that he was not liable in relief or contribution to one who, like Reynolds, had previously become party to the bill as drawer or acceptor. But the Court overruled the plea. Chief Justice Erle said, "The substance of the transaction is this: Cheeseman was in want of money, and applied to Reynolds and to Wheeler to lend him their names in order to obtain it. If the money had been raised by the joint and several note or bond of the three, it could not for a moment have been contended that Reynolds, paying the whole, would not have been entitled to contribution. The machinery adopted here was the drawing of a note by Cheeseman upon Reynolds, and the indorsement of it by

dation of the St. John's Stone China Ware Company, the appellant, having first written his name upon the back of the notes, has thereby become liable to him, in the same manner, and to the same effect, as if he had been a prior indorser upon a proper commercial bill.

Had the appellant been, in point of fact, the holder of the notes, and had the respondent, in these circumstances, given his indorsements to the Merchants' Bank of Canada, which was about to discount them, the appellant would have been bound to indemnify the respondent against any demand made upon him by the bank, or any subsequent holder, to the same extent as if the respondent had been a proper indorser. That was held to be the legal effect of such an indorsement in *Penny* v. *Innes* (12).

In the present case the appellant, although his indorsement was first written, was a stranger to the notes in the same sense as the respondent, and it is not matter of dispute that the indorsements of both were given for one and the same purpose—namely, in order to induce the bank to discount two of the notes, and pay the proceeds to the promisor, the St. John's Stone China Ware Company, and also to give the company credit in account current to the amount of the third note. It was argued, however, for the respondent that, in the absence of some special contract or agreement between them, *dehors* the notes themselves, strangers giving their indorsements successively must be held to have undertaken the same liabilities *inter se* which are incumbent on successive holders and indorsers of a note for value. The appellant and respondent must therefore, it was said, be assumed to stand towards each other in the relation of prior and subsequent indorsers for value, inasmuch as it had not been proved, *habili modo*, that they had specially agreed that their indorsements were to have the effect of making them co-sureties for the promisor. On the other hand, it was contended for the appellant that all the directors who indorsed the notes in question must now be treated as co-sureties, seeing that their indorsements were made, without reference to the order of their signatures, in pursuance of a mutual agreement to give their joint guarantee to the bank that the notes would be duly retired by the company.

Their Lordships see no reason to doubt that the liabilities, *inter se*, of the successive indorsers of a bill or promissory note must, in the absence of all evidence to the contrary, be determined according to the ordinary principles of the law-merchant. He who is proved or admitted to have made a prior indorsement must, according to these principles, indemnify subsequent indorsers. But it is a well-established rule of law that the whole facts and circumstances attendant upon the making, issue and transference of a bill or note, may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers or as indorsers; and that reasonable inferences, derived from these facts and circumstances, are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law-merchant would otherwise assign to them. It is in accordance with that rule that the drawer of a bill is made liable in relief to the acceptor, when the facts and circumstances connected with the making and issue of the bill sustain the inference that it was accepted solely for the accommodation of the drawer. Even where the liability of the party, according to the law-merchant, is not altered or affected by reference to such facts and circumstances, he may still obtain relief by shewing that the party from whom he claims indemnity agreed to give it him; but, in that case, he sets up an independent and collateral guarantee, which he can only prove by means of a writing which will satisfy the Statute of Frauds.

The appellant has not attempted to establish an independent collateral agreement by the respondent, to contribute equally with him and the other indorsers, in the event of the company's failure to make payment of the notes in question to the bank. He relies upon the facts proved with respect to the making and issue of these three promissory notes as sufficient to themselves to create the legal inference

(12) I. Cr. M. & R. 439; 4 Law J. Rep. Exch. 12.

that all the directors of the company, including the respondent, put their signatures upon the notes, in August, 1875, in pursuance of a mutual agreement to be co-sureties for the company. And, in the opinion of their Lordships, that is the proper legal inference to be derived from the circumstances of the present case.

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Wheeler." And Mr. Justice Williams, stating the law to the same effect, said, "If the relation of surety subsists, he (Reynolds) is entitled to contribution, and we are entitled to disregard the form of the instrument."

In the present case the directors of the St. John's Stone China Ware Company one and all agreed with each other to become sureties to the bank for the same debts of the company. That was the substance of the agreement to which they came on the 5th of August, 1875, and the fact that the machinery which they adopted for carrying out their agreement was the making of three promissory notes by the company, payable to the appellant, and successively indorsed by him and his co-directors, cannot have, in law, the effect of altering the mutual relations established by that agreement, and of substituting for these the liabilities of proper indorsers of an ordinary commercial note.

It was argued, however, that the respondent gave his indorsements at the request of the appellant, and must, therefore, be held to have given them on the faith of his having recourse against the appellant as a prior indorser. That contention was rested upon certain statements made by the respondent in his deposition as a witness for the appellant. He stated, "I was asked to indorse the notes in question by Edward Macdonald, in fact urged to do so, to sign them, that it was all right, which I did." Again, in answer to the question by his own counsel, "At whose instance did you indorse the notes in question?" he says, "At the instance of Edward Macdonald." The argument is really without foundation in fact. There is not a word in those statements to suggest that the appellant, Edward Macdonald, did anything more than urge the respondent to carry out the agreement which had already been come to by all the directors present, in order to aid the finances of the company.

The authority of *Reynolds* v. *Wheeler* (1), and similar cases, is in no wise affected by the decision of the House of Lords in the Scotch case of *Steele* v. *Mackinlay* (13), which is referred to in the judgment of the Court below. In that case A, acting on behalf of his sons B and C, arranged with D that the latter should make an advance to them of 1,000*l.* upon their personal security. D accordingly drew a bill for that amount on B and C, and delivered it to A, in order that he might procure their acceptances. A did obtain their acceptances, and before returning the accepted bill to D, he wrote his own name upon the back of it. The acceptors failed to retire the bill, and D, the drawer, brought an action against the representative of A (who had died in the mean time) for recovery of its contents, upon the allegation that A had signed as a co-acceptor, or at all events with the intention and effect of becoming a surety to him for the acceptors. Parol evidence was led, not only in regard to the making and issue of the bill, but also in regard to statements made at various times by the deceased, tending to prove a separate and independent engagement by him to guarantee payment of the bill by his sons. The admissibility of the evidence, so far as it bore upon the facts and circumstances connected with the making and indorsement of the bill, was not questioned either at the bar or by the House. On the contrary, the House did take that evidence into account, although it was ultimately held that the claim preferred by D was neither supported by the principle of the law-merchant, nor by any inference derivable from these facts and circumstances. But the House rejected the parol evidence adduced by D in order to establish an independent contract of guarantee, upon the ground that such a contract could only be proved by a writing properly signed under the 6th section of the Mercantile Law Amendment (Scotland) Act, 1856, which extends to Scotland the provisions of the English Statute of Frauds with respect to mercantile guarantees.

The respondent's counsel, in the course of the argument, referred to the case of *Jansen* v. *Paxton* (7), decided by the Court of Error and Appeal in Upper Canada, and to three other decisions of the Canadian Courts. With the same view, they cited the case of *Macdonald* v. *Magruder* (8). These authorities were relied upon as establishing the doctrine that, where

(13) Law Rep. 5 App. Cas. 754 (Scotch).

several persons mutually agree to give their indorsements on a bill, as securities for the holder who wishes to discount it, they must be held to have undertaken liability to each other, not as sureties for the same debt, and so jointly liable in contribution, but as proper indorsers, liable to indemnify each other successively, according to the priority of their indorsements, unless it had been specially stipulated that they were to be liable as co-sureties. It is unnecessary to enter into a minute criticism of these cases. Some of them are, in their circumstances, distinguishable from the present case; but there are undoubtedly to be found in the opinions of the learned Judges by whom they were decided *dicta* which seem to recognise the doctrine contended for by the respondent. If they are to be regarded as authorities to that effect, their Lordships cannot accept these cases as conclusive of the law of England, or as precedents which ought to govern the decision of this appeal. The Civil Code of Lower Canada (article 2340) enacts that "in all matters relating to bills of exchange not provided for in the Code, recourse must be had to the laws of England in force on the 30th of May, 1849." By article 2346 of the Code, the same law is made applicable to promissory notes as to bills of exchange, in so far as regards the liability of the parties; and seeing that the Code makes no provision regarding the question raised between the appellant and the respondent, that question must, in the opinion of their Lordships, be decided according to the law of England, as laid down by the Court of Common Pleas in *Reynolds* v. *Wheeler* (1).

Their Lordships will, accordingly, advise Her Majesty that the judgment appealed from ought to be reversed; and that the action *en garantie* at the respondent's instance ought to be dismissed, with the declaration that the appellant and the respondent made their several indorsements upon the promissory notes in question, along with other directors of the St. John's Stone China Ware Company, as co-sureties for the said company, and are, in that capacity, entitled and liable to equal contribution *inter se.*

The respondent must pay to the appellant the costs of this appeal, and also the costs incurred by him in the Courts below.

Solicitors—Simpson, Hammond & Co., for appellant; Robins & Peters, for respondent.

1883. June 12. THOMAS SIMON AND OTHERS (*appellants*) *v.* WILLIAM HENRY VENABLES VERNON (*respondent*).

Jersey—Marriage Contract—Registration—Hypothèque.

By an ante-nuptial contract, in consideration of the surrender by the wife of all her rights in case of widowhood, the husband agreed, if the wife should survive him, that his executors should pay her an annuity and a sum of money out of his personal estate. This contract was registered by act of the Royal Court. The husband became insolvent, the usual proceedings en décret *were taken, and the wife claimed to rank in the* codement *as a secured creditor in respect of the marriage contract from the date of registration, and the Royal Court held that the wife was so entitled. On the death of the husband the widow claimed payment both of the annuity and the money:*—Held, *that the wife having claimed both* en décret, *the Royal Court must be taken to have adjudicated in respect of both, and that the widow was therefore entitled to both.*

This was an appeal from a judgment of the Royal Court of Jersey.

The appellant was the "*tenant subrogé*" of the estate of one Joshua Le Bailly, an insolvent, deceased.

The respondent was the procurator of one Wardlaw Cortlandt Anderson and Margaret Jane Trotter, his wife.

The action was brought in the Royal Court by the respondent, on behalf of the said Margaret Jane Trotter, against the appellant, to recover 500*l.* covenanted to be paid by a contract of marriage to the

said Mary Jane Trotter in the event of the death of Joshua Le Bailly, her intended husband.

Previous to and in contemplation of a marriage between Joshua Le Bailly and Margaret Jane Trotter a contract was entered into by which "the said Margaret agreed to abandon all right of dower on the real estate and all interest in the personal estate of the said Joshua, which by reason of the marriage she might be lawfully entitled to in the event of her surviving the said Joshua. And in consideration of such surrender, the said Joshua agreed that, provided the marriage took place and the said Margaret survived him, his heirs, executors or administrators should pay to her out of his personal estate the sum of 500*l.* for her use and benefit, and during the term of her natural life that his heirs, executors or administrators should pay to her out of his real estate the annual sum of 200*l.* sterling."

By an Act of the Royal Court, dated the 7th of April, 1863, on the joint application of the said Joshua and Margaret, this contract was registered in the Public Registry of the island.

By the law of guarantee which prevailed in the Island of Jersey at the time of the contract, a personal debt, even when limited in terms to charge the personal estate, became by subsequent registration a debt of record and a charge upon the real estate of the debtor.

By an Act of the Royal Court, dated the 23rd of August, 1873, a *désastre* of the personal estate of Joshua Le Bailly was decreed.

By an Act of the Royal Court of the 9th of January, 1875, a *décret* or foreclosure was ordered upon the real estate of Joshua Le Bailly.

The claim of the said Margaret Jane Trotter, under and by virtue of the abovementioned contract, and of the Act of the Royal Court for registration thereof, was duly tendered by the said Margaret Jane Trotter to the Greffier of the Royal Court for registration as a secured claim carrying an "hypotheca" or mortgage as and from the date of the Act of the Royal Court ordering the registration.

The Greffier inserted the claim of the said Margaret Jane Trotter as simply an unsecured debt or liability, and sought to deal with it accordingly.

By a judgment of the Superior Number or Full Court as aforesaid, dated the 20th of March, 1875, it was ordered that, inasmuch as the contract for a settlement had been registered, it was entitled to rank in the *codement* of the *décret* of the said Joshua Le Bailly under the date of the Act ordering its registration.

In pursuance of such judgment the *Greffier* registered the claim of the said Margaret Jane Trotter in the said *codement.*

On the 27th of March, 1875, one Edwin Taylor, one of the unsecured creditors of the said Joshua Le Bailly, was declared *tenant* of the real estate of the bankrupt, and Pierre Jean Simon subsequently became "*tenant subrogé.*"

Pierre Jean Simon has since died, and the appellant is his heir and representative.

Joshua Le Bailly died on the 19th of March, 1881, leaving surviving Margaret Jane Trotter, his widow, who afterwards intermarried with Wardlaw Cortlandt Anderson.

The action was heard before the Inferior Number of the Royal Court, and that Court gave judgment in favour of the respondent.

The appellants appealed from this judgment to the Superior Number or Full Court of Appeal of the Royal Court, which Court confirmed the judgment of the Inferior Number.

From this judgment the appeal was brought.

The Attorney-General for Jersey (*George Clement Bertram*) and *W. Latham*, for the appellants.—The sum claimed in the action was payable only out of the personal estate of Joshua Le Bailly, and only after his death. By the *désastre* in his lifetime the whole of his personal estate became swept away. The "*tenant subrogé,*" not being heir, executor or administrator of Joshua Le Bailly, is not liable, according to the express terms of the contract, to pay the amount claimed. The marriage contract, even with the Act of registration, does not operate, so far as relates to the 500*l.*, as a charge on the *héritages* of

Joshua Le Bailly in the hands of the *tenant subrogé après décret.*

Davey, Q.C., and *Fishbourne*, for the respondent.—The marriage, and registration of the contract of marriage by Act of the Royal Court on the application of the contracting parties, made the contract a charge or mortgage from the date of such Act upon the real estate of Joshua Le Bailly, binding on such real estate in the hands of every person to whom it passed. A *tenant* after *décret* is bound to discharge all the debts and mortgages on the property to which he makes himself *tenant* prior in date to his own. The contract registered by an Act of the Royal Court could not be revoked by any *tenant*. The contract was made for valuable consideration.

LORD WATSON delivered the judgment of their Lordships (1):—

Margaret Jane Trotter, now the wife of Cortlandt Anderson, was previously married, on the 14th of April, 1863, to the late Joshua Le Bailly, of "Les Vaux," Jersey. By an ante-nuptial contract, entered into in contemplation of their marriage, Miss Trotter renounced all legal claims competent to her, as widow, upon the estates real and personal of her husband; and, in consideration thereof, Mr. Le Bailly engaged, for himself, his executors and administrators, that, in the event of her surviving him, his heirs, executors and administrators should, immediately after his decease, "duly pay to her out of his personal estate the sum of 500*l.* sterling for her own use and benefit exclusively," and should also, from and after the day of his decease, pay to her, out of "his estates real and personal," an annuity for life of 200*l.* sterling. This contract was registered in the Public Register of the Island of Jersey, pursuant to an order of the Royal Court, obtained on the joint application of the spouses, dated the 7th of April, 1863.

On the 23rd of August, 1873, the goods of the said Joshua Le Bailly were, by an order of the Royal Court, declared *en désastre*, and his personal property was sequestrated for the benefit of his creditors. By a subsequent order of the same Court, bearing date the 9th of January, 1875, his movable and heritable estates were adjudged to be renounced, and leave was given to certain of his creditors "*de faire décréter les dits héritages.*"

The proceedings *en décret*, so far as it is necessary to refer to them for the purposes of the present case, are as follows: A list is made up, before the Greffier, of the whole creditors of the insolvent, each creditor being ranked according to the priority of his debt or claim. But in the list or *codement* prepared by the Greffier the order of priority is inverted, the creditor having the first charge being placed last, whilst the first entry embraces all the unsecured creditors, who are ranked *pari passu* in one group. The Greffier next summons the creditors before him, and calls first the unsecured creditors in turn to accept or reject the insolvent's estate. If they reject, their claims are considered as cancelled, and the Greffier proceeds to make the same call upon the *puisné* encumbrancer. If he rejects the estate, his claim is in like manner considered as cancelled, and the Greffier calls upon the next encumbrancer in the order of the *codement*; and the same process is repeated until a creditor accepts, who is then declared to be "*tenant*," and thereby becomes entitled to the estate of the insolvent, and absolutely liable to pay, or settle in full, all claims inserted after his own in the *codement*. The obligation thus imposed upon the "*tenant*" is, in other words, the consideration for which he becomes purchaser of the insolvent's estate.

Margaret Jane Trotter, then the wife of Joshua Le Bailly, appeared as a claimant in the proceedings *en décret* which followed upon the order of the 9th of January, 1875, and gave in her marriage contract, together with the Act of Court, of the 7th of April, 1863, authorising its registration. The Greffier entered her in the *codement* as an unsecured creditor under that contract, and called upon her, along with the other claimants *sans hypothèques*, to declare

(1) Lord Watson, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, and Sir Arthur Hobhouse.

Simon v. *Vernon.*

whether she elected to become "*tenante*" or to renounce. The lady thereupon objected, and maintained, by her counsel, "Qu'elle n'est pas obligée de parler en ce moment, l'acte de la cour qu'elle a inséré étant daté du 7 Avril 1863, et enregistré au registre public à la dite date, devant porter la dite date dans ce décret." The obvious meaning of that contention was that the lady objected to her claim under the contract being dealt with as *sans hypothèque*, and insisted that the legal effect of its registration in the Public Register of the island by the authority of the Royal Court was to make her conventional provisions a charge upon the heritable estate of her husband from and after the 7th of April, 1863, the date of the order authorising registration.

The Greffier referred the question thus raised to the Court, and at the same time submitted to the Court his reasons for dealing with the lady's contract claims as an unsecured debt. The view taken by him was, in the first place, that no date could be assigned to the contract, because, even on the assumption that its insertion in the public register would have created a *hypothèque*, the documents given in did not contain any note by the Registrar stating the day upon which the contract came into his hands; and, in the second place, that the registration of the contract in the Public Register was for preservation merely, and did not make the wife's provision a charge upon the heritable estate of her husband, which could only be effected by its insertion in the proper register—namely, the "*livre des obligations.*"

When the question came before the Court, two creditors, *sans hypothèques*, entered in the *codement*, appeared to resist the claim of Margaret Jane Trotter, and, *inter alia*, maintained, "qu'en vertu de la pièce produite, la dite dame ne peut prétendre à une hypothèque quelconque sur les biens de son mari, au préjudice tant des créanciers de celui-ci, que des personnes qui ont transigé avec lui depuis la date de son mariage."

The main issue raised for the decision of the Court was whether the recording of her marriage contract in the Public Register did or did not confer upon Dame Margaret Jane Trotter a right of hypothec, in respect of its provisions, which entitled her to be ranked in the *codement* as a secured creditor from and after the date of the order of Court giving authority to register. After hearing parties, the Court, on the 20th of March, 1875, rejected the views submitted to them by the Greffier, and gave this decision in her favour: "Considérant que le contrat de mariage dont s'agit a été enregistré au registre public, la Cour a jugé qu'il doit porter au registre ou codement du décret du dit Josué Le Bailly, la date de l'acte ordonnant son enregistrement, savoir le 7 Avril 1863."

In consequence of that decision, the *codement* was altered so as to give effect to it; and the entry of Margaret Jane Trotter's name and of her documents of debt was transferred from the class of unsecured to that of the secured creditors, the date assigned to her security being the 7th of April, 1863. After the usual procedure, Edwin Taylor, one of the creditors, ranked as *sans hypothèque*, elected to become "*tenant*," but by arrangement he transferred his rights and liabilities as such to Pierre Jean Simon; and these two gentlemen were, on the 27th of March, 1875, declared by the Greffier to be respectively the "*tenant*" and "*tenant subrogé*" of all the heritages which had belonged to the insolvent, subject to the condition expressed in these words: "à la charge au dit tenant et au dit tenant subrogé de payer toutes les dettes et hypothèques qui ne sont pas renoncées faute d'insertion." By order of the 13th of April, 1875, the Royal Court duly confirmed the appointment of Messieurs Taylor and Simon as tenant and "*tenant subrogé.*"

After the death of Mr. Le Bailly, which occurred on the 19th of March, 1881, the widow claimed payment of her marriage contract provisions from the appellant, Thomas Simon, as the eldest son and representative of Pierre Jean Simon, the original "*tenant subrogé.*" The appellant did not dispute his liability to pay the annuity of 200*l.* provided to the widow, but he refused to make payment to her of the sum of 500*l.* specified in the contract. The widow, on the 29th of April, 1881, instituted a suit, before the Royal Court of

Jersey, for recovery of that sum, with interest from the date of her husband's decease; and the Court, on the 6th of June, 1881, decided in favour of the widow. Against that decree an appeal was taken to the Full Court, who, on the 19th of April, 1882, confirmed the judgment of the Court below, and dismissed the appeal with costs.

The case, as it has been presented to this Board, really involves no questions as to dower or as to the other rights to which a widow is entitled by the law or customs of the Island of Jersey. The appellant does not maintain that the widow must be remanded to her legal rights; on the contrary, his contention is that she must take her conventional provisions, but that the provision of 500*l.* out of the personal estate of her husband is, by its very terms, not recoverable from him. Nor does the appellant dispute that, as representing the "*tenant subrogé*," he is bound to satisfy the widow's contract claims to the extent to which these were sustained by the order of the Royal Court in the reference made to them by the Greffier with regard to the widow's demand to be ranked in the *codement* as a secured creditor.

An able and ingenious argument was addressed to us, with the object of shewing that the Royal Court, in directing Dame Margaret Jane Trotter's name and documents of debt to be entered in the *codement*, under date the 7th of April, 1863, only intended to treat her annuity of 200*l.* as a secured debt, and neither intended to attach, nor did, in point of fact, attach, any *hypothèque* to the claim of 500*l.* It was urged that the order of the Court is expressed in general terms, without special mention of the provision of 500*l.*, and is therefore open to that construction. The argument was rested not so much upon the terms of the order, or of the pleadings submitted to the Court before it was pronounced, as upon certain extrinsic considerations bearing upon the improbability of the Court having intended to decide that the claim for 500*l.* had been converted into a preferable debt by the registration of the marriage contract in the Public Register. The appellant's contention really went no further than this, that if it were held that the Court so decided, they must be held to have given a bad decision, and therefore it must be presumed that they did not give it.

There seems to be no reason to doubt—indeed, it was not controverted—that if the Court had decided in express terms that the debt of 500*l.* was entitled to the same priority as the 200*l.* annuity, the appellant could not now have challenged that decision. It necessarily follows that, if the reasonable inference to be derived from the terms of the judgment be that the Court did so decide, the appellant's challenge is equally barred, and he is liable to pay the sum sued for.

Their Lordships are unable to come to the conclusion that the decision of the Royal Court, of date the 20th of March, 1875, was an adjudication upon part only of the widow's claims under her marriage contract. When a creditor, appearing in proceedings for the distribution of his insolvent debtor's estate, produces and claims upon a document of debt which contains two separate obligations to pay by the insolvent, he must, unless something appear to the contrary, be understood as preferring a claim for both debts. Accordingly, it must be taken that Margaret Jane Trotter did claim, in the proceedings "*en décret*," to be ranked for the principal sum in question, as well as for her annuity. If it be assumed, as we think it must, that the lady claimed her provision of 500*l.*, as well as her annuity, it appears to be matter of necessary inference that she also claimed priority for both debts. It never was suggested, either before the Greffier or before the Court, that there was, or even that there might be, a distinction between the two provisions in favour of the widow contained in the marriage contract produced. The claim of the widow as well as the objections of the Greffier and the opposing creditors were stated and maintained on the footing that, as regarded priority, the same *rationes* were applicable to all the widow's marriage contract provisions; and the Court, by its order of the 20th of March, 1875, affirmed her claim to priority in substantially the same terms in which that claim was preferred before the Greffier.

Simon v. *Vernon.*

It was further argued for the appellant that the widow cannot insist, as against him, on payment of the 500*l.* in question, seeing that by the terms of the marriage contract that sum is payable out of a special fund—namely, the personal estate of the insolvent—and that the "*tenant subrogé*" has, in point of fact, taken nothing except heritable estate. It is by no means clear that an onerous obligation by A to pay 500*l.* out of his personal estate must be dealt with on the same principle as if it were a bequest of that amount by A., payable out of a special fund forming part of that estate. In the opinion of their Lordships, it is quite unnecessary to decide that point. The argument, if well founded, might, if it had been put forward in March, 1875, have induced the Royal Court to uphold the ruling of the Greffier in so far as it related to the provision of 500*l.*; but it does not appear to their Lordships to afford a good reason for disturbing the ranking of the widow's claims in the *codement*, as then settled by the judgment of the Court, and for relieving the "*tenant subrogé*" or his representatives of a debt the payment of which was made an essential condition of the title by which they acquired the heritable estates of the insolvent, the late Joshua Le Bailly.

Their Lordships will, therefore, humbly advise Her Majesty that the judgments appealed from ought to be confirmed, and the appeal dismissed with costs.

Solicitors—Lambert, Petch & Shakespear, for appellants; Saunders, Hawksford, Bennett & Co., for respondent.

1883. July 18. } THE ATTORNEY-GENERAL OF ONTARIO (*appellant*) *v.* ANDREW MERCER (*respondent*).

Canada—Real Estate—Escheat—Rights of the Provinces—British North America Act, 1867, *ss.* 102, 109 *and* 126—*Construction.*

By the British North America Act, 1867, *s.* 109, *it is provided that "All lands, mines, minerals and royalties belonging to the several provinces of Canada at the Union shall belong to the several provinces in which the same are situate or arise":*—Held, *that land escheated to the Crown in default of heirs belongs to the province in which the land is situate.*

This was an appeal from a judgment of the Supreme Court of Canada.

On the 28th of September, 1878, the appellant filed an information in the Court of Chancery for Ontario, to recover possession, from the respondent, of certain lands, on the ground that they were escheated to Her Majesty for the benefit of the province. The respondent demurred to the information.

The facts were as follows:—

Andrew Mercer, of the city of Toronto, died on the 13th of June, 1871. At the time of his death he was seized in fee-simple in possession of lands in that city. He died intestate without leaving any heir or next-of-kin. On his death the respondent entered into possession of the lands of which the said Andrew was seized at the time of his death.

On the 7th of January, 1879, the Vice-Chancellor, before whom the demurrer was argued, gave judgment and disallowed the demurrer. From this judgment the respondent appealed to the Court of Appeal for Ontario.

On the 27th of March, 1880, the Court of Appeal affirmed the judgment of the Vice-Chancellor and dismissed the appeal. By agreement the Dominion Government of Canada appealed to the Supreme Court of Canada in the name of the respondent, and it was agreed that the appeal should be limited to the question whether the Government of Canada or the Government of Ontario was entitled to lands situate in

the province of Ontario escheated to the Crown for want of heirs.

On the 14th of November, 1881, the Supreme Court allowed the respondent's appeal, reversed the order of the Court of Appeal and the decree of the Vice-Chancellor, and ordered that the respondent's demurrer should be allowed and the appellant's information dismissed.

Leave to appeal from the Supreme Court of Canada was given.

Davey, Q.C., The Attorney-General of Ontario (*Mowatt, Q.C.*), and *Cartwright*, for the appellant.—Lands in the Province of Ontario are held in free and common soccage, and are subject to the English law relating to escheats in so far as the same is applicable in the province. Such lands in the Province of Ontario belong originally to Her Majesty for the benefit of the province, and therefore revert on escheat to Her Majesty for the benefit of the province. On the true construction of the British North America Act, 1867, the right to lands in Ontario escheated for want of heirs was intended to be retained by the province. There is no provision in the British North America Act, 1867, by which the right of the province to escheated lands within the province is taken away or interfered with.

They referred to 1 Anne, c. 1, 39 & 40 Geo. 3. c. 88, 47 Geo. 3. c. 24, 1 Will. 4. c. 25, 1 & 2 Vict. c. 2, 3 & 4 Vict. c. 35, *Burgess* v. *Wheate* (1), *Theberge* v. *Landry* (2) and *Church* v. *Blake* (3).

The Solicitor-General (*Sir F. Herschell, Q.C.*), *Zalask, Q.C.* (Canadian Bar), and *Jeune*, for the respondent.—It is for the Province of Ontario to shew affirmatively that escheats in that province belong to it, and this has not been shewn. The real property of subjects dying intestate and without heirs escheats to the Crown *jure coronæ*, and this right as regards real property situated in Ontario has not been transferred from the Crown to the Province of Ontario. Since the passing of the British North America Act, 1867, the claim of the province to escheats can be determined only by reference to the provisions of that Act. On the true construction of the Act the right to escheats is expressly given to the Dominion. If not expressly given to the provinces, the right belongs to the Dominion.

They referred to 31 Geo. 3. c. 31, 59 Geo. 3. c. 94, 15 & 16 Vict. c. 39, and to *Russell* v. *The Queen* (4).

THE LORD CHANCELLOR (THE EARL OF SELBORNE) delivered the judgment of their Lordships (5):—

The question to be determined in this case is, whether lands in the Province of Ontario, escheated to the Crown for defect of heirs, "belong" (in the sense in which the verb is used in the British North America Act, 1867) to the Province of Ontario or to the Dominion of Canada.

By the imperial statute 31 Geo. 3. c. 31, s. 43, it was provided that all lands which should be thereafter granted within the Province of Upper Canada (now Ontario), should be granted in free and common soccage, in like manner as lands were then holden in free and common soccage in England. The argument before their Lordships, on both sides, proceeded upon the assumption that the lands now in question were so holden.

All land in England, in the hands of any subject, was holden of some lord by some kind of service, and was deemed in law to have been originally derived from the Crown, "and therefore the King was Sovereign Lord, or Lord paramount, either mediate or immediate, of all and every parcel of land within the realm" (6). The King had "*dominium directum*," the subject "*dominium utile*" (7). The word "tenure" signified this relation of tenant to lord. Free or common soccage was one of the ancient modes of tenure ("A man may hold of his lord by fealty only, and such tenure is tenure in soccage") (8), which by the statute 12 Car. 2. c. 24, was

(1) 1 W. Black. 123.

(2) 46 Law J. Rep. P.C. 1; Law Rep. 2 App. Cas. 102.

(3) 5 Duval, 594.

(4) 51 Law J. Rep. P.C. 77; Law Rep. 7 App. Cas. 829.

(5) The Lord Chancellor (The Earl of Selborne), Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

(6) Co. Litt. 65*a*.

(7) Ibid. 1*a*.

(8) Litt. s. 118.

substituted throughout England for the former tenures by knight-service and by soccage *in capite* of the King, and relieved from various feudal burdens. Some, however, of the former incidents were expressly preserved by that statute, and others (escheat being one of them), though not expressly mentioned, were not taken away.

"Escheat is a word of art, and signifieth properly when by accident the lands fall to the lord of whom they are holden, in which case we say the fee is escheated" (9). Elsewhere (10) it is called "a casual profit," as happening to the lord "by chance, and unlooked for." The writ of escheat, when the tenant died without heirs, was in this form:—"The King to the Sheriff, &c. Command A, &c., that he render to B ten acres of land, with the appurtenances in N which C held of him, and which ought to revert to him the said B as his escheat, for that the said C died without heirs" (11). If there was a mesne lord, the escheat was to him; if not, to the King.

From the use of the word "revert" in the writ of escheat is manifestly derived the language of some authorities which speak of escheat as a species of "reversion." There cannot, in the usual and proper sense of the term, be a reversion expectant upon an estate in fee-simple. What is meant is that, when there is no longer any tenant, the land returns, by reason of tenure, to the lord by whom, or by whose predecessors in title, the tenure was created. Other writers speak of the lord as taking it by way of succession or inheritance, as if from the tenant, which is certainly not accurate. The tenant's estate (subject to any charges upon it which he may have created) has come to an end, and the lord is in by his own right.

The profits and the proceeds of sales of lands escheated to the Crown were, in England, part of the casual hereditary revenues of the Crown, and (subject to those powers of disposition which were reserved to the sovereign by the Restraining and Civil List Acts) they were among the hereditary revenues placed at the disposal of Parliament by the Civil List Acts passed at the beginning of the present and the last preceding reign. Those Acts extended, expressly, to all such casual revenues arising in any of the colonies or foreign possessions of the Crown. But the right of the several colonial Legislatures to appropriate and deal with them, within their respective territorial limits, was recognised by the imperial statute 15 & 16 Vict. c. 39, and by an earlier imperial statute, 10 & 11 Vict. c. 71, confirming the Canada Civil List Act, passed in 1846, after the union of Upper and Lower Canada, by which Act the provision made by the colonial Legislature for the charges of the royal Government in Canada was accepted and taken, instead of "all territorial and other revenues," then at the disposal of the Crown, arising in that province; over which (as to three fifths permanently, and as to two fifths during the life of the Queen, and for five years afterwards) the Legislature of the province was to have full power of appropriation. It may be remarked that the Civil List Acts of the Province of Canada contained no reservation of escheats similar to section 12 of each of the Imperial Civil List Acts above referred to. It must have been purposely omitted, in order that escheats might be dealt with by the Government or Legislature of Canada, and not by the Crown, in whose disposition they must have remained if they had not been in that of the United Province of Canada.

When, therefore, the British North America Act of 1867 passed, the revenue arising from all escheats to the Crown within the then Province of Canada was subject to the disposal and appropriation of the Canadian Legislature.

That Act united into one "Dominion," under the name of "Canada," the former provinces of Canada (which it subdivided into the two new provinces of Ontario and Quebec, corresponding with what had been before 1840 Upper and Lower Canada), Nova Scotia and New Brunswick. It established a Dominion Government and Legislature, and Provincial Governments and Legislatures, making such a division and apportionment between them of powers, responsibilities and rights

(9) Co. Litt. 13*a*.
(10) Ibid. 92*b*.
(11) Fitz. N.B. 144 F.

as was thought expedient. In particular, it imposed upon the Dominion the charge of the general public debts of the several pre-existing provinces, and vested in the Dominion (subject to exceptions, on which the present question mainly turns) the general public revenues, as then existing, of those provinces. This was done by section 102 of the Act, which is in these words:—"All duties and revenues, over which the respective Legislatures of Canada, Nova Scotia and New Brunswick, before and at the Union, had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special powers conferred upon them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada, in the manner, and subject to the charges, in this Act provided."

If there had been nothing in the Act leading to a contrary conclusion, their Lordships might have found it difficult to hold that the word "revenues" in this section did not include territorial as well as other revenues; or that a title in the Dominion to the revenues arising from public lands did not carry with it a right of disposal and appropriation over the lands themselves. Unless, therefore, the casual revenue, arising from lands escheated to the Crown after the Union, is excepted and reserved to the Provincial Legislatures, within the meaning of this section, it would seem to follow that it belongs to the Consolidated Revenue Fund of the Dominion. If it is so excepted and reserved, it falls within section 126 of the Act, which provides that "such portions of the duties and revenues, over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the Union power of appropriation, as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall, in each Province, form one Consolidated Revenue Fund, to be appropriated for the public service of the Province."

Their Lordships, for the reasons above stated, assume the burden of proving that escheats, subsequent to the Union, are within the sources of revenue excepted and reserved to the provinces, to rest upon the provinces. But if all ordinary territorial revenues arising within the provinces are so excepted and reserved, it is not *a priori* probable that this particular kind of casual territorial revenue (not being expressly provided for) would have been, unless by accident and oversight, transferred to the Dominion. The words of the statute must receive their proper construction, whatever that may be; but, if this is doubtful, the more consistent and probable construction ought, in their Lordships' opinion, to be preferred. And it is a circumstance not without weight in the same direction, that, while "duties and revenues" only are appropriated to the Dominion, the public property itself, by which territorial revenues are produced (as distinct from the revenues arising from it), is found to be appropriated to the provinces.

The words of exception in section 102 refer to revenues of two kinds—First, such portions of the pre-existing "duties and revenues" as were by the Act "reserved to the respective Legislatures of the Provinces"; and secondly, such duties and revenues as might be "raised by them, in accordance with the special powers conferred on them by the Act." It is with the former only of these two kinds of revenues that their Lordships are now concerned; the latter being the produce of that power of "direct taxation within the Provinces, in order to the raising of a revenue for Provincial purposes," which is conferred upon the Provincial Legislatures by section 92 of the Act.

There is only one clause in the Act by which any sources of revenue appear to be distinctly reserved to the provinces—namely, the 109th section:—"All lands, mines, minerals and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals or royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same are situate or arise

subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same." The Provincial Legislatures are not, in terms, here mentioned; but the words, "shall belong to the several Provinces," are obviously equivalent to those used in section 126, "are by this Act reserved to the respective Governments or Legislatures of the Provinces." That they do not apply to all lands held as private property at the time of the Union seems clear from the corresponding language of section 125, "No lands or property belonging to Canada, or any Province, shall be liable to taxation"—where public property only must be intended. They evidently mean lands, &c., which were, at the time of the Union, in some sense, and to some extent, *publici juris*; and, in this respect, they receive illustration from another section, the 117th (which their Lordships do not regard as otherwise very material), "The several provinces shall retain all their respective public property, not otherwise disposed of by this Act, subject to the right of Canada to assume any lands or public property required for fortifications, or for the defence of the country."

Their Lordships are not satisfied that section 102, when it speaks of certain portions of the then existing duties and revenues as "reserved to the respective Legislatures of the Provinces," ought to be understood as referring to the powers of provincial legislation conferred by section 92. Even, however, if this were so held, the fact that exclusive powers of legislation were given to the provinces as to "the management and sale of the public lands belonging to the Province," would still leave it necessary to resort to section 109 in order to determine what those public lands were. The extent of the provincial power of legislation over "property and civil rights in the Province" cannot be ascertained without at the same time ascertaining the power and rights of the Dominion under sections 91 and 102, and therefore cannot throw much light upon the extent of the exceptions and reservations now in question.

It was not disputed, in the argument for the Dominion at the bar, that all territorial revenues arising within each province from "lands" (in which term must be comprehended all estates in land), which at the time of the Union belonged to the Crown, were reserved to the respective provinces by section 109; and it was admitted that no distinction could, in that respect, be made between Crown lands then ungranted and lands which had previously reverted to the Crown by escheat. But it was insisted that a line was drawn at the date of the Union, and that the words were not sufficient to reserve any lands afterwards escheated, which at the time of the Union were in private hands, and did not then belong to the Crown.

If the word "lands" had stood alone, it might have been difficult to resist the force of this argument. It would have been difficult to say that the right of the lord paramount to future escheats was "land belonging to him," at a time when the fee-simple was still in the freeholder. If capable of being described as an interest in land, it was certainly not a present proprietary right to the land itself. The word "lands," however, does not here stand alone. The real question is as to the effect of the words "lands, mines, minerals and royalties," taken together. In the Court of Appeal of the Province of Quebec it has been held that these words are sufficient to pass subsequent escheats; and, for this purpose, stress was laid by some, at least, of the learned Judges of that Court (the others not dissenting) on the particular word "royalties" in this context. If "lands and royalties" only had been mentioned (without "mines" and "minerals"), it would have been clear that the right of escheats (whenever they might fall), incident at the time of the Union to the tenure of all soccage lands held from the Crown, was a "royalty" then belonging to the Crown within the province, so as to be reserved to the province by this section, and excepted from section 102. After full consideration, their Lordships agree with the Quebec Court in thinking that the mention of "mines" and "minerals" in this context is not enough to deprive the word "royalties" of what would, otherwise, have been its proper force. It is true (as was observed in some of the opinions of the majority of the Judges in the Supreme

Court of Canada) that this word "royalties," in mining grants or leases (whether granted by the Crown or by a subject), has often a special sense, signifying that part of the *reddendum* which is variable, and depends upon the quantity of minerals gotten. It is also true that, in Crown grants of land in British North America, the practice has generally been to reserve to the Crown, not only royal mines, properly so called, but minerals generally; and that mining grants or leases had, before the Union, been made by the Crown both in Nova Scotia and in New Brunswick; and that, in two Acts of the Province of Nova Scotia (one as to coal mines, and the other as to mines and minerals generally), the word "royalties" had been used in its special sense, as applicable to the variable *reddenda* in mining grants or leases. Another Nova Scotia Act of 1849, surrendering to the Provincial Legislature the territorial and casual revenues of the Crown arising within the province, was also referred to by Mr. Justice Gwynne. But the terms of that Act were very similar to those now under consideration; and if "royalties," in the context which we have here to consider, do not necessarily and solely mean *reddenda* in mining grants or leases, neither may they in that statute.

It appears, however, to their Lordships to be a fallacy to assume that because the word "royalties" in this context would not be inofficious or insensible if it were regarded as having reference to mines and minerals, it ought, therefore, to be limited to those subjects. They see no reason why it should not have its primary and appropriate sense, as to (at all events) all the subjects with which it is here found associated—lands, as well as mines and minerals. Even as to mines and minerals, it here necessarily signifies rights belonging to the Crown, *jure coronæ*. The general subject of the whole section is of a high political nature; it is the attribution of royal territorial rights, for purposes of revenue and government, to the provinces in which they are situate or arise. It is a sound maxim of law that every word ought, *prima facie*, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context. In its primary and natural sense, "royalties" is merely the English translation or equivalent of "*regalitates*," "*jura regalia*," "*jura regia*" (12). "*Regalia*" and "*regalitates*," according to Ducange, are "*jura regia*"; and Spelman (13) says "*Regalia dicuntur jura omnia ad fiscum spectantia.*" The subject was discussed with much fulness of learning in *Dyke* v. *Walford* (14), where a Crown grant of *jura regalia*, belonging to the County Palatine of Lancaster, was held to pass the right to *bona vacantia*. "That it is a *jus*" (said Mr. Ellis, in his able argument, *ibid.*, p. 480) "is indisputable; it must also be *regale*; for the Crown holds it generally through England by royal prerogative, and it goes to the successor of the Crown, not to the heir or personal representative of the sovereign. It stands on the same footing as the right to escheats, to the land between high and low water mark, to felons' goods, to treasure trove, and other analogous rights." With this statement of the law their Lordships agree, and they consider it to have been, in substance, affirmed by the judgment of Her Majesty in Council in that case.

Their Lordships are not now called upon to decide whether the word "royalties," in section 109 of the British North America Act of 1867, extends to other royal rights besides those connected with "lands," "mines" and "minerals." The question is, whether it ought to be restrained to rights connected with mines and minerals only, to the exclusion of royalties, such as escheats, in respect of lands. Their Lordships find nothing in the subject, or the context, or in any other part of the Act, to justify such a restriction of its sense. The larger interpretation (which they regard as, in itself, the more proper and natural) also seems to be that most consistent with the nature and general objects of this particular enactment, which certainly includes all other ordinary territorial revenues of the Crown arising within the respective provinces.

(12) See, *in voce* royalties, Cowel's Interpreter; Wharton's Law Lexicon; and Tomlins' and Jacobs' Law Dictionaries.

(13) Gloss. Arch.

(14) 5 Moore P.C. 634.

The conclusion at which their Lordships have arrived is, that the escheat in question belongs to the Province of Ontario, and they will humbly advise Her Majesty that the judgment appealed from ought to be reversed, and that of the Vice-Chancellor and Court of Appeal of Ontario restored. It is some satisfaction to know that in this result the Courts of Quebec and Ontario have agreed; and, though it differs from the opinion of four Judges, constituting the majority in the Supreme Court of Canada, two of the Judges of that Court, including the Chief Justice, dissented from that opinion.

This being a question of a public nature, the case does not appear to their Lordships to be one for costs.

Solicitors—Freshfields & Williams, for appellant; Bompas, Bischoff & Dodgson, for respondent.

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JUDICIAL COMMITTEE AND THE LORDS OF THE

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THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

GREAT BRITAIN AND IRELAND:

PASSED IN THE

FORTY-SIXTH AND FORTY-SEVENTH YEARS

OF THE REIGN OF HER MAJESTY

QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 29th Day of April, *Anno Domini* 1880, in the Forty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

Being the FOURTH SESSION of the TWENTY-SECOND PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.

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MDCCCLXXXIII.

46 & 47 VICTORIA, 1883.

CHAP. 1.

Consolidated Fund (Permanent Charges Redemption) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Consolidated Fund (Permanent Charges Redemption) Act, 1873. (20th March 1883.)

WHEREAS by the Consolidated Fund (Permanent Charges Redemption) Act, 1873, the Treasury are authorised, as regards certain annuities as defined by that Act which are charged on the Consolidated Fund, or moneys provided by Parliament, to contract for their redemption by payment of a capital sum out of moneys provided by Parliament not exceeding the sum therein mentioned, or by the transfer of Government securities instead of the payment of a sum of money:

And whereas by section twenty-three of the Revenue Friendly Societies and National Debt Act, 1882, the Treasury were authorised, for the purpose of the redemption of such of the said annuities as were payable to ecclesiastical corporations in England, to borrow the required capital sum or annuities from the National Debt Commissioners, and to repay the loan by a terminable annuity:

And whereas it is expedient to give the like authority for the purpose of the redemption of others of the said annuities:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed as one with the Consolidated Fund (Permanent Charges Redemption) Act, 1873.

This Act may, together with that Act, be cited as the Consolidated Fund (Permanent Charges Redemption) Acts, 1873 and 1883, and may be cited, alone, as the Consolidated Fund (Permanent Charges Redemption) Act, 1883.

2. (1.) The Treasury may from time to time borrow from the National Debt Commissioners, and those Commissioners may lend out of the funds in their hands on account of Trustee or Post Office Savings Banks, such capital sum or such Government securities as may be necessary for the purpose of carrying into effect any contract made in pursuance of the Consolidated Fund (Permanent Charges Redemption) Act, 1873, for the redemption of any annuity as defined by that Act.

(2.) For the purpose of repaying any such loan, the Treasury may create, in favour of

the National Debt Commissioners, a terminable annuity for the period of ten years from the date of the loan, to be calculated with interest at the rate of not less than three and a quarter per cent. per annum.

(3.) Such annuity shall be notified by certificate under the hand of the Comptroller or Assistant Comptroller and the Actuary of the National Debt Office, and shall be charged upon the Consolidated Fund or the growing produce thereof.

3. In this Act—

The expression "National Debt Commissioners" means the Commissioners for the reduction of the National Debt.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

CHAP. 2.

Consolidated Fund (No. 1) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 2,233,958*l.* 9*s.* 8*d. out of the Consolidated Fund for the service of the years ending* 31*st March* 1882 *and* 1883.
2. *Issue of* 4,121,300*l. out of the Consolidated Fund for the service of the year ending* 31*st March* 1884.
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-two, one thousand eight hundred and eighty-three, and one thousand eight hundred and eighty-four. (20th March 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-two and one thousand eight hundred and eighty-three the sum of two million two hundred and thirty-three thousand nine hundred and fifty-eight pounds nine shillings and eightpence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four, the sum of four million one hundred and twenty-one thousand three hundred pounds.

3. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of six million three hundred and fifty-five thousand two hundred and fifty-eight pounds nine shillings and eightpence, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

4. This Act may be cited as the Consolidated Fund (No. 1) Act, 1883.

CHAP. 3.

Explosive Substances Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Law relating to Explosive Substances.

(10th April 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Explosive Substances Act, 1883.

2. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the minimum term allowed by law), or to imprisonment with or without hard labour for a term not exceeding two years.

3. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously—

(*a.*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; or

(*b.*) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to endanger life or cause serious injury to property in the United Kingdom,

shall, whether any explosion does or not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labour for a term not exceeding two years, and the explosive substance shall be forfeited.

4. (1.) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years with or without hard labour, and the explosive substance shall be forfeited.

(2.) In any proceeding against any person for a crime under this section, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

5. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this Act, shall be guilty of felony, and shall be liable to be tried and punished for that crime, as if he had been guilty as a principal.

6. (1.) Where the Attorney General has reasonable ground to believe that any crime under this Act has been committed, he may order an inquiry under this section, and thereupon any justice for the county, borough, or place in which the crime was committed or is suspected to have been committed, who is authorised in that behalf by the Attorney General, may, although no person may be charged before him with the commission of such crime, sit at a police court, or petty sessional or occasional court-house, or police station in the said county, borough, or place, and examine on oath concerning such crime any witness appearing before him, and may take the deposition of such witness, and, if he see cause, may bind such witness by recognizance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognizance; and the law relating to the compelling of the attendance of a witness before a justice, and to a witness attending before a justice and required to give evidence concerning the matter of an information or complaint, shall apply to compelling the attendance of a witness for examination and to a witness attending under this section.

(2.) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself; but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in the case of an indictment or other criminal proceeding for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

(3.) A justice who conducts the examination under this section of a person concerning any crime shall not take part in the committing for trial of such person for such crime.

(4.) Whenever any person is bound by recognizance to give evidence before justices, or any criminal court, in respect of any crime under this Act, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties: Provided that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

7. (1.) If any person is charged before a justice with any crime under this Act, no further proceeding shall be taken against such person without the consent of the Attorney General, except such as the justice may think necessary by remand, or otherwise, to secure the safe custody of such person.

(2.) In framing an indictment the same criminal act may be charged in different counts as constituting different crimes under this Act, and upon the trial of any such indictment the prosecutor shall not be put to his election as to the count on which he must proceed.

(3.) For all purposes of and incidental to arrest, trial, and punishment, a crime for which a person is liable to be punished under this Act, when committed out of the United Kingdom, shall be deemed to have been committed in the place in which such person is apprehended or is in custody.

(4.) This Act shall not exempt any person from any indictment or proceeding for a crime or offence which is punishable at common law, or by any Act of Parliament other than this Act, but no person shall be punished twice for the same criminal act.

8. (1.) Sections seventy-three, seventy-four, seventy-five, eighty-nine, and ninety-six of the Explosives Act, 1875, (which sections relate to the search for, seizure, and detention of explosive substances, and the forfeiture thereof, and the disposal of explosive substances seized or forfeited), shall apply in like manner as if a crime or forfeiture under this Act were an offence or forfeiture under the Explosives Act, 1875.

(2.) Where the master or owner of any vessel has reasonable cause to suspect that any dangerous goods or goods of a dangerous nature which, if found, he would be entitled to throw overboard in pursuance of the Merchant Shipping Act, 1873, are concealed on board his vessel, he may search any part of such vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel, and such master or owner, if he finds any such dangerous goods or goods of a dangerous nature shall be entitled to deal with the same in manner provided by the said Act, and if he do not find the same, he shall not be subject to any liability, civil or criminal, if it appears to the tribunal before which the question of his liability is raised that he had reasonable cause to suspect that such goods were so concealed as aforesaid.

9. (1.) In this Act, unless the context otherwise requires,—

The expression "explosive substance" shall

be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

The expression "Attorney General" means Her Majesty's Attorney General for England or Ireland, as the case may be, and in case of his inability or of a vacancy in the office, Her Majesty's Solicitor General for England or Ireland, as the case requires.

(2.) In the application of this Act to Scotland the following modifications shall be made:

The expression "Attorney General" shall be deemed to mean the Lord Advocate, and in case of his inability or of a vacancy in the office, Her Majesty's Solicitor General for Scotland.

The expression "petty sessional court-house" shall be deemed to mean the sheriff court.

The expression "felony" shall be deemed to mean a high crime and offence.

The expression "recognizance" shall be deemed to mean juratory caution.

The expression "justice" shall include sheriff and sheriff-substitute.

CHAP. 4.

National Gallery (Loan) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act for enabling the Trustees and Director of the National Gallery to lend Works of Art to other Public Galleries in the United Kingdom. (10th April 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the National Gallery (Loan) Act, 1883.

2. Any two or more of the trustees, together with the director of the National Gallery, present at any meeting specially assembled for the purpose by fourteen days previous notice, may from time to time order that any pictures or works of art belonging to them or under their control which in their opinion can be spared from the national collection shall be lent to any public gallery authorised by this Act.

3. Any loan of pictures or works of art in pursuance of this Act shall be made for such time and subject to such conditions as any two or more of the said trustees, together with the director, present at any such meeting as aforesaid may determine; provided that any profits, which after payment of all expenses may be derived from any exhibition of pictures or works of art at any gallery to which a loan may be made under this Act, shall be devoted altogether to the promotion of science and art.

4. Pictures and works of art which have been acquired by the said trustees and director under any gift or bequest shall not be lent in pursuance of this Act until the expiration of fifteen years from the date at which such pictures or works of art came into the possession of such trustees and director; and where any such gift or bequest is made on condition that the articles so given or bequeathed should be kept together, or otherwise subject to a condition inconsistent with the same being lent, such pictures and works of art shall not be lent in pursuance of this Act until the expiration of twenty-five years from the date at which such pictures or works of art came

into the possession of such trustees and director.

5. In this Act—

The expression "public gallery authorised by this Act" means any gallery situate in the United Kingdom belonging to or under the control of Government or of any municipal authority or of any society or body approved by any two or more of the said trustees of the National Gallery together with the director.

The expression "municipal authority" means the common council of the City of London, the Metropolitan Board of Works, the town council of any municipal borough in England or Ireland, the town council or police commissioners of any royal burgh in Scotland, also any other local authority which may be approved by any two or more of the said trustees of the National Gallery together with the director.

CHAP. 5.

Consolidated Fund (No. 2) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 6,240,100*l. out of the Consolidated Fund for the service of the year ending* 31*st March* 1884.
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four. (10th April 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four, the sum of six million two hundred and forty thousand one hundred pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of six million two hundred and forty thousand one hundred pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 2) Act, 1883.

CHAP. 6.

Army (Annual) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to provide, during twelve months, for the Discipline and Regulation of the Army. (26th April 1883.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law:

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and thirty-seven thousand six hundred and thirty-two men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions:

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid:

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea:

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of this realm; yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

And whereas the Army Act, 1881, will expire—

(*a.*) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thirtieth day of April one thousand eight hundred and eighty-three; and

(*b.*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July one thousand eight hundred and eighty-three; and

(*c.*) Elsewhere, whether within or without Her Majesty's dominions, on the thirty-first day of December one thousand eight hundred and eighty-three:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:

1 This Act may be cited as the Army (Annual) Act, 1883.

2.—(1.) The Army Act, 1881, shall be and remain in force during the periods herein-after mentioned, and no longer, unless otherwise provided by Parliament; that is to say,

(*a.*) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand eight hundred and eighty-three to the thirtieth day of April one thousand eight hundred and eighty-four, both inclusive; and

(*b.*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand eight hundred and eighty-three to the thirty-first day of July one thousand eight hundred and eighty-four, both inclusive; and

(*c.*) Elsewhere, whether within or without Her Majesty's dominions, from the thirty-first day of December one thousand eight hundred and eighty-three to the thirty-first day of December one thousand eight hundred and eighty-four, both inclusive;

and the day from which the Army Act, 1881, is continued in any place by this Act is in relation to that place referred to in this Act as the commencement of this Act.

(2.) The Army Act, 1881, while in force shall apply to persons subject to military law, whether within or without Her Majesty's dominions.

(3.) A person subject to military law shall not be exempted from the provisions of the Army Act, 1881, by reason only that the number of the forces for the time being in the service of Her Majesty, exclusive of the marine forces, is either greater or less than the number herein-before mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act, 1881, the prices specified in the Schedule to this Act.

Amendments of Army Act, 1881.

4. Whereas the words herein-after mentioned in section forty-six of the Army Act, 1881, are superfluous, inasmuch as the offence therein mentioned is an aggravated offence of drunkenness, and it is expedient to omit the same: Be it therefore enacted as follows:

In section forty-six of the Army Act, 1881, the words "was guilty of drunkenness after "being warned for duty, or unless he" shall be omitted from the third subsection.

5. Whereas by section eighty of the Army Act, 1881, provision is made with respect to the recording of the answers of a recruit in an attestation paper to the questions put to him, and with respect to the signing and attesting of the attestation paper, and doubts have arisen with respect to the application of the said section to duplicates of such paper if duplicates are required by the regulations of a Secretary of State under Part II. of the said Act, and it is expedient to remove such doubts: Be it therefore enacted as follows:—

There shall be added to section eighty of the Army Act, 1881, after the sixth subsection the following enactment:

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

6. Whereas by the second subsection of section ninety-four of the Army Act, 1881, it is enacted that an officer while subject to military law shall not act as a justice of the peace for the purpose of the attestation of soldiers:

And whereas militiamen can be attested before any officer as well as before a justice of the peace, and it is expedient to make provision for the attestation of soldiers before officers: Be it therefore enacted as follows:—

In section 94 of the Army Act, 1881, the words "an officer in the United Kingdom "or elsewhere, if authorised in that behalf "under the regulations of a Secretary of "State also," shall be inserted before the words "every person exercising the office of a magistrate" in the first subsection; and the second subsection shall be omitted.

7. Whereas under section one hundred and forty-five of the Army Act, 1881, it is provided that in the case either (*a*) of an order or decree made for payment by a soldier either of the cost of the maintenance of his wife or child, or of any bastard child, or of the cost of any relief given to his wife or child, by way of loan, being sent to a Secretary of State, or (*b*) of it appearing to the satisfaction of a Secretary of State that a soldier has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age, the Secretary of State may order a sum therein mentioned to be

deducted from the daily pay of such soldier, and to be appropriated in the first case in liquidation of the sum adjudged to be paid by such order or decree, and in the second case towards the maintenance of such wife or children:

And whereas it is expedient to make it obligatory on the Secretary of State to make the order in such cases: Be it therefore enacted as follows:—

In section one hundred and forty-five of the Army Act, 1881, the words "Secretary of State shall order" shall be substituted for the words "Secretary of State may order" in the second subsection.

8. Whereas it is expedient to make further provision respecting the validity of orders of military authorities for the detention in custody of persons subject to military law when on board ship: Be it therefore enacted as follows—

There shall be added to section one hundred and seventy-two of the Army Act, 1881, after the fourth subsection the following enactment—

(5.) Where a military convict, or a military prisoner, or a person who is subject to military law and charged with an offence, is a prisoner in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner in custody and convey him in accordance with the order, and the prisoner while so kept shall be deemed to be kept in military custody.

9. Whereas in section one hundred and seventy-five of the Army Act, 1881, which declares what persons shall be subject to military law as officers, the first subsection is as follows:—

(1.) "Officers of the regular forces on full pay, and if not otherwise subject to military law, officers of the staff of the army, and officers employed on military service under the orders of an officer of the regular forces:"

And whereas, having regard to the terms of the Royal Warrant regulating the pay and promotion of the army, doubts have arisen with respect to the construction of the above enactment, and it is expedient to remove such doubts: Be it therefore enacted as follows:—

In section one hundred and seventy-five of the Army Act, 1881, the words "officers of the "regular forces on the active list, within the "meaning of any Royal Warrant for regulating the pay and promotion of the regular "forces, and officers not on such active list "who are employed on military service under "the orders of an officer of the regular forces, "who is subject to military law" shall be substituted for the first subsection (above recited).

10. Whereas by section one hundred and eighty-two of the Army Act, 1881, power is given to a court-martial to sentence a warrant officer to be suspended from rank, pay, and allowances, or any of them, and injustice may arise if a warrant officer is sentenced to a suspension in any one of such cases, and not in all of them, and it is expedient to prevent the same;

And whereas by the same section power is given to a court-martial to sentence a warrant officer to be transferred to a corps in the same arm or branch of the service, and in the same regimental rank as that in which he served immediately before his transfer to be warrant officer, and such power is unnecessary, as the power to order such transfer is by section eighty-three of the same Act vested in the competent military authority: Be it therefore enacted as follows:—

In section one hundred and eighty-two of the Army Act, 1881, the words "or any of them" shall be omitted after the words "rank and pay and allowances" in the second subsection.

In section one hundred and eighty-two of the Army Act, 1881, the words "or to be "transferred to a corps in the same arm or "branch of the service and in the same rank "as that in which he served immediately "before his transfer to be warrant officer" shall be omitted from the second subsection.

11. In all copies of the Army Act, 1881, which may be printed after the commencement of this Act the words by this Act directed to be substituted for other words shall be printed therein in lieu of the latter words, and the words directed by this Act to be added shall be added thereto, and the words directed by this Act to be omitted shall be omitted therefrom.

SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where hot meal furnished.	Twopence halfpenny per night.
Hot meal as specified in Part I. of the Second Schedule to the Army Act, 1881.	One shilling and one penny halfpenny each.
Where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Fourpence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and ninepence per day.
Lodging and attendance for officer - - - -	Two shillings per night.

Note.—An officer shall pay for his food.

CHAP. 7.

Bills of Sale (Ireland) Act (1879) *Amendment Act*, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Bills of Sale (Ireland) Act, 1879. (26th April 1883.)

WHEREAS it is expedient to amend the Bills of Sale (Ireland) Act, 1879:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Bills of Sale (Ireland) Act (1879) Amendment Act, 1883; and this Act and the Bills of Sale (Ireland) Act, 1879, may be cited together as the Bills of Sale (Ireland) Acts, 1879 and 1883.

2. This Act shall come into operation on the first day of August one thousand eight hundred and eighty-three, which date is herein-after referred to as the commencement of this Act.

3. The Bills of Sale (Ireland) Act, 1879, is herein-after referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as herein-after mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

5. Save as herein-after mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say,)

(1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.

(2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

(1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;

(2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;

(3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;

(4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;

(5.) If execution shall have been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of Ireland then within seven clear days after the time at which it would in the ordinary course of post arrive in Ireland if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Court of Judicature in Ireland, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued as being situated elsewhere than within the county of the city of Dublin or the county of Dublin, or where the bill of sale describes the chattels enumerated therein as being in some place or places outside the said county of the city of Dublin or the county of Dublin, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the clerk of the peace in whose district such place or places is or are situate, and if such places are in the districts of different clerks of the peace, then to each such clerk of the peace.

Every abstract so transmitted shall be filed, kept, and indexed by the clerk of the peace in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a judgment, decree, or warrant for the recovery of taxes, poor rates, county cess, or other rates.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

18. This Act shall not extend to England or to Scotland.

CHAP. 3.

Explosive Substances Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Law relating to Explosive Substances.

(10th April 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Explosive Substances Act, 1883.

2. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the minimum term allowed by law), or to imprisonment with or without hard labour for a term not exceeding two years.

3. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously—

(a.) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; or

(b.) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to endanger life or cause serious injury to property in the United Kingdom,

shall, whether any explosion does or not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labour for a term not exceeding two years, and the explosive substance shall be forfeited.

4. (1.) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years with or without hard labour, and the explosive substance shall be forfeited.

(2.) In any proceeding against any person for a crime under this section, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

5. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this Act, shall be guilty of felony, and shall be liable to be tried and punished for that crime, as if he had been guilty as a principal.

CHAP. 9.

Isle of Man Harbours Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make further provision for taking dues for repairing and improving the Harbours in the Isle of Man. (31st May 1883.)

WHEREAS certain repairs and improvements are required in the harbours of the Isle of Man other than Port Erin, and it is expedient to enable money to be provided for such repairs and improvements by the levy of further duties on vessels using such harbours:

And whereas the said harbours are under the management of the Isle of Man Harbour Commissioners incorporated by the Isle of Man Harbours Act, 1872:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed as one with the Isle of Man Harbours Act, 1872, and may be cited together with that Act as the Isle of Man Harbours Act, 1872 and 1883, and this Act may be cited as the Isle of Man Harbours Act, 1883.

2. The Court of Tynwald from time to time when required by the Governor, may, with the approval of the Board of Trade, by resolution appoint, that there shall be payable by vessels entering or leaving the harbours to which this Act applies, or any of such harbours, a duty on passengers carried for hire by such vessels, of such amount and subject to such regulations as may be specified in such resolution and approved by the Board of Trade: Provided that—

(1.) The said duty shall not exceed a sum of threepence in respect of every passenger embarked and of every passenger disembarked at a harbour in which the said passenger duty is payable:

(2.) The said duty shall be at all times charged equally to all persons in respect of the same description of vessel under the same circumstances:

(3.) The said duty shall not be payable at any harbour at which there have been no improvements made for which it appears to the Board of Trade reasonable to charge such duty.

The Court of Tynwald, when required by the Governor, may, with the approval of the Board of Trade, from time to time, subject to the above provisoes, revoke, alter, or add to any resolution under this section.

3. A resolution of the Court of Tynwald under this Act, when approved by the Board of Trade, shall be published in the London Gazette, and otherwise as the Board of Trade may direct, and shall come into force at such time, not earlier than one month after such publication in the London Gazette, as may be fixed by the resolution.

The approval of the Board of Trade may be signified under the hand of a secretary or assistant secretary of the Board, and any document purporting to be printed by authority in the Isle of Man or by the printers to Her Majesty or of the Government to the Isle of Man, and to contain a resolution of the Court of Tynwald under this Act, approved by the Board of Trade, shall be evidence that the duty mentioned in such resolution is payable.

4. The Commissioners may, subject to the regulations affecting the same, take the passenger duty, which by a resolution made and approved in pursuance of this Act, and for the time being in force, is appointed to be payable at any of the harbours to which this Act applies, and with the consent of the Treasury may either arrange with the Commissioners of

Customs for the collection of the said duty, or may appoint such officers to collect the same upon such terms as to security and otherwise as the Governor may direct.

All sums received by the Commissioners in respect of the said duty or otherwise, in pursuance of this Act shall be paid by them without any deduction to the Commissioners of Customs, and accounted for in like manner as if they were part of the revenue of the Customs of the Isle of Man, but shall be kept as a distinct account from such revenue.

5. For the purpose of collecting the said passenger duty, the term "rates" in the Harbours, Docks, and Piers Clauses Act, 1847 (incorporated with the Isle of Man Harbours Act, 1872.) and in this Act referred to as the General Harbours Act, shall include such duty, and the provisions of the General Harbours Act with respect to the collection of rates, shall for the purposes of this Act be amended as follows:—

(1.) Nothing in the General Harbours Act shall give power to alter the said duty otherwise than as provided by this Act:

(2.) Any packet boat or post office packet, being a packet boat or post office packet as defined under the provisions of any Act relating to the Post Office, shall not be entitled to the exemption contained in section twenty-eight of the General Harbours Act, in respect of the said passenger duty, but shall be entitled to such exemption, either total or partial, from, or to pay such special composition for, that duty, as may be from time to time agreed on between the Governor and HerMajesty's Postmaster General, with the consent of the Treasury, or, in case of difference, as may be determined by the Treasury, and in the absence of any such agreement or determination shall not be entitled to exemption from such duty:

(3.) The Commissioners may, if the regulations so permit, and subject to such regulations, accept any composition for the said passenger duty in respect of any vessel:

(4.) The master of every vessel liable to pay the said passenger duty, or, if the Commissioners so permit, an agent on behalf of the master, shall deliver to the collector of rates a declaration, in a form to be prescribed by the Commissioners, as to the number of passengers carried for hire by the said vessel and embarked or disembarked at any harbour, and a master or agent who refuses or neglects to deliver such declaration, or who delivers any declaration which is false in any material particular, shall be liable to a penalty not exceeding twenty pounds, recoverable as if the same were a penalty mentioned in the General Harbours Act:

(5.) The collector of rates may at any reasonable time inspect and examine, and if he wishes, take copies of or extracts from all books, tickets, and other documents showing the number of passengers carried for hire by any vessel liable to pay the said passenger duty: Provided that any information obtained by means of an inspection under this section, shall not be admissible in evidence in any prosecution or other proceeding against any person for carrying an excessive number of passengers on any voyage of such vessel:

(6.) If any person in possession or charge of any of the said books, tickets, or documents relating to such vessel as aforesaid refuses or fails to produce and show the same or any of them to any collector of rates, or to permit such collector to inspect, examine, or take copies thereof or extracts therefrom, in every such case there shall be payable in respect of such vessel rates calculated at the rate of sixpence per ton on the gross tonnage of such vessel for every time such vessel has entered or left any harbour at which the passenger duty is payable during the period to which the said books or documents which such collector was not permitted to inspect, examine, or take copies or extracts from relate:

(7.) If the passenger duty is not paid by any vessel in respect of any passenger embarked or disembarked at any harbour at which the duty is payable, there shall be payable in respect of such vessel rates calculated at the rate of sixpence per ton on the gross tonnage of such vessel on entering the harbour for such disembarkation or on leaving it after such embarkation; but if the owner or master of the vessel shows that such nonpayment arises from any mistake or accident, and pays or tenders the amount of duty unpaid the said tonnage rate shall not be enforced:

(8.) The gross tonnage of a vessel for the purposes of this section means the gross tonnage of such vessel as ascertained under the provisions of the Merchant Shipping Act, 1854:

(9.) The rates payable under this section shall be in addition to any other harbour dues, and shall (subject to the provisions of the Isle of Man Harbours Act, 1872, as to legal proceedings) be recovered in the manner provided by sections forty-three

and forty-four of the General Harbours Act.

6. The passenger duty and rates received under this Act shall be applied exclusively for defraying the principal and interest due in respect of money borrowed either before or after the passing of this Act for the improvement, maintenance, or repair of the harbours to which this Act applies, or any of them, and subject thereto, for the improvement, maintenance, or repair of the said harbours or any of them.

If at any time the Board of Trade direct that the duty payable in pursuance of this Act be revised, so that the produce thereof may, so far as is practicable, be sufficient and not more than sufficient for the purposes before in this section mentioned, the Court of Tynwald shall revise the same, by a resolution under the foregoing provisions of this Act, and if the Court of Tynwald fail to revise the same, the Board of Trade may withdraw their approval to the resolution appointing such duty, and thereupon such resolution shall cease to be a resolution approved by the Board of Trade.

7. The Commissioners may borrow on the security of the passenger duty and rates under this Act in like manner as they may borrow on the security of the sums mentioned in section twenty of the Isle of Man Harbours Act, 1872.

8. In this Act—

The term "vessel" means any vessel used in navigation which is not propelled solely by oars, and which is of a burden of not less than five tons.

The term "harbours to which this Act applies" means such of the harbours of the Isle of Man other than Port Erin as may for the time being have their limits defined in pursuance of section fourteen of the Isle of Man Harbours Act, 1872.

CHAP. 10.

Customs and Inland Revenue Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. (31st May 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Customs and Inland Revenue Act, 1883.

PART I.

CUSTOMS AND EXCISE.

2. The duties of customs now chargeable upon tea shall continue to be levied and charged, on and after the first day of August one thousand eight hundred and eighty-three until the first day of August one thousand eight hundred and eighty-four, on the importation thereof into Great Britain or Ireland; (that is to say,)

Tea, the pound - - Sixpence.

3. All explosives within the meaning of the Explosives Act, 1875, on the unloading or landing of which any restriction is imposed by or in pursuance of that Act, and all explosive substances within the meaning of the Explosive Substances Act, 1883, which are forfeited under that Act, shall be deemed to be restricted goods within the meaning of the Customs Consolidation Act 1876, and this section shall be read as part of the last-mentioned Act.

4. Every licence or certificate to kill game now in force, or to be taken out under the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter ninety, which expires, or would expire, under the provisions of that Act on the fifth day of April, shall expire on the thirty-first day of July, and wherever in such provisions the fifth day of April is mentioned or referred to, the same shall be read as if the thirty-first day of July had been therein inserted in lieu of the said fifth day of April.

5. A licence or certificate to kill game may be taken out under the provisions of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter ninety, for a continuous period of fourteen days to be specified in such licence or certificate, and there shall be granted and paid thereon the duty of one pound.

6. Every licence granted under the Gun Licence Act, 1870, shall expire on the thirty-first day of July next following the day of the date thereof: Provided, that in the case of any such licence in force at the passing of this Act, or to be granted before the first day of August next after the passing thereof, the same shall not expire until the thirty-first day of July one thousand eight hundred and eighty-four.

7. The expression "any vehicle drawn by a "horse or mule, or horses or mules," in provision numbered six of section nineteen of the Act of the thirty-second and thirty-third years of Her Majesty's reign, chapter fourteen, shall be extended so as to embrace any vehicle drawn or propelled upon a road or tramway, or elsewhere than upon a railway, by steam or electricity, or any other mechanical power.

PART II.

INCOME TAX.

8. There shall be charged, collected, and paid for the year which commenced on the sixth day of April one thousand eight hundred and eighty-three in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four (herein-after referred to as the Income Tax Act, 1853), the following duties of income tax; (that is to say,)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A.) (C.) (D.) or (E.) of the said Act the duty of fivepence;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said Act,—

In England, the duty of twopence halfpenny;

In Scotland and Ireland respectively, the duty of one penny three farthings.

9. All such provisions contained in any Act relating to income tax as were in force on the fifth day of April one thousand eight hundred and eighty-three, shall have full force and effect, with respect to the duties of income tax granted by this Act so far as the same shall be consistent with the provisions of this Act.

10. (1.) Where any dividend, interest, or other annual profits or gains, due or payable half-yearly or quarterly, shall have become due or payable in the course of the said year which commenced on the sixth day of April one thousand eight hundred and eighty-three and shall have been paid to any person prior to the passing of this Act without any charge for the duty of income tax hereby granted having been made thereon or deducted therefrom, the amount of the said duty shall be added to the assessment in respect of the next half-yearly or quarterly payment to such person, and charged thereon and deducted therefrom accordingly.

(2.) Where any person liable to pay any rent, interest, annuity, or other annual payment in the course of the said year shall, on making any such payment prior to the passing of this Act, have not made any deduction in respect of the duty of income tax hereby granted, he shall be authorised to make the deduction on the occasion of the next payment, in addition to any other deduction which he may by law be authorised to make.

(3.) The charge or deduction of the duty of income tax hereby granted in the case of any payment made in the course of the said year prior to the passing of this Act shall be deemed to have been a legal charge or deduction.

11. With respect to the assessment of the duties of income tax hereby granted under Schedules (A.) and (B.) in respect of property elsewhere than in the metropolis as defined by the Valuation (Metropolis) Act, 1869, and of the duties on inhabited houses elsewhere than in the said metropolis, for the year commencing, as respects England, on the sixth day of April, and as respects Scotland, on the twenty-fourth day of May one thousand eight hundred and eighty-three, the following provisions shall have effect:—

(1.) The inspectors or surveyors of taxes shall be the assessors for the said duties, and, in lieu of the poundage by law granted to be divided between the assessors and collectors in regard to such duties, there shall be paid a poundage of three halfpence to the collectors thereof:

(2.) The sum charged as the annual value of any property in the assessment of income tax thereon for the year which commenced on the sixth day of April one thousand eight hundred and eighty-two, and the sum charged as the annual value of every inhabited house in the assessment made thereon for the same year as respects England, and as respects Scotland for the year which commenced on the twenty-fifth day of May one thousand eight hundred and eighty-two, shall be taken as the annual value of such property, or of such inhabited house, for the assessment and charge thereon of the duties of income tax hereby granted, or of the duties on inhabited houses, to all intents and purposes as if such sum had been estimated to be the annual value in conformity with the provisions in that behalf contained in the Acts relating to income tax and the duties on inhabited houses respectively:

(3.) The Commissioners executing the said Acts shall for each place within their district cause duplicates of the assessments to be made out and delivered to the collectors, together with the warrants for collecting the same.

12. In order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and eighty-four, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and eighty-four, shall have full force and effect with respect to the duties of income tax which may be so granted in the same manner as if the said duties had been actually granted and the said provisions had been applied thereto by an Act of Parliament passed on that day: Provided that nothing in this section shall be deemed to render necessary or authorise the appointment of assessors for such of the said duties as may be granted and payable under Schedules (A.) and (B.) of the Income Tax Act, 1853.

CHAP. 11.

Poor Law Conferences Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to provide for Expenses incurred by Guardians of the Poor in relation to Poor Law Conferences.

(18th June 1883.)

WHEREAS doubts have arisen as to the power of guardians of the poor to charge the rates with the payment of expenses incurred in attending conferences for the discussion of matters connected with the duties which devolve on them, and in purchasing reports of such conferences:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Poor Law Conferences Act, 1883.

2. The guardians of any union may, when empowered by and subject to any regulations made by the Local Government Board (which regulations the said Board is hereby authorised from time to time to make, vary, or rescind), pay the reasonable expenses of any guardian or guardians, or clerk to the guardians, incurred in attending any conference of guardians held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such conference, and may charge the amount to their common fund, or, if they have no common fund, to the fund under their control.

3. Expressions used in this Act have the same respective meanings as they have in the Poor Law Act, 1879.

CHAP. 12.

Prevention of Crime (Ireland) Act, 1882, *Amendment (Audience of Solicitors) Act*, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Act for the Prevention of Crime in Ireland, 1882, as to the Audience of Solicitors.

(18th June 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for all parties appearing on the investigation of applications under the provisions of section nineteen of the Prevention of Crimes (Ireland) Act, 1882, to be heard by their solicitors, as well as personally, or by counsel as in said Act provided.

2. This Act may be cited as the Prevention of Crime (Ireland) Act, 1882, Amendment (Audience of Solicitors) Act, 1883.

CHAP. 13.

Consolidated Fund (No. 3) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to apply the sum of five million nine hundred and seventy-three thousand nine hundred and twelve pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four.

(18th June 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the 31st day of March one thousand eight hundred and eighty-four the sum of five million nine hundred and seventy-three thousand nine hundred and twelve pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of five million nine hundred and seventy-three thousand nine hundred and twelve pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such Fund is available.

3. This Act may be cited as the Consolidated Fund (No. 3) Act, 1883.

CHAP. 14.

Constabulary and Police (Ireland) Act, 1883

ABSTRACT OF THE ENACTMENTS.

Preliminary.

PART I.

Royal Irish Constabulary.

An Act to amend the Laws relating to the Pay and Pensions of the Royal Irish Constabulary and the Police Force of Dublin Metropolis; and for other purposes. (18th June 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as the Constabulary and Police (Ireland) Act, 1883.

PART I.

Royal Irish Constabulary.

2. From and after the passing of this Act so much of the Constabulary (Ireland) Act, 1874, as limits the annual salaries of the head constable major, the head constables, constables, acting constables, and sub-constables of the Royal Irish Constabulary, (who are in this part of this Act referred to as constables,) to the sums specified in that Act, shall be repealed. The pay of constables of the Royal Irish Constabulary shall be according to the rates specified in that behalf in the First Schedule to this Act. The extra pay allowed to a limited number of constables of long service shall cease to be paid after the passing of this Act.

There shall be deducted from the pay provided for each constable by this Act the sum of one shilling by the week for every week during which lodging accommodation in any barrack or elsewhere, or an allowance in lieu thereof, is supplied for him out of moneys provided by Parliament or out of local rates: Provided that such deduction shall not be made during the lifetime of the wife, or of any of the children under the age of sixteen years, of a constable whose marriage is registered in the Constabulary Department in accordance with the regulations of the force, in case lodging accommodation is not supplied for such wife or child in a barrack or elsewhere from moneys provided by Parliament or out of local rates.

Provided also that such deduction shall not be made from the pay of the head constable major, nor of any constable whose length of service is less than six months.

3. (1.) Subject to the provisions of this Act, every constable of the Royal Irish Constabulary who became a member of the force on or after the tenth day of August one thousand eight hundred and sixty-six, or who shall become a member of the force after the passing of this Act—

(*a.*) if he has completed not less than twenty-five years service, shall be entitled on the expiration of two months after he has given written notice to the Inspector General of his desire to retire, or of such less time after that notice as the Inspector

General allows, to retire and receive a pension for life; and

(*b.*) if he has completed not less than fifteen years service, and is incapacitated for the performance of his duty by infirmity of mind or body, shall be entitled to retire and receive a pension for life; and

(*c.*) if he is incapacitated for the performance of his duty by infirmity of mind or body occasioned in the execution of his duty without his own default, shall be entitled to retire and to receive a pension for life; and

(*d.*) if he has not completed fifteen years service, and is incapacitated for the performance of his duty by infirmity of mind or body occasioned otherwise than as aforesaid and without his own default, may, if the Inspector General allows him, retire, and the Inspector General, if he thinks fit, may grant him a gratuity.

(2.) Provided that,—

(*a.*) a constable becoming a member of the force after the passing of this Act, and who receives a pension under this section before he has completed twenty-five years service shall be subject to return to service, as mentioned in this Act, if he ceases to be incapacitated; and

(*b.*) where a constable receives a pension under this section before he has completed fifteen years service, the pension shall be subject to such reduction by the Inspector General as is provided by this Act.

(3.) The said pensions and gratuities shall be in accordance with the pension scale under this Act, and, subject to the limits in that scale, shall be such as the Inspector General, with the approval of the Commissioners of the Treasury, may determine.

(4.) Provided that where a pension is granted to a constable on account of infirmity of mind or body, and such infirmity is certified by some legally qualified medical practitioner to have been brought about or been contributed to by his own default or by his vicious habits, and such constable is entitled under this Act to a pension of a fixed amount or to a pension not less than a fixed amount, the Inspector General may, subject to the limit in the pension scale, grant to him a less amount of pension than the said fixed amount of pension to which he would otherwise have been entitled.

The pension scale under this Act shall be the scale set out in the Second Schedule to this Act.

(5.) No pension shall be granted to any such constable unless the Inspector General is satisfied that he has served with diligence and fidelity.

(6.) When any constable who became a member of the force on or after the tenth day of August one thousand eight hundred and sixty-six or who shall become a member of the force after the passing of this Act has completed a service of twenty-five years, the Inspector General may, if he thinks fit, require him to retire upon the terms as to pension prescribed by this Act.

When any constable who became a member of the force before the said tenth day of August one thousand eight hundred and sixty-six has completed a service of twenty-five years, the Inspector General may, if he thinks fit, require him to retire, and in computing the pension to which he is entitled his length of service shall be reckoned as thirty years.

4. (1.) Where a constable dies from some cause which, if it had only incapacitated him from the performance of his duty, would have entitled him to a pension for life, the Inspector General shall grant a pension to his widow and children.

(2.) Where a constable dies from some cause not arising from his own default, and other than that above mentioned in this section, the Inspector General may, if he thinks fit, grant gratuities to his widow and children, or any of them.

(3.) Where a constable to whom a pension has been granted dies within twelve months after the grant of such pension, the Inspector General shall grant a gratuity to his widow and children.

(4.) The said pension allowances and gratuities shall be in accordance with the pension scale under this Act, and, subject to the limits in that scale, shall be such as the Inspector General, with the consent of the Commissioners of the Treasury, may determine.

(5.) This section shall apply to the widows and children of constables appointed before the tenth day of August one thousand eight hundred and sixty-six as if they were constables entitled to pensions under this Act.

(6.) This section shall not apply to the widow or children of any constable who marries after the passing of this Act, unless the marriage of such constable is in accordance with the regulations of the force.

5. (1.) In reckoning the service of a constable for the purposes of this Act, approved service in any other police force, or if he has served in more than one, then in each police force in which he served for not less than three years approved service, and from which with the written sanction of the chief officer of that force he removed to another force, or to the Royal Irish Constabulary, shall be reckoned as service in the Royal Irish Constabulary;

and the length of service which a constable is entitled to reckon in the police force from which he removes shall be stated in the said written sanction, or shall otherwise be sent in writing by the chief officer of that force to the Inspector General of the Royal Irish Constabulary on the removal of the constable into the Royal Irish Constabulary. For the purposes of this Act, approved service shall mean such continuous service as may, after deduction, if any, for sickness, misconduct, or other cause, be established to the satisfaction of the police authority having the control of such police force, to have been diligent and faithful service.

(2.) Where a constable with the knowledge of the Inspector General belongs to the army reserve, his absence when called out for training or for permanent service shall not prevent his service in the constabulary being deemed to be continuous service for the purposes of this Act, and he shall be entitled on returning to the constabulary after the end of such absence to reckon any service which he was entitled to reckon at the commencement thereof.

6. (1.) Where a pension is granted to a constable who, after having served for less than twenty-five years, retires on the ground of his being incapacitated by infirmity of mind or body for the discharge of his duty, the Inspector General shall, before granting such pension, be satisfied, by the evidence of some legally qualified medical practitioner or practitioners employed or approved by him, that such constable is so incapacitated, and that the incapacity is likely to be permanent, and afterwards, until the power under this Act of requiring the constable to serve again ceases, shall yearly or otherwise, from time to time, also satisfy himself by the like evidence that such incapacity continues.

(2.) In the event of such incapacity ceasing before the expiration of such time as would, together with the period of service prior to his retirement, make up a period of twenty-five years, the constable, if he became a member of the force after the passing of this Act, shall be liable to serve again in the force, and if before the expiration of the said time he declines so to serve, or if when serving again he neglects to perform his duty satisfactorily, being in a competent state of health, he shall forfeit his pension.

(3.) A constable so serving again shall be entitled to retire at the same time as he would be entitled to do if the time which elapsed between his retirement and the renewal of his service were service, but the time which so elapsed shall not be reckoned as service in calculating his pension on his retirement subsequent to such renewal.

(4.) Where a pension is granted to a constable who has served for less than fifteen years on the ground of his being incapacitated by infirmity of mind or body for the discharge of his duty, and the Inspector General is, before the expiration of such time as would together with the period of his service prior to the grant of the pension make up a period of twenty-five years, satisfied, by the evidence of some legally qualified medical practitioner or practitioners employed or approved by him, or otherwise, that such incapacity has partly ceased, the Inspector General, may, subject to the limits in the pension scale, reduce permanently or temporarily the pension granted to such constable.

(5.) If a constable fails or refuses, when so required by the Inspector General, to be examined by some legally qualified medical practitioner or practitioners employed or approved by such Inspector General, the Inspector General shall have the same power of requiring such constable to serve again and of forfeiting or reducing the pension of such constable as he would have under this section if satisfied by the evidence of any such practitioner that the incapacity of such constable had wholly or partly ceased.

7. A pension or allowance under this Act is granted only upon condition that it becomes forfeited, and may be withdrawn by the Inspector General, in any of the following cases:—

(*a.*) If the grantee is convicted of any indictable offence; or

(*b.*) If the grantee knowingly associates with thieves or suspected persons; or

(*c.*) If the grantee refuses to give to the police all information and assistance in his power for the detection of crime, for the apprehension of criminals, and for the suppression of any disturbance of the public peace; or

(*d.*) If the grantee is guilty of any conduct which is illegal, or in the opinion of the Inspector General disgraceful, or enters into or continues to carry on any business, occupation, or employment, in which (if he was a constable) he has made use of the fact of his former employment in the police in a manner which the Inspector General considers to be discreditable and improper.

8. Where a constable in receipt of a pension under this Act takes service in any police force, his pension may be suspended by the Inspector General in whole or in part so long as he remains in such service.

9. Where a person obtains any pension,

gratuity, or allowance under this Act by any false representation or false evidence, or by personation, or by malingering or feigning disease or infirmity, or by maiming or injuring himself, or causing himself to be maimed or injured, or otherwise producing disease or infirmity, or by any other fraudulent conduct, such person shall be liable to a fine not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding three months, and also to forfeit the pension, gratuity, or allowance obtained.

Offences against this section may be prosecuted, and penalties recovered, in a summary manner.

10. In the case of any constable who became a member of the Royal Irish Constabulary before the tenth day of August one thousand eight hundred and sixty-six, and who retires after the passing of this Act, and who shall at the time of his retirement have served for thirty years or upwards, the pension which he is qualified to receive may be granted to him without the production of a certificate that he is unable from mental or bodily infirmity to perform his duty.

The pension which may be awarded to any constable who became a member of the Royal Irish Constabulary before the tenth day of August one thousand eight hundred and sixty-six shall not be calculated with reference to the scale of pay specified in the First Schedule to this Act, but shall be calculated with reference to the pay which such constable would be entitled to receive if this Act had not been passed; and for the purposes of such calculation in the case of any head constable who became a member of the force before the tenth day of August one thousand eight hundred and sixty-six, and who had not attained the rank of a first-class head constable before the passing of this Act, such head constable shall, when he has served for five years as a head constable, be deemed to have attained by promotion the rank of a first-class head constable, and to be entitled to the scale of pay to which first-class head constables were entitled at the passing of this Act; and when he has served for less than five years as a head constable shall be deemed to have attained, upon his promotion to be such head constable, the rank of a second-class head constable, and to be entitled to the scale of pay to which second-class head constables were entitled at the passing of this Act.

Provided that any constable who became a member of the force before the said tenth day of August one thousand eight hundred and sixty-six may, if he so elects, be pensioned in accordance with the provisions of this Act relating to the pensions of constables who became members of the force after that date, and with reference to the scale of pay specified in the First Schedule.

11. No deduction shall be made from the pay or pension of any person who becomes a member of the Royal Irish Constabulary after the passing of this Act as a contribution towards the Constabulary Force Fund; nor shall any such person, nor the widow or family of any such person, be entitled to be paid any gratuity, bounty, pension, or allowance, out of that fund.

12. After the first day of October one thousand eight hundred and eighty-three the sub-inspectors, constables, acting constables, and sub-constables of the Royal Irish Constabulary, shall respectively be styled district inspectors, sergeants, acting sergeants, and constables.

PART II.

Dublin Metropolitan Police.

13. From and after the passing of this Act the pay of the chief superintendent, superintendents, inspectors, acting inspectors, station sergeants, sergeants, acting sergeants, and constables of the Dublin Metropolitan Police shall be according to the rates specified in that behalf in the Third Schedule to this Act.

Provided that where any member of the force is at the time of the passing of this Act in receipt of a higher rate of pay than the rate specified in the said schedule in relation to such person, nothing contained in this Act shall be taken to reduce the rate of pay which such person is entitled to receive.

Nothing contained in this Act shall affect the pay or classification of the Inspectors holding that rank at the passing of this Act.

There shall be deducted from the pay provided by this Act for each member of the Dublin Metropolitan Police below the rank of inspector the sum of one shilling and twopence by the week for every week during which lodging accommodation in any barrack or elsewhere, or an allowance in lieu thereof, is supplied for him out of moneys provided by Parliament or out of local rates; provided that such deduction shall not be made from the pay of any supernumerary constable.

14. The provisions of this Act relative to pensions and gratuities for constables of the Royal Irish Constabulary who became members of that force on or after the tenth day of August one thousand eight hundred and sixty-six, or who shall become members of that force

after the passing of this Act, shall apply to the members of the Dublin Metropolitan Police Force, not being of higher rank than chief superintendent, who became members of the force on or after the twelfth day of August, one thousand eight hundred and sixty-seven, or who shall become members of the force after the passing of this Act, subject to the following provisions:

(1.) The term "constable" shall include every member of the Dublin Metropolitan Police, not being of higher rank than chief superintendent.

(2.) Anything authorised or required to be done by the Inspector General shall be done by the Commissioner of the Dublin Metropolitan Police.

15. In the case of any constable who became a member of the Dublin Metropolitan Police before the twelfth day of August one thousand eight hundred and sixty-seven, and who retires after the passing of this Act, and who shall at the time of his retirement have served for thirty years or upwards, the pension which he is qualified to receive may be granted to him without the production of a certificate that he is unable, from mental or bodily infirmity, to perform his duty.

The pension which may be awarded to any constable who became a member of the Dublin Metropolitan Police before the twelfth day of August one thousand eight hundred and sixty-seven shall not be calculated with reference to the scale of pay specified in the Third Schedule to this Act, but shall be calculated with reference to the pay which such person would be entitled to receive if the scale of pay in force at the time of the passing of this Act had continued in force until the time of his retirement; and the pay which such person would be entitled to receive as aforesaid shall for the purpose of such calculation be taken to be the pay set out in the Fourth Schedule to this Act: Provided that any such constable may, if he so elects, be pensioned in accordance with the provisions of this Act relating to the pensions of constables who became members of the force after the said date, and with reference to the scale of pay provided for constables by this Act.

When any constable who became a member of the Dublin Metropolitan Police on or after the twelfth day of August one thousand eight hundred and sixty-seven or who shall become a member of the police after the passing of this Act has completed a service of twenty-five years, the Commissioner may, if he thinks fit, require him to retire upon the terms as to pension prescribed by this Act. When any constable who became a member of the police before that day has completed a service of twenty-five years, the Commissioner may, if he thinks fit, require him to retire, and in computing the pension to which he is entitled, his length of service shall be reckoned as thirty years.

16. The provisions of this Act relative to pensions and gratuities to widows and children of constables shall apply to the widows and children of constables of the Dublin Metropolitan Police, and in the case of the widows and children of constables appointed before the twelfth day of August, one thousand eight hundred and sixty-seven, shall apply as if they were constables entitled to pensions under this Act.

17. Whereas by the eleventh section of the Summary Jurisdiction (Ireland) Amendment Act, 1871, it is enacted that there shall be paid to every deputy appointed by any divisional justice of the police district of Dublin metropolis under the provisions of the said section, by such justice at his own charge, such sum by way of remuneration for his services as the Chief Secretary to the Lord Lieutenant shall direct; and it is expedient to make other provision for the payment of such deputies when they are appointed in the case of the sickness or unavoidable absence of any of such justices but not in any other case:

Therefore whenever after the passing of this Act a deputy is appointed by any of the said divisional justices under such of the provisions of the said section as relate to the case of the sickness or unavoidable absence of any of the said justices, there shall be paid to such deputy, out of moneys to be provided by Parliament, remuneration for his services as such deputy, at such daily rate and subject to such conditions as the Commissioners of the Treasury may from time to time prescribe.

18. Every person appointed after the passing of this Act to be a deputy to any of the said divisional justices shall, before he shall begin to execute the duties of his office, take the oath required by law to be taken by every person appointed to be a divisional justice of the police district of Dublin metropolis.

19. Nothing in this Act shall prevent any constable being dismissed or reduced to any lower rank or lower rate of pay on account of misconduct or negligence in or unfitness for the discharge of his duties, or other reasonable cause.

SCHEDULE I.

Rates of Pay of Royal Irish Constabulary.

	Weekly Pay. s.	d.
Head constable major - -	40	0
Head constable:		
Six years service in that rank and over - - - -	40	0
Three to six years service - -	37	6
Under three years service - -	35	0
Constable:		
Four years service in that rank and over - - - -	31	0
Under four years - - -	29	0
Acting constable - - -	28	0
Sub-constable:		
Twenty years service and over -	27	0
Fifteen to twenty years service -	26	0
Twelve to fifteen years service -	25	0
Nine to twelve years service -	24	0
Seven to nine years service -	23	0
Four to seven years service -	22	0
Six months to four years service -	21	0
Under six months service - -	15	0

The pay of the depôt schoolmaster shall be such as the Lord Lieutenant, with the consent of the Commissioners of the Treasury, may determine.

The weekly pay of any head constable who is a first-class head constable at the passing of this Act shall be forty shillings, irrespective of his length of service in the rank of head constable.

SCHEDULE II.

PENSION SCALE.

Pensions and Gratuities to Constables.

(1.) The pension to a constable on retirement shall be according to the following scale; that is to say,

(*a.*) if he has completed fifteen but less than twenty-one years service, an annual sum equal to one fiftieth of his annual pay for every completed year of service; and

(*b.*) if he has completed twenty-one but less than twenty-five years service, an annual sum equal to twenty fiftieths of his annual pay with an addition of two fiftieths of his annual pay for every completed year of service above twenty years; and

(*c.*) if he has completed twenty-five years service, an annual sum equal to thirty fiftieths of his annual pay with an addition of one fiftieth of his annual pay for every completed year of service above twenty-five years, so however that the pension shall not exceed two thirds of his annual pay.

(2.) The pension to a constable on retirement who is partially incapacitated by infirmity of mind or body occasioned in the execution of his duty without his own default shall, in the case of accidental injury, be according to the following scale, that is to say:

(*a.*) if he has completed not more than five years service, an annual sum not more than ten fiftieths of his annual pay; and

(*b.*) if he has completed more than five and not more than ten years service, an annual sum not more than twelve fiftieths of his annual pay; and

(*c.*) if he has completed more than ten years and not more than fifteen years service, an annual sum not more than fifteen fiftieths of his annual pay; and

(*d.*) if he has completed more than fifteen years service, an annual sum not more than his annual pay:

Provided that if he has completed fifteen years service the pension shall not be less than the sum to which he is entitled under article one of this schedule.

(3.) The pension to a constable on retirement who is wholly incapacitated by infirmity of mind or body occasioned in the execution of his duty without his own default shall, in the the case of accidental injury, be according to the following scale, that is to say:

(*a.*) if he has completed not more than ten years service, an annual sum not more than fifteen fiftieths of his annual pay; and

(*b.*) if he has completed more than ten and not more than fifteen years service, an annual sum not more than twenty fiftieths of his annual pay; and

(*c.*) if he has completed more than fifteen years service, an annual sum not more than his annual pay:

Provided that if he has completed fifteen years service the pension shall not be less than the sum to which he is entitled under article one of this schedule.

(4.) The pension to a constable on retirement who is partially incapacitated by infirmity of mind or body occasioned in the execution of his duty without his own default in a case other than a case of accidental injury, shall be according to the following scale; that is to say,

(*a.*) if he has completed not more than ten years service, an annual sum not more

than twenty fiftieths of his annual pay; and

(*b.*) if he has completed more than ten but not more than fifteen years service, an annual sum not more than one half of his annual pay; and

(*c.*) if he has completed more than fifteen years service, an annual sum not more than his annual pay;

Provided that if he has completed fifteen years service the pension shall not be less than the sum to which he is entitled under article one of this schedule.

(5.) The pension to a constable on retirement who is wholly incapacitated by infirmity of mind or body occasioned in the execution of his duty without his own default, in a case other than a case of accidental injury, shall be an annual sum not more than his annual pay, and if he has completed fifteen years service, not less than the sum to which he is entitled under article one of this schedule.

(6.) Any gratuity to a constable on his retirement who is incapacitated for the performance of his duty by infirmity of mind or body occasioned without his own default, but otherwise than in the execution of his duty, shall not exceed the amount of one month's pay for every completed year of service.

(7.) Where, on account of the infirmity of mind or body of a constable having been brought about or been contributed to by his own default or by his vicious habits, the pension granted to such constable is of less amount than that to which he would otherwise be entitled, the diminution of such pension shall not exceed five fiftieths of the annual pay of such constable.

(8.) A pension granted to a constable who has completed less than the fifteen years service shall not, if reduced on account of partial recovery from his incapacity, be less than one fiftieth of his annual pay for every completed year of service of such constable.

Pensions, Allowances, and Gratuities to Widows and Children.

(9.) Where a constable has died from some cause which, if it had only incapacitated him for the performance of his duty, would have entitled him to a pension for life, the pension to his widow and the allowances to his children shall be according to the following scale:—

(*a.*) the pension to the widow shall be an annual sum equal to one tenth of the constable's pay or the sum of ten pounds, whichever is the larger; and

(*b.*) the allowance to each child shall be an annual sum equal to one fiftieth of the constable's pay or two pounds ten shillings, whichever is the larger.

(10.) Where a constable has died from some cause not arising from his own default, but so that his widow and children are not entitled to pension or allowance under the preceding article of this schedule, any gratuities to the widow and children shall not exceed in the whole the amount of gratuity which could be given to the constable if he had at the time of his death become wholly incapacitated and retired.

(11.) The gratuity granted to the widow and children of a constable who dies within twelve months after the grant of a pension shall not exceed the difference between the annual pay of such constable and the amount he has actually received in respect of his pension.

(12.) The pension to a widow shall continue only while she remains a widow and continues to be of good character.

(13.) The allowance to a child shall not continue after the child attains the age of fifteen years.

General Provisions.

(14.) For the purpose of estimating any pension, gratuity, or allowance under this schedule—

(*a.*) a pension or gratuity to a constable shall be calculated according to the amount of his annual pay at the date of his retirement, or of the injury or cause occasioning the incapacity which compels his retirement, whichever is the larger;

(*b.*) a pension or gratuity to the widow and an allowance or gratuity to a child of a constable shall be calculated according to the amount of the constable's annual pay at the date of his death or of the injury or cause occasioning his death, or where he had a pension of his retirement;

(*c.*) but where a constable who becomes a member of the force after the passing of this Act has, in the course of the three years next before the date of his retirement, or death, or such injury, or cause, been in receipt of a different annual pay from that which he is receiving at that date, his annual pay at the date of the retirement, death, injury, or cause shall be deemed to be the average annual amount of pay received by him for the said three years, instead of the annual amount actually received by him at that date.

(*d.*) Section twelve of the Act of the session of the fourth and fifth years of the reign of His Majesty King William the Fourth, chapter twenty-four, shall continue to

apply to the pensions and gratuities to be granted to constables who became members of the Royal Irish Constabulary before the passing of this Act. Nothing contained in this Act shall be taken to extend that section to any pension or gratuity to which it would not apply if this Act had not been passed.

The annual pay with reference to which pensions and allowances under this Act shall be calculated is the pay set out in the First and Third Schedules to this Act. In converting weekly pay into annual pay the year shall be taken to be fifty-two weeks.

SCHEDULE III.

Rates of Pay of Dublin Metropolitan Police.

Chief Superintendent	Annual salary on appointment 400*l.*, rising by 15*l.* a year to 500*l.*
Superintendent -	Annual salary on appointment 250*l.*, rising by 10*l.* a year to 320*l.*
Inspector - -	Annual salary on appointment 120*l.*, rising by 6*l.* a year to 160*l.*

	Weekly Pay. £	*s.*	*d.*
Acting inspector serving at the passing of this Act - -	2	0	0
Station sergeant - - -	2	0	0
Sergeant:			
Five years service in that rank and upwards - - -	1	18	0
Two to five years service in that rank - - - -	1	16	0
Under two years service in that rank - - - -	1	14	0
Acting sergeant serving at the passing of this Act - -	1	12	6
Constable:			
Fifteen years service in that rank and upwards - -	1	10	0
Eight to fifteen years service in that rank - - -	1	9	0
Three to eight years service in that rank - - -	1	7	0
One to three years service in that rank - - -	1	5	0
Less than one year's service in that rank - - -	1	3	0
Supernumerary constable -	0	15	6

In the Detective ("G") Division the pay shall be at the above rate, subject to the modifications following:—

The annual salary of the superintendent shall be 300*l.*, rising by 10*l.* a year to 400*l.*

The annual salary of the chief inspector shall be 160*l.*, rising by 8*l.* a year to 200*l.*

The weekly pay of a sergeant of eight years service in that rank and upwards shall be 40*s.*

The weekly pay of an acting sergeant serving at the passing of this Act shall be 1*l.* 13*s.* 6*d.*

The constables who are styled detectives shall be paid 30*s.* a week, irrespective of their length of service as constables.

SCHEDULE IV.

The pay of members of the Dublin Metropolitan Police appointed before the 12th August 1867, and who retire upon pensions calculated with reference to the scale of pay in force at the time of the passing of this Act, shall be estimated for the purposes of such pension as follows:

	Annual Pay.
Chief superintendent	330*l.*
Superintendent -	220*l.*, rising by 6*l.* a year to 250*l.*

	Weekly Pay. £	*s.*	*d.*
Acting inspector - - -	1	16	0
Station sergeant - - -	1	16	0
Sergeant holding that rank at the passing of this Act - -	1	14	6
Sergeant, who was an acting sergeant at the passing of this Act, and retires after not less than five years service subsequent to his appointment as acting sergeant - - - -	1	14	6
Sergeant, who was an acting sergeant at the passing of this Act, and retires after less than five years service subsequent to his appointment as acting sergeant	1	12	6
Sergeant, who was a constable at the passing of this Act, and retires after not less than five years service as a sergeant -	1	14	6
Sergeant, who was a constable at the passing of this Act, and retires after less than five years service as a sergeant - -	1	12	6
Acting sergeant - - -	1	12	6
Constable - - - -	1	9	0

The pension of an inspector who became a member of the force before the 12th August 1867, shall be calculated with reference to the

pay which he receives at the time of his retirement.

The pay of members of the force serving in the Detective ("G") Division, appointed before the 12th August, 1867, and who retire upon pensions calculated with reference to the scale of pay in force at the time of the passing of this Act, shall be estimated for the purposes of such pension, as follows:—

	Annual Pay. £	s.	d.
The pay of a superintendent shall be estimated at - -	250	0	0
Chief inspector - - -	180	0	0

	Weekly Pay. £	s.	d.
Inspector - - -	1	19	0
The senior acting inspector -	1	19	0
Acting inspector - -	1	18	0
Sergeant with not less than five years service in that rank -	1	18	0
Sergeant with not less than two years service in that rank -	1	14	6
Sergeant with less than two years service in that rank -	1	13	6
Acting sergeant - - -	1	13	6
Detective - - -	1	10	0
Constable - - -	1	10	0

CHAP. 15.

Lands Clauses (Umpire) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Amendment of s. 28 of 8 Vict. c. 18. extending the power of appointment of umpire by Board of Trade.*
2. *Short title.*

An Act to amend the Lands Clauses Consolidation Act, 1845. (18th June 1883.)

WHEREAS it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The following words in section twenty-eight of the Lands Clauses Consolidation Act, 1845, are hereby repealed, that is to say, "in "any case in which a railway company shall "be one party to the arbitration, and two "justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows:

> 28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

CHAP. 16.

Lord Alcester's Grant Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Grant of* 25,000*l.* *to Baron Alcester.*
2. *Short title.*

An Act to grant a sum of money to Admiral Baron Alcester, G.C.B., in consideration of his eminent services. (29th June 1833.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, duly considering the approbation graciously signified by Your Majesty of the important services rendered by Baron Alcester, Admiral in Your Majesty's Navy, in the course of the recent expedition to Egypt, do most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. A sum of twenty-five thousand pounds shall be paid to Admiral Baron Alcester, G.C.B., out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof.

2. This Act may be cited as Lord Alcester's Grant Act, 1883.

CHAP. 17.

Lord Wolseley's Grant Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Grant of* 30,000*l.* *to Baron Wolseley.*
2. *Short title.*

An Act to grant a sum of money to General Baron Wolseley of Cairo, G.C.B., G.C.M.G., in consideration of his eminent services. (29th June 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, duly considering the approbation graciously signified by Your Majesty of the important services rendered by Baron Wolseley of Cairo, General in Your Majesty's Army, in the course of the recent expedition to Egypt, do most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. A sum of thirty thousand pounds shall be paid to General Baron Wolseley of Cairo, G.C.B. and G.C.M.G., out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof.

2. This Act may be cited as Lord Wolseley's Grant Act, 1883.

CHAP. 18.

Municipal Corporations Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make provision respecting certain Municipal Corporations and other Local Authorities not subject to the Municipal Corporation Act.

(29th June 1883.)

WHEREAS Commissioners were appointed by His late Majesty King William the Fourth (in this Act referred to as the Commissioners of 1834) to inquire into Municipal Corporations in England and Wales, and made reports respecting divers corporations, including most of those mentioned in the schedules to this Act:

And whereas the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882, were passed and applied to most of the places mentioned in the above report, but not to those which are mentioned in the schedules to this Act:

And whereas Commissioners were appointed by Her Majesty to inquire into Municipal Corporations not subject to the Municipal Corporation Acts (in this Act referred to as the Commissioners of 1876), and have made reports to Her Majesty respecting the places mentioned in the schedules to this Act, and it is expedient to make the provisions herein-after appearing respecting those places:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Municipal Corporations Act, 1883.

2. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may in the case of any place or

places appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act) apply to each of the places mentioned in the schedules to this Act; that is to say,

(1.) All civil, criminal, and Admiralty jurisdiction of any corporate officer, court, or judge of the said place appointed or holding office under any charter, grant, or prescription shall cease, whether such jurisdiction is conferred by such charter, grant, or prescription, or by any Act, and the place shall be subject to the same jurisdiction as the part of the county in which it is situate or to which it adjoins, and if it adjoins more than one county or part of a county, then as the county or part with which it has the longest common boundary:

(2.) All exclusive rights of trading, local exemptions from juries, and other local franchises, privileges, and exemptions existing under any charter or grant or prescription shall cease.

3. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may, in the case of any place or places, appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act) apply to each of the places mentioned in the schedules to this Act to which Her Majesty may not be pleased before the said day to grant a new charter; that is to say,

(*a.*) The place shall not be a corporate town or borough, and any municipal or other corporation thereof existing under any charter or grant or prescription shall be dissolved.

(*b.*) All property of any corporation in the place which is dissolved by this Act, or of any person as member or officer thereof, or of any court or judge whose jurisdiction is abolished by this Act, shall be applied for the public benefit of the inhabitants of the place in such manner as may be for the time being provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme, and shall vest in such persons or body corporate as may be specified in such scheme.

(2.) Provided that until any such scheme takes effect the said property shall continue to be held, managed, and enjoyed as heretofore in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the persons managing the property shall continue in like manner as if they were a body constituted by the scheme for the administration of such property, but the legal estate in the property shall vest in the official trustees.

4. Nothing in this Act shall prevent the application to any place of any charter applying the Municipal Corporation Acts which Her Majesty may be pleased to grant, or affect anything done in pursuance of those Acts or any scheme thereunder, and shall not affect the operation of any such charter, thing, or scheme; save that nothing in the said Acts or scheme shall authorise the establishment or continuance of any court for the trial of civil actions.

(2.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

5. Whereas the Commissioners of 1876 reported that the places mentioned in the first part of the First Schedule to this Act might be dealt with by being subjected to the provisions of the Municipal Corporations Act, 1835, and the Acts amending the same, as if they were mentioned in Schedule B. of the Municipal Corporations Act, 1835: Be it therefore enacted as follows:

(1.) As soon as conveniently may be after the passing of this Act, the Privy Council shall cause an inquiry to be made into the expediency of advising Her Majesty to grant a charter extending the Municipal Corporation Acts to the several places mentioned in the first part of the First Schedule to this Act, and also whether it is expedient that any adjoining district not included in the existing corporations shall be included in the places to which such charters may be granted, and shall report to Her Majesty thereon.

(2.) The expenses of such inquiry shall be regulated by the Commissioners of Her Majesty's Treasury, and paid out of moneys provided by Parliament.

(3.) Nothing in this section shall require an inquiry to be held with respect to any place with respect to which a similar inquiry has been held since the first day of January one thousand eight hundred and seventy-nine.

6. The Privy Council, upon being satisfied by any applicants after inquiry that it is expedient for the public so to do, may, by order, provide for retaining any court leet or other court or any officer, whether as returning

officer for the return of members to serve in Parliament, or as town clerk for the purpose of the registration of parliamentary voters, or otherwise, and for the appointment of any officer so retained, subject in every case to such exceptions, restrictions, and modifications as seem expedient.

(2.) Subject to the provisions of any Order of the Privy Council, any person who at the passing of this Act holds an office by virtue of which he is such returning officer or town clerk as aforesaid may during the time limited for the tenure of his office continue to perform the duties of such returning officer or town clerk as aforesaid, and on the expiration of such time, or his otherwise ceasing to perform the duties, the said duties shall, so far as regards the returning officer, be performed in manner provided by the Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to amend the law relating to the "appointment of returning officers in certain "cases," and so far as regards the town clerk shall be performed by the person in the parliamentary borough who is town clerk within the meaning of section one hundred and one of the Parliamentary Registration Act, 1843.

7. Whereas there are local boards or improvement commissioners in some of the places mentioned in the First Schedule to this Act, and the Commissioners of 1876 reported that it might be expedient to establish local boards in other of such places: Be it therefore enacted as follows:

(1.) Where any part of any of the places mentioned in any of the schedules to this Act is comprised in the district of any local board or improvement commissioners, whether established before or after the passing of this Act, and Her Majesty is not pleased to grant a charter to such place, the Local Government Board, after such local inquiry as they think expedient, may, at any time before any corporation in the said place becomes abolished by this Act, make such scheme as might be made by the Committee of Council under part eleven of the Municipal Corporations Act, 1882:

(2.) Sections two hundred and thirteen and two hundred and fourteen of the Seventh Schedule to that Act shall, so far as is consistent with the tenour thereof, apply accordingly as if they were herein re-enacted, with the substitution of the Local Government Board for the Committee of Council, and of the said district for borough, and with a limitation to the purposes of this section:

(3.) A scheme may be made as aforesaid for the purpose of amending any previous scheme under this section:

(4.) Sections two hundred and ninety-four, two hundred and ninety-five, and two hundred and ninety-six of the Public Health Act, 1875, shall, so far as is consistent with the tenour thereof, apply to any local inquiry held by order of the Local Government Board for the purposes of this section.

8. (1.) The Charity Commissioners may provide, by the appointment of interim trustees and otherwise, for the security and proper management and application of the property, for the application of which such Commissioners have, or may in certain events have, power under this Act to make a scheme.

(2.) If any such property has after the first day of March one thousand eight hundred and eighty-three, and before the date at which a charter or a scheme under this Act, or the Municipal Corporations Act, 1882, as the case may be, takes effect, been alienated by way of sale, mortgage, grant, lease, charge, or otherwise, and such alienation has not been made in pursuance of some covenant, contract, or agreement bonâ fide made or entered into on or before the said first day of March, or of some resolution duly entered in the Corporation books of the Corporation on or before the said first day of March, or in pursuance of any right saved by this Act, and such alienation has been made collusively and for no consideration, or for insufficient consideration, such alienation may be set aside in the like proceedings (instituted with the consent of the Charity Commissioners or of the Attorney General) and in like manner as a lease of land of a charity granted without due consideration may be set aside: Provided that if a charter is granted or a scheme made whereby the property is affected, the said proceedings shall be commenced within one year after the charter or scheme takes effect.

(3.) Anything authorised by this Act to be done by the Charity Commissioners may be done by an order of those Commissioners, which may be made in like manner as if the property were the endowment of a charity and application had been made as provided by the Charitable Trusts Acts, 1853 to 1869; and an order of the Charity Commissioners may be made at any time after the passing of this Act, so, however, that the order shall not take effect until such date as the Charity Commissioners fix as being, in their opinion, under the circumstances of the case, most consistent with the purposes of this Act.

(4.) Any corporation or person directly affected by any order of the Charity Commissioners under this Act in relation to any pro-

perty made before a scheme under this Act has provided for the application of such property, or directly affected by the order of the Charity Commissioners which first establishes a scheme providing for the application of such property, may, if aggrieved by the order, appeal (except as herein-after provided) to the Privy Council, and the Privy Council after considering the objections to the order and, if it seem necessary, hearing the parties, may make such order as in their opinion the Charity Commissioners ought to have made, and such order shall have the same effect under this Act as if made by the Charity Commissioners, and an appeal shall not lie to the High Court of Justice under the Charitable Trusts Acts, 1853 to 1869, against any order against which an appeal to the Privy Council can be had in pursuance of this enactment.

(5.) After a scheme has been made under this Act providing for the application of any property the Charitable Trusts Acts, 1853 to 1869, shall apply in all respects as if the scheme were a scheme made in pursuance of those Acts, and the property shall for the purpose of those Acts be deemed to be the endowment of a Charity.

9. (1.) All property by this Act vested in the official trustees or any body corporate or persons shall, so far as the same can be transferred by this Act, be transferred by virtue of this Act, and so far as the same cannot be so transferred, be held in trust for those trustees, body corporate, or persons, and shall be vested for the same estate and interest, and subject to the same liabilities, for and subject to which such property was held at the time immediately before the same becomes so vested.

(2.) For the purposes of this Act the expression "property" includes all property, real and personal, and all things in action, and all rights of common or commonable rights, and rights to toll, and all franchises, privileges, and rights which have any pecuniary value, and all charters, records, deeds, books, and documents, and includes any estate or interest, legal or equitable, in any property as so defined; and all property held, enjoyed, claimed, or administered by any corporation, court, judge, or person shall for the purposes of this Act be deemed to be the property of such corporation or person.

(3.) All powers and duties conferred or imposed by any local Act of Parliament (including a Provisional Order confirmed by Parliament) on, and all trusts administered by, any corporation abolished by this Act, or any officers or nominees of such corporation, either alone or jointly with other persons, shall vest in and be exercised, and performed, and administered by such persons as may be provided by a scheme under this Act, and until such scheme takes effect by the same persons as at the passing of this Act.

(4.) Any question which may arise as to whether anything is property within the meaning of this Act, or as to whether anything is vested in the official trustees or any body corporate or persons as provided by this Act, shall in the first instance be decided by the Charity Commissioners, subject, nevertheless, to an appeal to the High Court of Justice, as provided by section eight of the Charitable Trusts Act, 1860, and such appeal may be presented by any person interested or claiming to be interested in the property, and the provisions of this Act with respect to an appeal to the Privy Council shall not apply.

10. (1.) Every person who now is or hereafter may be an inhabitant of any borough mentioned in any of the schedules to this Act, and also every person who has been admitted or might hereafter have been admitted a freeman or burgess of any such borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any such borough or any municipal or other corporation thereof, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any corporation may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner as he or she by any statute, charter, byelaw, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed: Provided that—

(*a.*) The total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses, which on the first day of March one thousand eight hundred and eighty-three were defrayed out of or chargeable upon the same:

(*b.*) Nothing herein-before contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or corporation; and after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any corporation except as herein-after is excepted:

(*c.*) Nevertheless, every person who on the said first day of March was an inhabitant or was entitled to be admitted a freeman or burgess of any borough mentioned in any of the schedules to this Act, or who on the said first day of March was the wife or widow, son or daughter, of any freeman or burgess of any such borough, or who on the said first day of March was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or corporation as fully and for such time and in such sort as he or she by any statute, charter, byelaw, or custom in force on the first day of March might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise:

(*d.*) Where, by any statute, charter, byelaw, or custom in force at the time of passing this Act within any of the boroughs mentioned in any of the schedules to this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any corporation, or to any member, officer, or servant of any corporation, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, elected under the Municipal Corporations Act, 1882, or to such other person as may be appointed in that behalf by a scheme under that Act or under this Act:

(*e.*) Nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or corporation, or of any person, to the benefit of any such rights as are herein-before reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

(2.) From and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough mentioned in any of the schedules to this Act by gift or purchase.

(3.) Every scheme under the Municipal Corporations Act, 1882, or this Act, shall, if need be, provide for carrying this section into effect, and for the enrolment of persons from time to time entitled under this section, and a scheme may be made for that purpose or for the purpose of managing any property to which the said persons may be for the time being entitled.

11. (1.) If any person alleges that he is by virtue of this Act deprived of any emolument or pecuniary profit, or any other profit of a pecuniary value, he may apply to the Local Government Board, and that Board, if satisfied that the allegation is true, and that under all the circumstances the applicant ought, if deprived thereof, to receive compensation for the same, may order that he shall continue to enjoy such emolument or profit, or shall receive such compensation for the same as the Board may think just, and if the compensation is pecuniary, the money shall (and if necessary from time to time) be raised in such manner or paid out of such funds (being, so far as may be, the same manner or funds in or out of which the emolument or profit was previously raised or paid) as the order directs.

(2.) All liabilities of any corporation, court, judge, or officer abolished by this Act, existing at the time of such abolition, shall be discharged out of the same funds and in the same manner, as near as may be, as they would have been if this Act had not passed; and the Local Government Board, on the application of any person interested, may by order provide in such manner as they think expedient for the discharge of such liabilities.

(3.) For the purposes of this section, a rate, toll, or due may continue to be levied, and may be made, assessed, levied, and collected by such persons as the Local Government Board direct, in like manner as if they were

the persons who, if this Act had not passed, would have been authorised to make, assess, and levy such rate, toll, or due.

(4.) An order under this section may be made an order of the High Court of Justice, and may be enforced accordingly.

12. Nothing in this Act shall be in derogation of any power otherwise vested in the Committee of Council, or the Charity Commissioners, and the Committee of Council and Charity Commissioners may exercise for the purposes of this Act all powers otherwise vested in them in relation to boroughs and charities respectively.

13. With respect to any cinque port or ancient town or member of a cinque port mentioned in the schedules to this Act, the following provisions shall have effect:—

(1.) Nothing in this Act shall diminish the jurisdiction of the Court of Admiralty of the Cinque Ports within the boundaries defined by the Act of the session of the first and second years of the reign of King George the Fourth, chapter seventy-six, intituled "An Act to continue and amend "certain Acts for preventing the various "frauds and depredations committed on "merchants, shipowners, and under-"writers by boatmen and others within "the jurisdiction of the Cinque Ports; "and also for remedying certain defects "relative to the adjustment of salvage "under a statute made in the twelfth year "of the reign of Her late Majesty Queen "Anne," or of any commissioners appointed in pursuance of that Act:

(2.) Nothing in this Act shall increase the authority or jurisdiction which any cinque port, or any court, justice, or officer of a cinque port, has over any member of a cinque port, notwithstanding that that member is, in pursuance of this Act, no longer corporate:

3.) The non-corporate members of any such cinque port or ancient town shall form part of the body of the county, and hundred, and other division in which those members are respectively situate.

14. In the event of a charter not being granted to Winchelsea the property of the corporation of Winchelsea shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the corporation of Winchelsea shall continue undissolved in like manner as if it were constituted by the said scheme; and, notwithstanding anything in this Act, Winchelsea shall continue to be entitled an ancient town of the Cinque Ports.

15. (1.) Every body referred to in the First Schedule to this Act shall, notwithstanding any mistake in the name or description thereof, be subject to this Act, as a corporation, and be deemed to be a local authority within the meaning of section two hundred and thirteen of the Municipal Corporations Act, 1882.

(2.) Any mayor, jurat, recorder, justice of the peace, coroner, bailiff, sergeant, inspector, or constable, or any other officer by whatever name called, having or claiming the authority of any judge or officer above named, shall be deemed to be included in this Act in the expression judge or officer, as the case may be.

(3.) Where in any report of the Commissioners of 1834, or in any report of the Commissioners of 1876, any corporation, court, sessions, judge, recorder, justice, coroner, constable, inspector, authority, or officer, or any franchise, privilege, right, or exemption, or any property, is mentioned in connection with any place mentioned in the schedules to this Act, that mention shall be evidence that the same is subject to this Act.

16. (1.) Nothing in this Act shall affect the right enjoyed by any person at the passing of this Act to vote for any member or members to serve in Parliament.

(2.) The abolition by this Act of any jurisdiction shall not affect anything done in pursuance of such jurisdiction before it is abolished; any offence committed before such abolition may be prosecuted, tried, and punished as if the jurisdiction had been abolished at the time when the offence was committed.

17. Whereas it appears from the Report of the Commissioners of 1876, that doubt exists as to whether the corporation mentioned in Part II. of the First Schedule to this Act, as existing or reputed to exist in Romney Marsh, is a municipal corporation, and it is expedient to make such provision respecting the same and respecting the lords bailiff and jurats of Romney Marsh as herein-after contained: Be it therefore enacted as follows:

(1.) The reputed corporation of the bailiff jurats and commonalty of Romney Marsh shall, notwithstanding anything in this Act, continue to exist, and to elect officers, and to hold the property vested in them, but any such corporation shall not have or exercise any municipal rights or powers; and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by

law applicable or otherwise for the benefit of the inhabitants of the said place.

(2.) Notwithstanding anything in this Act, the bailiff and justices of the corporation of Romney Marsh shall continue to be appointed and elected, as nearly as may be, in like manner as heretofore, and to have authority as justices in like manner as if they were justices assigned by a commission from Her Majesty in a liberty not having a separate court of quarter sessions.

(3.) The reputed corporation of the lords bailiff and jurats of Romney Marsh shall not be deemed a municipal corporation, and notwithstanding anything in this Act shall continue to exist, to elect officers, to hold the property vested in them, and to exercise the same powers as heretofore, and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

18. Whereas it appears from the Report of the Commissioners of 1876 that doubt exists whether the corporation of Havering-atte-Bower is a municipal corporation, and whether an Order in Council for the union of Havering-atte-Bower to the county of Essex might be made in pursuance of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter one hundred and five, intituled "An Act for facili- "tating the union of liberties with the counties "in which they are situate," upon the petition of the justices of the said county, without any petition from the justices of Havering-atte-Bower: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to apply to Havering-atte-Bower or to the justices or corporation or reputed corporation thereof, save that it shall be lawful that an Order in Council be made for uniting Havering-atte-Bower to the county of Essex, in pursuance of the recited Act, upon the petition either of the justices of the said county or of the justices of Havering-atte-Bower.

19. Notwithstanding anything in this Act, the corporation referred to in the Alnwick Corporation Act, 1882, shall continue to be a corporation and to hold and administer the property vested in such corporation at the passing of this Act, and shall apply the same for the purposes mentioned in the said Alnwick Corporation Act, 1882, and the maintenance as heretofore of the Corporation schools, or for any other public or charitable purposes; and the provisions of this Act with respect to an inquiry by the Privy Council or the Local Government Board, or with respect to a scheme by the Local Government Board, shall not apply to Alnwick, and this Act shall not affect the provisions of the said Alnwick Corporation Act, 1882.

20. Whereas in Langharne and Malmesbury divers members of the Corporation, whether called burgesses, landholders, or any other name, have the right to occupy without rent or at low rents certain property belonging to the Corporation, and it is expedient to make provision with respect to such property, be it enacted as follows:

(1.) In the event of a charter not being granted to Langharne or Malmesbury, the property of the corporation of the place to which a charter is not so granted shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, enjoyment, and management, and for that purpose the corporation in the said place shall continue undissolved in like manner as if it were constituted by the said scheme.

(2.) The corporation of such place, subject to the approval of the Charity Commissioners, may sell all or any of the property of the corporation for the best price that may be got for the same; and, after compensating or saving the rights of any person in such property, whether existing or prospective, may pay the proceeds to any public authority in the locality, to be applied by such authority for the benefit of the inhabitants of the said place.

(3.) The provisions of this Act and of the Municipal Corporations Act, 1882, for saving the rights and interests of freemen and of persons who might have become freemen shall extend to the rights and interests of persons who are or if this Act had not passed might have become landholders, assistant burgesses, or capital burgesses in Malmesbury, and for that purpose freemen of Malmesbury may continue to be elected landholders, assistant burgesses, and capital burgesses.

21. Whereas it appears from the report of the Commissioners of 1876 that the office of mayor of Newport (Pembroke) is purely honorary, and that the corporation has no revenue and no municipal function: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the election of the mayor of Newport

(Pembroke) as heretofore, or to dissolve the corporation of Newport (Pembroke), or deprive the lord of the manor or the burgesses of any tolls, rights of common, or other rights of a pecuniary value.

22. Whereas it appears from the Report of the Commissioners of 1876 that the corporation of Over has no revenue, and no municipal function, and that the mayor of Over, elected at the court leet, has a magisterial but no other jurisdiction: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the holding of the court leet, and the election by such court of the mayor of Over as heretofore, but such mayor shall not, as such, have the jurisdiction of a justice, whether for criminal, licensing, or any other purpose.

23. Whereas it appears from the report of the Commissioners of 1876 that the corporation of Altrincham has no municipal function, and that the mayor of Altrincham elected at the court leet has no jurisdiction, be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the holding of the court leet and the election by such court of the mayor of Altrincham as heretofore, but such mayor shall not have any jurisdiction magisterial, municipal, or other.

24. Nothing in this Act shall deprive the lord of the manor of Corfe of any title enjoyed by him under any charter.

25. (1.) Nothing in this Act shall diminish the liability of the owner or occupier of any tenement to any rent or sum payable under any charter granted to any corporation mentioned in the Schedules to this Act, and any person entitled to receive such rent or sum shall have the same right and remedy for recovering the same as prior to the passing of this Act, and also upon the abolition by this Act of the corporation under the charter shall have the power of such corporation or of any officer of such corporation to enforce payment of such rent or sum.

(2.) The provisions of this section and of the other parts of this Act for protecting the rights of persons interested shall have effect in favour of Her Majesty, her heirs and successors, and of any body corporate, not being a corporation abolished by this Act, in like manner as if Her Majesty, her heirs and successors, and such body corporate, were included in the term person.

(3.) Nothing in this Act shall affect the legal proceedings pending at the passing of this Act on the information of the Attorney General against the corporation of the mayor and burgesses of Holt, and certain members of that corporation, and for the purpose of such proceedings the said corporation shall continue to be and to act as a corporation, and the mayor, bailiffs, and burgesses shall continue to be elected and appointed in like manner as if this Act had not passed, and any liabilities of such corporation under any judgment, decree, or order in such legal proceedings shall be deemed for the purposes of this Act to be liabilities of the corporation existing at the time of the abolition thereof.

26. (1.) So much of any Act, law, charter, or usage as is inconsistent with this Act is hereby repealed.

(2.) The Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act to amend the law concern- "ing the making of borough rates in boroughs "not within the Municipal Corporation "Acts," shall, on and after the first day of January one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may appoint, be repealed, without prejudice to any rate previously made in pursuance of that Act, and without prejudice to the making of any rate which is by this Act authorised to be made; and any such rate may be made, levied, collected, and applied, as nearly as may be, as if the said Act had not been repealed.

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

The expression "Privy Council" means the Lords of Her Majesty's most Honourable Privy Council, or any two of them;

The expression "Committee of Council" means a Committee of the said Lords;

The expression "Municipal Corporation Acts" has the same meaning as in the Municipal Corporations Act, 1882:

The expression "Charity Commissioners" means the Charity Commissioners for England and Wales:

The expression "official trustees" means, as respects real property the official trustee of charity lands, and as respects all other property the official trustees of charitable funds, acting under the Charitable Trusts Acts, 1853 to 1869.

SCHEDULES.

FIRST SCHEDULE.

PLACES REPORTED ON BY THE COMMISSIONERS OF 1876.

PART I.

Places to which the Commissioners of 1876 *consider that the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Aldeburgh	"The bailiff and burgesses of the borough of Aldeburgh."
Alnwick	"The chamberlains, common council, and freemen."
Appleby	"The mayor, aldermen, and capital burgesses."
Bishop's Castle	"The bailiff and burgesses of the borough of Bishop's Castle."
Bradninch	"The mayor and burgesses of the borough of Bradninch."
Christchurch	"The mayor and burgesses of the borough of Christchurch."
Henley-on-Thames	"The mayor, aldermen, bridgemen, and burgesses of Henley-on-Thames."
Kidwelly	"The mayor, aldermen, bailiffs, and burgesses."
Llanfyllin	"The bailiffs and burgesses of the borough of Llanfyllin."
Lostwithiel	"The mayor and burgesses of Lostwithiel."
Lydd	"The bailiffs, jurats, and commonalty of the town of Lydd."
Malmesbury	"The aldermen and burgesses of the borough of Malmesbury."
Montgomery	"The bailiffs and burgesses of the borough of Montgomery."
New Romney	"The mayor, jurats, and commonalty of the town and port of New Romney."
Okehampton	"The mayor and burgesses of the town and borough of Okehampton."
Over	"The mayor of Over."
Queenborough	"The mayor, jurats, bailiffs, and burgesses of Quinborowe."
Radnor	"The bailiff, aldermen, and burgesses of New Radnor."
Saltash	"The mayor and free burgesses of the borough of Saltash."
Sutton Coldfield	"The warden and society of the royal town of Sutton Coldfield."
Wareham	"The mayor, capital burgesses, and assistants of the borough of Wareham."
Wilton	"The mayor and burgesses of the borough of Wilton."
Wokingham	"The aldermen and burgesses of the town of Wokingham."
Woodstock	"The mayor and commonalty of the borough of New Woodstock."
Wootton Bassett	"The mayor, aldermen, and burgesses of the borough of Wootton Bassett."

PART II.

Places not mentioned by the Commissioners of 1876 *as places to which the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Alresford	"Bailiff and burgesses of New Alresford."
Altrincham	"The mayor, aldermen, and burgesses of the borough of Altrincham."
Axbridge	"The mayor, aldermen, and burgesses of the borough of Axbridge."
Berkeley	"The mayor and aldermen of the borough of Berkeley."
Bovey Tracey	"The mayor and freeholders of Bovey Tracey."
Brackley	"The mayor, aldermen, and burgesses of the borough of Brackley."
Brading	"The bailiffs, burgesses, and commoners of the borough of Brading."

Places.	Corporation or reputed Corporation.
Camelford - -	"The mayor and burgesses of the vill of Camelford."
Chipping Campden -	"The high steward, deputy steward, treasurer, senior bailiff, junior bailiff, and capital and inferior burgesses of Chipping Campden."
Corfe Castle - -	"The mayor, barons, and inhabitants of Corfe."
Cowbridge - -	"The bailiffs, aldermen, and burgesses of the town of Cowbridge."
Dinas Mowddwy -	"The mayor and burgesses of Dinas Mowddwy."
Dunwich - -	"The bailiffs, burgesses, and commonalty of the borough and corporation of Dunwich."
Dursley - -	"The bailiff and aldermen of Dursley."
East Looe - -	"The mayor and free burgesses of the borough of East Looe."
Fordwich - -	"The mayor, jurats, and commonalty of the town of Fordwich."
Garstang - -	"The bailiff and burgesses of the borough of Garstang."
Great Dunmow -	"The bailiff and burgesses of the borough of Great Dunmow."
Harton - -	"The portreeve and burgesses of Harton."
Havering-atte-Bower -	"The tenants and inhabitants of the lordship or manor of Havering-atte-Bower."
Higham Ferrers -	"The mayor, aldermen, and burgesses of the borough and parish of Higham Ferrers."
Holt - - -	"The mayor and burgesses of Holt."
Ilchester - -	"The bailiff and burgesses of Ilchester."
Kenfig - - -	"The constable of the castle, portreeve, and burgesses of Kenfig."
Kilgerran - -	"The portreeve and burgesses of Kilgerran."
Lampeter - -	"The burgesses of the borough of Lampeter Pont Stephen."
Langport Eastover -	"The portreeve and commonalty of the borough of Langport."
Laugharne - -	"The portreeve and burgesses of the town and corporation of Laugharne."
Llantrissant - -	"The constable of the castle, portreeve, aldermen, and burgesses of Llantrissant."
Loughor - -	"The portreeve, aldermen, and burgesses of the borough of Loughor."
Marazion - -	"The mayor, burgesses, and inhabitants of the town of Marazion."
Nevin - - -	"The mayor, bailiffs, and burgesses of the town and borough of Nevin."
Newport (Salop) -	"The high steward, bailiffs, and burgesses of Newport."
Newport (Pembroke) -	"The mayor, aldermen, and burgesses of the borough of Newport."
Orford - - -	"The mayor and commonalty of the borough of Orford."
Overton - -	"The burgesses of Overton."
Petersfield - -	"The mayor of Petersfield."
Pevensey - -	"The bailiff, jurats, and commonalty of the town and liberty of Pevensey."
Romney Marsh -	"The bailiff, jurats, and commonalty."
St. Clear's - -	"The burgesses and commonalty of St. Clear's."
Seaford - -	"The bailiff, jurats, and freemen of the town and port of Seaford."
Thornbury - -	"The bailiff and aldermen of Thornbury."
Usk - - -	"The portreeve and burgesses of Usk."
Westbury - -	"The mayor and burgesses of Westbury."
Wickwar - -	"The mayor and aldermen of Wickwar."
Winchcomb - -	"The bailiffs and burgesses of Winchcomb."
Winchelsea - -	"The mayor, jurats, and commonalty of the ancient town of Winchelsea."
Wootton-under-Edge -	"The mayor and aldermen of Wootton-under-Edge."
Yarmouth (Isle of Wight).	"The mayor and chief burgesses of the borough of Yarmouth."

NOTE.—Since the Report of the Commissioners a charter has been granted to the town of Lewes.

SECOND SCHEDULE.

Places in which the Commissioners of 1876 *report that a Municipal Corporation has not existed or has become virtually extinct.*

PART I.

Places mentioned in paragraph (15) *of the Report of the Commissioners of* 1876 *as places which either have not been municipal or have long since ceased to be so:*

Bala.	Fowey.	Presteign.
Bangor.	Grampound.	Ruyton.
Bridlington.	Harlech.	St. David's.
Chipping Sodbury.	Hay.	Tavistock.
Criccieth.	Machynlleth.	Weobley.
Crickhowell.	Midhurst.	Wiston.
Farnham.	Newborough.	
Fishguard.	Newton (Lancashire).	

PART II.

Places mentioned in paragraph (16) *of the Report of the Commissioners of* 1876 *as having had municipal corporations in* 1835:

Bossinny.	Llanelly.	Rhuddlan.
Caerwys.	Newtown (Isle of Wight).	Tregony.
Castle Rising.	Plympton Earle.	West Looe.
Clun.		

CHAP. 19.

Medical Act (1858) *Amendment Act*, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Royal University empowered to choose one member of General Medical Council.*
2. *Short title.*

An Act to amend the Medical Act (1858). (16th July 1883.)

WHEREAS by an Act passed in the twenty-first and twenty-second years of Her Majesty's reign, entitled "The Medical Act," a Council, entitled "The General Council of Medical "Education and Registration of the United "Kingdom," was established; and by the same Act it was provided that such Council should consist of twenty-three persons, of whom six were to be nominated by Her Majesty, with the advice of Her Privy Council, and the rest by certain universities and medical bodies therein named, and among such universities the Queen's University in Ireland was empowered to choose one member of the said Council: and whereas by an Act passed in the forty-second and forty-third years of Her Majesty's reign, entitled "The "University Education (Ireland) Act, 1879," it was provided that it should be lawful for Her Majesty by charter to found an university in Ireland, which should be one body politic and corporate, by such name as Her Majesty should appoint; and by the said Act it was also provided that upon a day within a period of two years from the granting of any such charter, to be fixed by the Lord Lieutenant by order made by and with the advice and consent of the Privy Council in Ireland, the Queen's University in Ireland should be dissolved: and whereas by charter dated twenty-seventh day of April one thousand eight hundred and eighty Her Majesty, pursuant to the power by said last-recited Act conferred, did constitute a university, which should be one body politic and corporate, by the name of the Royal University of Ireland: and whereas, subsequently, a day for this purpose having been

duly fixed by the Lord Lieutenant of Ireland, by order made with the advice and consent of the Privy Council in Ireland, the Queen's University in Ireland has been dissolved, and the right enjoyed by the said University to nominate a member of the aforesaid Medical Council has for the future ceased to exist: and whereas it is expedient to confer upon the said Royal University of Ireland the power to appoint a member of the aforesaid Medical Council in the same manner as the Queen's University in Ireland was heretofore entitled:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Royal University of Ireland shall henceforth have, enjoy, and exercise the power to choose one person to be a member of the General Council of Medical Education and Registration of the United Kingdom in the same manner and as fully and subject to the same regulations and conditions as the said Queen's University in Ireland until its dissolution enjoyed and exercised the same; and such person shall have the same authority, and perform the same duties as the person formerly elected a member of said Council by the Queen's University in Ireland, the first appointment to take effect from the time when the existing appointment made by the Queen's University in Ireland shall expire and cease to have effect.

2. This Act may be cited for all purposes as the Medical Act (1858) Amendment Act, 1883.

CHAP. 20.

Registry of Deeds Office (Ireland) Holidays Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Alteration of hours of business in register office.*
2. *Short title.*

An Act to amend the Law relating to the Registry of Deeds Office, Ireland. (16th July 1883.)

WHEREAS by an Act of the session of the second and third years of the reign of King William the Fourth, chapter eighty-seven, intituled "An Act to regulate the Office for registering Deeds, Conveyances, and Wills in Ireland," by section six of the said Act it is enacted as follows:

"That after the said thirty-first day of "December one thousand eight hundred "and thirty-two the said register office "shall be kept open for business from "the hour of ten in the forenoon until "the hour of four in the afternoon of "every day in the year, excepting Sun- "days, Christmas Day, and Good Friday, "and days of Public Fast or Thanks- "giving:"

And whereas it is expedient to amend the said section:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the passing of this Act the said register office shall be kept open for business from the hour of ten in the forenoon until the hour of four in the afternoon of every day in the year, excepting Saturdays, on which days the office shall be closed at the hour of two in the afternoon; provided that the office shall be kept closed on Sundays, Good Friday, Easter Monday, Whitsun Monday, Christmas Day, and the two week days next after Christmas Day, and on days of Public Fast or Thanksgiving.

2. This Act may be cited for all purposes as the Registry of Deeds Office (Ireland) Holidays Act, 1883.

CHAP. 21.

Annual Turnpike Acts Continuance Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

(2nd August 1883.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first and second columns of the first schedule annexed hereto shall, to the extent specified in the third column thereof, continue in force until the first day of September, one thousand eight hundred and eighty-three, and no longer.

2. The Acts specified in the first and second columns of the second schedule annexed hereto shall, to the extent specified in the third column thereof, continue in force until the first day of November, one thousand eight hundred and eighty-three, and no longer.

3. The Acts specified in the first and second columns of the third schedule annexed hereto shall, to the extent specified in the third column thereof, be repealed on and after the first day of November, one thousand eight hundred and eighty-three.

Provided that so much of the road from Shrewsbury to Holyhead as is situate in the county of Salop, being that portion of the said road in relation whereto the said Acts are repealed by this section, shall upon such repeal become a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878; and, in conformity with and subject to the provisions of that Act, one half of the expenses incurred from and after the first day of November, one thousand eight hundred and eighty-three by the highway authority in the maintenance of such main road, shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority.

Terms used in this section shall have the same meaning as in the Highways and Locomotives (Amendment) Act, 1878.

4. The Act specified in the first and second columns of the fourth schedule annexed hereto shall, as from the date specified in the third column thereof, be subject to the modifications specified in the fourth column thereof, and shall, as so modified, continue in force until the first day of November, one thousand eight hundred and eighty-six, and no longer: Provided that, if the tolls should cease to be levied upon the roads to which the said Act is applicable before the first day of November, one thousand eight hundred and eighty-six, in pursuance of an Order made by the Local Government Board under section fifteen of the Turnpike Acts Continuance Act, 1873, the said Act shall in that case expire on the date when the tolls shall so cease to be levied.

5. The Act specified in the first and second columns of the fifth schedule annexed hereto shall, to the extent specified in the third column thereof, as from the date specified in the fourth column thereof, be subject to the modifications specified in the fifth column thereof, and shall to the same extent, as so modified, continue in force until the first day of November, one thousand eight hundred and

eighty-four, and no longer, unless Parliament in the meantime otherwise provides.

6. The Acts specified in the sixth schedule annexed hereto shall continue in force until the first day of November, one thousand eight hundred and eighty-four, and no longer, unless Parliament in the meantime otherwise provides.

7. The Acts specified in the first and second columns of the seventh schedule annexed hereto shall, to the extent specified in the third column thereof, be repealed on and after the first day of November, one thousand eight hundred and eighty-four, unless Parliament in the meantime otherwise provides, due regard being had to local requirements, and to the special circumstances of the trust.

8. All other Acts now in force for regulating, making, amending, or repairing any turnpike road which will expire at or before the end of the next session of Parliament, shall continue in force until the first day of November, one thousand eight hundred and eighty-four, and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer, or any Act which is to be repealed at a specified time.

9. This Act shall not apply to Scotland or Ireland.

10. This Act may be cited for all purposes as the Annual Turnpike Acts Continuance Act, 1883.

SCHEDULES.

SCHEDULES 1, 2, 3, AND 4.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Cumberland -	Carlisle and Eamont Bridge, Northern Division -	2	6
	Glasgow and Carlisle (part) - - - -	1	1, 2, 3, 4, 5
Devon -	Tiverton - - - - - -	2	8
Kent - -	Biddenden to Boundgate - - - -	2	7
Lancaster -	Oldham and Ripponden - - - - -	2	9
Northumberland.	Berwick, Norham, and Islandshires - - -	2	11
	Ford and Lowick - - - - -	4	17
Salop - -	Shrewsbury and Holyhead (part) - - -	3	13,14,15,16
Surrey -	Kingston and Leatherhead - - - -	2	10
York - -	Rotherham and Wortley - - - -	2	12

FIRST SCHEDULE.

Acts which to the extent specified are to continue in force until the 1st of September 1883, and no longer.

Date of Act.	Title of Act.	Extent to which Act is continued.
56 Geo. 3. c. lxxxiii. -	1. An Act for improving the road from the city of Glasgow to the city of Carlisle - -	So far as regards that portion of the road from Glasgow to Carlisle which is situate in the county of Cumberland.
58 Geo. 3. c. xliv. -	2. An Act to alter the application of part of the sum of fifty thousand pounds granted by an Act passed in the fifty-sixth year of the reign of His present Majesty, intituled An Act for improving the road from the city of Glasgow to the city of Carlisle - - - -	
59 Geo. 3. c. xc. -	3. An Act for altering and amending two Acts passed in the fifty-sixth and fifty-eighth years of the reign of His present Majesty, for improving the road from the city of Glasgow to the city of Carlisle - - - -	
1 & 2 Geo. 4. c. cxxvii.	4. An Act for enlarging, explaining, and amending the powers granted by certain Acts passed for improving the road from the city of Glasgow to the city of Carlisle - - -	
2 Will. 4. c. c. -	5. An Act for amending and enlarging the powers, and renewing the term granted by certain Acts passed for improving the communication between the city of Glasgow and the city of Carlisle - - - - -	

SECOND SCHEDULE.

Acts which to the extent specified are to continue in force until the 1st of November 1883, and no longer.

Date of Act.	Title of Act.	Extent to which Act is continued.
22 & 23 Vict. c. xxv.	6. An Act to repeal an Act passed in the eleventh year of the reign of King George the Fourth, chapter one hundred and ten, intituled "An Act for more effectually re- " pairing the road from Carlisle to Penrith, " and from Penrith to Eamont Bridge, in " the county of Cumberland," and to make other provisions in lieu thereof.	So far as regards the "Northern Division" of the road.
24 Vict. c. v. -	7. An Act to continue the Biddenden Turnpike Trust in the county of Kent; and for other purposes.	The whole Act.
24 Vict. c. xix. -	8. An Act to repeal an Act of the eleventh year of the reign of King George the Fourth, for improving several roads and making certain new roads in the counties of Devon and Somerset leading to and from the town of Tiverton, and for amending an Act of His present Majesty for repairing several roads leading from and through the town of Wiveliscombe, and to make other provisions in lieu thereof.	The whole Act.
24 Vict. c. xxv. -	9. An Act to repeal an Act for more effectually amending the road from Oldham, in the county of Lancaster, to Ripponden, in the county of York, and other roads in the same counties, and for making and maintaining a new branch to communicate therewith, and to make other provisions in lieu thereof, so far as regards the said road from Oldham to Ripponden, and the other roads already made in connexion therewith.	The whole Act.
24 Vict. c. xxvii. -	10. An Act for extending the term and amending the provisions of the Act relating to the Kingston-upon-Thames and Leatherhead turnpike road, in the county of Surrey.	The whole Act.
24 Vict. c. lix. -	11. An Act for maintaining certain roads and bridges in the county of the borough and town of Berwick-upon-Tweed, and counties of Northumberland and Berwick, and for the liquidation of the debt due on the security of the tolls taken on the said roads and bridges.	The whole Act.
25 & 26 Vict. c. cxix.	12. An Act for the Rotherham and Wortley turnpike road, in the West Riding of the county of York.	The whole Act.

THIRD SCHEDULE.

Acts which to the extent specified are to be repealed on and after the 1st of November 1883.

1. Date of Act.	2. Title of Act.	3. Extent of Repeal.
59 Geo. 3. c. 30. -	13. An Act for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon, and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His present Majesty, from the future repair and maintenance thereof; and for altering and repealing so much of the said Acts as affects the said line of road.	So far as the same relate to that portion of the road from Shrewsbury to Holyhead which is situate in the county of Salop.
59 Geo. 3. c. 48. -	14. An Act to amend an Act passed in the fifty-fifth year of His present Majesty for granting to His Majesty the sum of twenty thousand pounds towards repairing roads between London and Holyhead by Chester, and between London and Bangor by Shrewsbury, and for giving additional powers to the Commissioners therein named to build a bridge over the Menai Straits, and to make a new road from Bangor Ferry to Holyhead, in the county of Anglesea.	
5 & 6 Will. 4. c. 21. -	15. An Act to amend and alter an Act of the fifty-ninth year of His late Majesty King George the Third, for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His then present Majesty, from the future repair and maintenance thereof; and for repealing so much of the said Acts as affects the said line of road.	
3 & 4 Vict. c. 104. -	16. An Act to transfer to the Commissioners of Her Majesty's Wood and Works, and other commissioners, the several powers now vested in the commissioners for repairing the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and to amend the London and Holyhead Roads Acts, so far as relates to the Dunstable Road.	

FOURTH SCHEDULE.

Act which is to continue in force until the 1st of November 1886, or to the date when the tolls shall cease to be levied, and no longer, subject to modifications.

1. Date of Act.	2. Title of Act.	3. Date from which Modifications are to commence.	4. Modifications.
30 Vict. c. lxxxiv.	17. An Act for maintaining certain roads and bridges in the county of Northumberland, called the Ford and Lowick turnpikes, and for the liquidation of the debt due on the security of the tolls taken at the said roads and bridges.	1 November 1883.	No interest payable. No money to be expended from the tolls in the repair of the roads. Salaries not to exceed 50*l.* per annum.

SCHEDULES 5, 6 AND 7.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Derby	Birkin Lane	6	12
	Sheffield and Chapel-en-le-Frith	6	11
	Tupton and Ashover	6	12
Gloucester	Haw Bridge	6	6
	Tewkesbury, Severn Bridge	5	1
Hants	Winchester Road	6	9
Kent	Folkestone and Barham	6	8
Lancaster	Manchester and Ashton-under-Lyne	6	5
	Manchester and Salter's Brook	6	2, 3
Notts	Retford and Gainsborough	6	7
Sussex	New Chappel, Lindfield, and Brighton	6	10
York	Ferrybridge and Boroughbridge	6	4
Anglesey, Carnarvon, Denbigh, Merioneth	Shrewsbury and Holyhead (part)	7	13, 14, 15, 16.
Flint	Flint, Holywell, and Mostyn	7	17

FIFTH SCHEDULE.

Act which is to continue in force, subject to modifications, until the 1st November 1884, and no longer, unless Parliament in the meantime otherwise provides.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is modified and continued.	4. Date from which Modifications are to commence.	5. Modifications.
13 & 14 Vict. c. lxvi.	1. An Act for continuing the term of an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled, An Act for building a bridge over the River Severn at or near to the Mythe Hill, within the parish and near to the town of Tewkesbury, in the county of Gloucester, to the opposite side of the said river, in the parish of Bushley, in the county of Worcester, and for making convenient roads and avenues to communicate with such Bridge, within the counties of Gloucester and Worcester, and of another Act passed in the seventh year of the reign of His late Majesty King George the Fourth, intituled an Act for altering, amending, and enlarging the powers and provisions of an Act relating to the Tewkesbury Severn Bridge and Roads, for the purpose of paying off the debt now due on the said bridge and roads.	So far as the same relates to the bridge over the river Severn at or near the Mythe Hill.	1st November 1883.	No interest payable. Return toll upon horses drawing to be abolished.

SIXTH SCHEDULE.

Acts which are to continue in force until 1st November 1884, and no longer, unless Parliament in the meantime otherwise provides.

Date of Act.	Title of Act.
7 Geo. 4. c. xvi. - -	2. An Act for more effectually repairing and improving the roads from Manchester in the county palatine of Lancaster to Salter's Brook, in the county palatine of Chester, and for making and maintaining several extensions or diversions of road, and a new branch of road to communicate therewith.
3 Will. 4. c. lvii. - -	3. An Act to amend an Act passed in the seventh year of the reign of His late Majesty King George the Fourth, for repairing the roads from Manchester to Salter's Brook, and for making several roads to communicate therewith, and also for making a certain new extension or diversion of the said roads instead of a certain extension or diversion by the said Act authorised to be made.
5 & 6 Vict. c. lxxxvi. -	4. An Act for repairing, improving, and maintaining the road leading from Ferrybridge, through Wetherby, to Boroughbridge in the county of York.
14 Vict. c. xli. - -	5. An Act to continue the term of the Act of the sixth year of George the Fourth, chapter fifty-one (Local), so far as relates to the turnpike road between Manchester and Audenshaw in the parish of Ashton-under-Lyne, all in the county palatine of Lancaster, and to make better provision for the repair of the road; and for other purposes.
15 Vict. c. lix. - -	6. An Act for continuing the term and amending and extending the provisions of the Acts relating to the Haw Passage Bridge in the county of Gloucester.
24 Vict. c. vi. - -	7. An Act to repeal the Act for more effectually repairing and improving the road from the west end of Gainsburgh Bridge to East Retford, and to Grigley-on-the-Hill in the county of Nottingham, and to make other provisions in lieu thereof.
25 Vict. c. vi. - -	8. An Act for extending the term and amending the provisions of the Acts relating to the Folkestone to Barham Downs turnpike road in the county of Kent.
25 Vict. c. xii. - -	9. An Act for the Winchester Road in the county of Southampton.
25 & 26 Vict. c. lix. -	10. An Act to repeal the Act relating to the New Chappel, Lindfield and Brighton, and Ditcheling and Clayton Roads, and to make other provisions in lieu thereof.
25 & 26 Vict. c. cxxxiv. -	11. An Act to repeal the Act "for repealing two Acts for repairing the road from Little Sheffield in the county of York to Sparrow Pit Gate in the county of Derby, and also an Act for making a road from Banner Cross in the West Riding of the county of York to Fox House in the county of Derby, and for consolidating the trusts of certain roads mentioned in the said Acts, and for amending and making certain other roads to communicate therewith, and for other purposes;" and to make other provisions in lieu thereof.
25 & 26 Vict. c. cxlvii. -	12. An Act for more effectually repairing certain roads called "The Tupton and Ashover Road," and "The Birkin Lane Road," in the county of Derby.

SEVENTH SCHEDULE.

Acts which to the extent specified are to be repealed on and after the 1st of November 1884, unless Parliament in the meantime otherwise provides.

1. Date of Act.	2. Title of Act.	3. Extent of Repeal.
59 Geo. 3. c. 30 -	13. An Act for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon, and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His present Majesty, from the future repair and maintenance thereof; and for altering and repealing so much of the said Acts as affects the said line of road.	
59 Geo. 3. c. 48 -	14. An Act to amend an Act passed in the fifty-fifth year of His present Majesty for granting to His Majesty the sum of twenty thousand pounds towards repairing roads between London and Holyhead by Chester, and between London and Bangor by Shrewsbury, and for giving additional powers to the Commissioners therein named to build a bridge over the Menai Straits, and to make a new road from Bangor Ferry to Holyhead, in the county of Anglesea.	So far as the same relate to that portion of the road from Shrewsbury to Holyhead which is situate in the counties of Anglesey, Carnarvon, Denbigh and Merioneth.
5 & 6 Will. 4. c. 21 -	15. An Act to amend and alter an Act of the fifty-ninth year of His late Majesty King George the Third, for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His then present Majesty, from the future repair and maintenance thereof; and for repealing so much of the said Acts as affects the said line of road.	
3 & 4 Vict. c. 104 -	16. An Act to transfer to the Commissioners of Her Majesty's Woods and Works, and other commissioners, the several powers now vested in the commissioners for repairing the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and to amend the London and Holyhead Roads Acts, so far as relates to the Dunstable Road.	
26 Vict. c. xxx. -	17. An Act for more effectually repairing and improving the several roads comprised in the Flint, Holywell and Mostyn Districts of roads; and for reviving and extending the powers for the construction of certain new roads; and for other purposes.	The whole Act.

CHAP. 22.

Sea Fisheries Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to carry into effect an International Convention concerning the Fisheries in the North Sea, and to amend the laws relating to British Sea Fisheries. (2nd August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Sea Fisheries Act, 1883.

Confirmation of Convention.

2. The convention set out in the first schedule to this Act (referred to in this Act as the Convention) is hereby confirmed, and the Articles thereof shall be of the same force as if they were enacted in the body of this Act.

Fishery Regulations.

3. It shall be lawful for Her Majesty from time to time, by Order in Council, to make, alter, and revoke regulations for carrying into execution this Act, and the intent and object thereof, and for the maintenance of good order among sea fishing boats, and the persons belonging thereto, and to impose fines not exceeding ten pounds for the breach of such regulations.

4. If within the exclusive fishery limits of the British Islands any person, or if outside those limits any person belonging to a British sea-fishing boat,

(*a.*) acts in contravention of Articles thirteen to twenty-two (both inclusive) of the first schedule to this Act, or any of them; or,

(*b.*) causes injury to any person in any one or more of the following ways, namely, by assaulting any one belonging to another sea-fishing boat, or by causing damage to another sea-fishing boat, or to any property on board thereof, or belonging thereto; or,

(*c.*) fishes for oysters or has on board his boat any oyster dredge within any seas and during any time within and during which oyster fishing is prohibited by law, or by any convention, treaty, or arrangement to which this Act may be hereafter applied;

such person shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or, in the discretion of the court, to imprisonment for a term not exceeding three months, with or without hard labour.

5. If within the exclusive fishery limits of the British Islands, any person, or if outside those limits any person belonging to a British sea-fishing boat,

(*a.*) Uses any instrument for the purpose of damaging or destroying, by cutting or otherwise, any fishing implement belonging to another sea-fishing boat, except in the cases provided for by Articles twenty and twenty-one of the first schedule to this Act; or,

(*b.*) Takes on board or has on board such boat any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise;

such person shall be liable on summary conviction to a fine not exceeding fifty pounds, or in the discretion of the court to imprisonment for a term not exceeding three months, with or without hard labour, and the instrument shall be liable to be forfeited.

6. The regulations respecting lights for the time being in force under the Acts relating to merchant shipping shall, so far as they relate to sea-fishing boats, be deemed to be provisions of this Act and may be enforced accordingly, and a sea-fishery officer shall for that purpose, in addition to his powers under this Act, have the same powers as are given to any officer by the said Acts relating to merchant shipping.

Exclusive Fishery Limits.

7. (1.) A foreign sea-fishing boat shall not enter within the exclusive fishery limits of the British Islands, except for purposes recognised by international law, or by any convention, treaty, or arrangement for the time being in force between Her Majesty and any Foreign State, or for any lawful purpose.

(2.) If a foreign sea-fishing boat enters the exclusive fishery limits of the British Islands,

(*a.*) The boat shall return outside of the said limits so soon as the purpose for which it entered has been answered;

(*b.*) No person on board the boat shall fish or attempt to fish while the boat remains within the said limits;

(*c.*) Such regulations as Her Majesty may from time to time prescribe by Order in Council shall be duly observed.

(3.) In the event of any contravention of this section on the part of any foreign sea-fishing boat, or of any person belonging thereto, the master or person for the time being in charge of such boat shall be liable on summary conviction to a fine not exceeding, in the case of the first offence, ten pounds, and in the case of

a second or any subsequent offence, twenty pounds.

Registry of British Sea-fishing Boats.

8. (1.) Sections twenty-two, twenty-three, twenty-four, and twenty-six of the Sea Fisheries Act, 1868 (which relate to the registry of British sea-fishing boats), shall have effect as if Articles five to twelve (both inclusive) of the first schedule to this Act were therein referred to in addition to the Articles of the first schedule to that Act in the said sections mentioned, and as if offences under this Act were offences in the said sections mentioned; provided that nothing in the said sections shall be deemed to authorise any foreign sea-fishery officer to do anything which he is not, under the first schedule to this Act, authorised to do.

(2.) Section one hundred and seventy-six of the Customs Consolidation Act, 1876, shall not apply to any British sea-fishing boat entered or registered in pursuance of the said sections of the Sea Fisheries Act, 1868.

Miscellaneous.

9. (1.) There shall not be manufactured or sold or exposed for sale at any place within the British Islands, any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise.

(2.) In the event of any contravention of this section a person guilty thereof shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or, in the discretion of the court, to imprisonment for a term not exceeding three months, with or without hard labour, and the instrument shall be liable to be forfeited.

10. The boats and things specified in Article twenty-five of the first schedule to this Act shall be deemed to be "wreck" within the meaning of any Acts relating to merchant shipping, so however that the provisions of the said Article shall be duly observed.

Enforcement of Act.

11. (1.) The provisions of this Act and of any Order in Council under this Act or under the sections of the Sea Fisheries Act, 1868, amended by this Act shall be enforced by sea-fishery officers, either British or foreign.

(2.) The following persons shall be British sea-fishery officers; that is to say, every officer of or appointed by the Board of Trade, every commissioned officer of any of Her Majesty's ships on full pay, every officer authorised in that behalf by the Admiralty, every British Consular Officer, every collector and principal officer of customs in any place in the British Islands, and every officer of Customs in the British Islands authorised in that behalf by the Commissioners of Customs, every divisional officer of the coast guard, and every principal officer of a coastguard station.

(3.) The following persons shall be foreign sea-fishery officers, that is to say, the commander of any vessel belonging to the Government of any Foreign State bound by the Convention, and any officer appointed by a Foreign State for the purpose of enforcing the Convention, or otherwise recognised by Her Majesty as a sea-fishery officer of a Foreign State.

12. For the purpose of enforcing the provisions of this Act and of any Order in Council under this Act or under the Sea Fisheries Act, 1868, as amended by this Act, a British sea-fishery officer may with respect to any sea-fishing boat within the exclusive limits of the British Islands and with respect to any British sea-fishing boat outside of those limits, exercise the following powers:

(1.) He may go on board it;

(2.) He may require the owner, master, and crew, or any of them, to produce any certificates of registry, licences, official logbooks, official papers, articles of agreement, muster rolls, and other documents relating to the boat or to the crew, or to any member thereof, or to any person on board the boat, which are in their respective possession or control on board the boat, and may take copies thereof or of any part thereof;

(3.) He may muster the crew of the boat;

(4.) He may require the master to appear and give any explanation concerning his boat and her crew, and any person on board his boat, and the said certificates of registry, licences, official logbooks, official papers, articles of agreement, muster rolls, and other documents, or any of them;

(5.) He may examine all sails, lights, small boats, anchors, grapnels, and fishing implements belonging to the boat;

(6.) He may seize any instrument serving only or intended to damage or destroy fishing implements, by cutting or otherwise, which is found on board the boat or in the possession of any person belonging to the boat;

(7.) He may make any examination or inquiry which he deems necessary to ascertain whether any contravention of the provisions of this Act, or of any such Order of Council as aforesaid has been committed, or to fix the amount of compensation due for any damage done to another sea-fishing boat, or to any person or property on board thereof or belonging thereto, and may administer an oath for such purpose; and

(8.) In the case of any person who appears to him to have committed any such contravention he may, without summons, warrant, or other process, both take the offender and the boat to which he belongs and the crew thereof to the nearest or most convenient port, and bring him or them before a competent court, and detain him, it, and them in the port until the alleged contravention has been adjudicated upon.

13. For the purpose of carrying into effect the Convention, and of exercising and performing the powers and duties thereby vested in and imposed on cruisers and commanders of cruisers, a foreign sea-fishery officer may, with respect to any British sea-fishing boat, and any sea-fishery officer, whether British or foreign, may, with respect to any foreign sea-fishing boat to which this Act for the time being applies, exercise any of the powers conferred by this Act on British sea-fishery officers.

Provided that—

(*a.*) Nothing in this section shall authorise a sea-fishery officer to do anything not authorised by the Convention; and

(*b.*) The port to which any sea-fishing boat or any person belonging thereto is taken shall, except where the nationality of such boat is not evidenced by official papers, be a port of the state to which such boat belongs.

14.—(1.) A sea-fishery officer shall be entitled to the same protection in respect of any action or suit brought against him for any act done or omitted to be done in the execution of his duty under this Act, as is given to any officer of customs by the Customs Consolidation Act, 1876, or any Act amending the same, and (with reference to the seizure or detention of any ship) by any Act relating to the registry of British ships.

(2.) If any person obstructs any sea-fishery officer in acting under the powers conferred by this Act, or refuses or neglects to comply with any requisition or direction lawfully made or given by, or to answer any question lawfully asked by, any sea-fishery officer in pursuance of this Act, such person shall be liable, on summary conviction, to a fine not exceeding fifty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Legal Proceedings.

15. (1.) Where on the conviction of any person under this Act for an offence it appears to the court that any injury to person or property has been caused by the offence, the court may by such conviction adjudge the person convicted to pay in addition to any fine a reasonable sum as compensation for such injury, and such sum may be recovered as a fine under this Act and when recovered shall be paid to the person injured.

(2.) Any compensation specified in a document signed in accordance with Article thirty-three of the first schedule to this Act or fixed by a sea-fishery officer in accordance with any submission to arbitration may be recovered as a simple contract debt, and in England may also be recovered as a civil debt before a court of summary jurisdiction.

(3.) In a proceeding against any person for the recovery of such last-mentioned compensation, the formal document referred to in the said Article, or an award of a sea-fishery officer in pursuance of a submission to arbitration signed by the person liable to pay such compensation, shall be sufficient evidence that such person is liable to pay the compensation specified in such document or award.

16. (1.) Offences under this Act may (save as otherwise provided) be prosecuted, and fines under this Act may be recovered in a summary manner; that is to say,—

(*a.*) In England before a justice or justices, in manner provided by the Summary Jurisdiction (English) Acts;

(*b.*) In Scotland in manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881;

(*c.*) In Ireland within the police district of Dublin metropolis in manner provided by the Acts regulating the powers and duties of the justices of the peace of such district, or of the police of such district, and elsewhere in Ireland in manner provided by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same;

(*d.*) In the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark respectively, before any court, governor, deputy governor, deemster, jurat, or other magistrate, in the manner in which the like offences and fines are by law prosecuted and recovered, or as near thereto as circumstances admit.

(2.) If any person feels aggrieved by any conviction under this Act by a court of summary jurisdiction, or by any determination or adjudication of such court with respect to any compensation under this Act, he may, where imprisonment is awarded without the option of a fine, or the sum adjudged to be paid exceeds five pounds, appeal therefrom as follows:—

(*a.*) In England the appeal shall be to

quarter sessions in manner provided by the Summary Jurisdiction English (Acts);

(*b.*) In Ireland the appeal shall be to the court of quarter sessions in manner directed by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same.

(*c.*) In Scotland, the Isle of Man, and the Islands of Guernsey, Jersey, Alderney, and Sark, the appeal shall be to the court and in the manner in which appeals from the like convictions and determinations and adjudications are made.

17. (1.) Any document drawn up in pursuance of the first schedule to this Act shall be admissible in any proceeding, civil or criminal, as evidence of the facts or matters therein stated.

(2.) If evidence contained in any such document was taken on oath in the presence of the person charged in such evidence, and such person had an opportunity of cross-examining the person giving such evidence and of making his reply to such evidence, the sea-fishery officer drawing up such document may certify the said facts, or any of them.

(3.) Any document or certificate in this section mentioned purporting to be signed by a sea-fishery officer shall be admissible in evidence without proof of such signature, and, if purporting to be signed by any other person, shall, if certified by a sea-fishery officer to have been so signed, be deemed until the contrary is proved to have been signed by such other person.

(4.) If any person forges the signature of a sea-fishery officer to any such document as above mentioned, or makes use of any such document knowing the signature thereto to be forged, such person shall be liable on summary conviction to imprisonment for a term not exceeding three months with or without hard labour, and on conviction on indictment to be imprisoned with or without hard labour for a term not exceeding two years, and the cost of the prosecution of any such person on indictment may be paid as in cases of felony.

18. For the purpose of giving jurisdiction to courts under this Act, a sea-fishing boat shall be deemed to be a ship within the meaning of any Act relating to offences committed on board a ship, and every court shall have the same jurisdiction over a foreign sea fishing boat within the exclusive fishery limits of the British Islands, and persons belonging thereto, as such court would have if such boat were a British sea fishing boat.

19. Service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any sea-fishing boat to which he may belong, with the person being or appearing to be in command or charge of such boat.

20. (1.) Where any offence against this Act has been committed by some person belonging to a sea-fishing boat, the master or person for the time being in charge of such boat shall in every case be liable to be deemed guilty of such offence; provided that if he proves that he issued proper orders for the observance, and used due diligence to enforce the observance, of this Act, and that the offence in question was actually committed by some other person without his connivance, and that the actual offender has been convicted, or that he has taken all practicable means in his power to prosecute such offender (if alive) to conviction, he shall not be liable to any further punishment than payment of compensation for any injury caused by the offence.

(2.) Any fine or compensation adjudged under this Act may be recovered in the ordinary way, or, if the court think fit so to order, by distress or poinding and sale of the sea-fishing boat to which the offender belongs, and her tackle, apparel, and furniture and any property on board thereof or belonging thereto, or any part thereof; provided that, where the boat is a foreign sea-fishing boat, the court may order that in lieu of any such distress the boat may be detained in some port in the British Islands for a period not exceeding three months from the date of the conviction, and the boat may be detained accordingly, and in such case shall not be distrained.

21. (1.) The court adjudging any fine or forfeiture under this Act may, if it think fit, direct the whole or any part thereof to be applied in or towards payment of the expenses of the proceedings; and, subject to such direction, all fines and the proceeds of all forfeitures recovered under this Act shall, notwithstanding anything in any Act relating to municipal corporations or otherwise, be paid into the Exchequer in such manner as the Commissioners of the Treasury may direct.

(2.) Forfeitures may be destroyed, sold, and disposed of as the court adjudging the forfeiture may direct.

22. (1.) Nothing in this Act shall prevent any person being liable under any other Act or otherwise to any indictment, proceeding, punishment, or penalty, other than is pro-

vided for any offence by this Act, so that no person be punished twice for the same offence.

(2.) Nothing in this Act, or in any Order in Council made thereunder, nor any proceedings under such Act or Order with respect to any matter, shall alter the liability of any person in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

Application of Act.

23. If at any time after the commencement of this Act any convention, treaty, or arrangement respecting sea fisheries is made between Her Majesty and any Foreign State, it shall be lawful for Her Majesty by Order in Council, to direct that all or any of the provisions of this Act shall, and the same shall accordingly (subject to the exceptions, restrictions, and conditions, if any, in the Order mentioned) apply to the said convention, treaty, or arrangement, and have effect in like manner as if the said convention, treaty, or arrangement were set forth in the first schedule to this Act, and were part of that schedule and were the Convention referred to in this Act.

24. If the provisions of this Act are applied by Order in Council to any convention, treaty, or arrangement made in substitution for the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, or for the Convention and Articles set forth in the schedule to the Act of the sixth and seventh years of the reign of Her present Majesty, chapter seventy-nine, intituled "An Act to carry into "effect the Convention between Her Majesty "and the King of the French, concerning the "fisheries in the seas between the British "Islands and France," that last-mentioned Act shall, after the date fixed by the said Order for the application of this Act be repealed, but such last-mentioned Act shall, until the said date or any earlier date at which the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, comes into operation, continue in force so far as regards French sea-fishing boats and persons belonging thereto within the seas to which the said Convention and Articles set forth in the schedule thereto apply, so far as those seas are outside the exclusive fishery limits of the British Islands, and are not within the North Sea as defined in the first schedule to this Act.

25. This Act, so far as it applies to foreign sea-fishing boats outside of the exclusive fishery limits of the British Islands, and persons belonging thereto, and to foreign sea-fishery officers, shall apply only within the North Sea as defined by Article four of the first schedule to this Act, or within the seas specified in any convention, treaty, or arrangement to which this Act may be applied by Order in Council made in pursuance of this Act, and to the boats and officers of a Foreign State bound by the Convention in the first schedule to this Act or by any convention, treaty, or arrangement to which this Act may be applied, but save as aforesaid this Act shall apply to the whole of the British Islands as defined by this Act, and to the seas surrounding the same, whether within or without the exclusive fishery limits of the British Islands, and the Royal Courts of Guernsey and Jersey shall register this Act in their respective Courts.

Supplemental.

26. Orders in Council made in pursuance of this Act shall be published in the London Gazette, or otherwise published in such manner as the Board of Trade may direct for such sufficient time before they come into force as to prevent inconvenience.

27. The reference in section eighteen of the Sea Fisheries Act, 1868, to section two hundred of the Customs Consolidation Act, 1853, shall be construed to refer to section one hundred and seventy of the Customs Consolidation Act, 1876.

28. In this Act,—

The expression "sea-fishing" shall not include fishing for salmon as defined by any Act relating to salmon, but save as aforesaid, means the fishing for every description both of fish, and shell fish, found in the seas to which this Act applies; and the expression "sea fisherman" and other expressions relating to sea-fishing shall be construed accordingly:

The expression "sea-fishing boat" includes every vessel of whatever size, and in whatever way propelled, which is used by any person in sea-fishing, or in carrying on the business of a sea fisherman:

The expression "fishing implement" means any net, line, float, barrel, buoy, or other instrument, engine, or implement used or intended to be used for the purpose of sea-fishing:

The expression "British Islands" includes the United Kingdom of Great Britain and Ireland, the Isle of Man, the Islands of Guernsey, Jersey, Alderney, and Sark, and their dependencies:

The expression "exclusive fishery limits "of the British Islands" means that portion of the seas surrounding the British Islands within which Her Majesty's subjects have, by international law, the exclusive right of fishing, and where such portion is defined by the terms of any convention, treaty, or arrangement for the time being in force between Her Majesty and any Foreign State, includes, as regards the sea-fishing boats and officers and subjects of that State, the portion so defined:

The expression "the Admiralty" means the Lord High Admiral for the time being of the United Kingdom of Great Britain and Ireland, or any two or more of the Commissioners for executing the office of Lord High Admiral of the United Kingdom:

The expression "Consular officer" includes Consul-General, Consul and Vice-Consul, and any person for the time being discharging the duties of Consul-General, Consul, or Vice-Consul:

The expression "person" includes a body of persons corporate or unincorporate:

The expression "court" includes any tribunal or magistrate exercising jurisdiction under this Act.

29. This Act shall come into force on such day as may be fixed by a notice in that behalf published in the London Gazette, which day is in this Act referred to as the commencement of this Act.

30. (1.) After the commencement of this Act the Acts specified in the first part of the second schedule to this Act shall be repealed to the extent specified in the third column of that schedule.

(2.) After the commencement of this Act, the Acts specified in the second part of the second schedule to this Act shall be repealed to the extent specified in the third column of that schedule:

Provided that, until the date herein-after mentioned at which such repeal takes full effect, the repeal of the enactments specified in the said second part shall, except within the North Sea as defined by the first schedule to this Act, be subject to the following limitations:

(*a.*) The repeal shall not extend to section twelve of the Sea Fisheries Act, 1868 (which section relates to oyster fishing), nor to the recovery of any penalty for a violation of that section.

(*b.*) The repeal shall extend only to officers and boats within the exclusive fishery limits of the British Islands and to British sea-fishing boats when outside the exclusive fishery limits of the British Islands;

(*c.*) The repeal shall not affect the power of French sea-fishery officers and French courts over British sea-fishing boats when outside the exclusive fishery limits of the British Islands, or the power of British and French sea-fishery officers and British courts over French sea-fishing boats brought within the exclusive fishery limits of the British Islands for offences committed outside those limits;

(*d.*) The repeal shall not alter the power of receiving as evidence any depositions, minutes, and other documents which by the said Acts are made receivable as evidence;

(*e.*) If the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, comes into operation, then, upon notice thereof being given in the London Gazette, the said enactments shall, subject to the provisions of this section, be in force for the purposes of such Convention.

If this Act is applied by Order in Council to French sea-fishery officers and French sea-fishing boats within the seas to which the Convention set forth in the first schedule to the Sea Fisheries Act, 1868, applies, the said repeal of the enactments specified in the second part of the second schedule to this Act shall take full effect as from the date at which such application of this Act takes effect.

(3.) The repeal of any enactment by this Act shall not affect anything duly done or suffered, or any liability, penalty, forfeiture, or punishment incurred under any enactment hereby repealed, and any legal proceeding or remedy in respect of such liability, penalty, forfeiture, or punishment may be carried on as if this Act had not passed.

31. So much of this Act as has effect outside of the exclusive fishery limits of the British Islands, shall, if the Convention ceases to be binding on Her Majesty, cease to apply to the boats and officers of any Foreign State bound by the Convention, and if the Convention ceases to be binding on any Foreign State shall cease to apply to the boats and officers of such State, but subject as aforesaid this Act shall continue in force notwithstanding the determination of the Convention.

SCHEDULES.

FIRST SCHEDULE.

INTERNATIONAL CONVENTION for the purpose of regulating the POLICE of the FISHERIES in the NORTH SEA outside TERRITORIAL WATERS.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the Emperor of Germany, King of Prussia; His Majesty the King of the Belgians; His Majesty the King of Denmark; the President of the French Republic; and His Majesty the King of the Netherlands, having recognised the necessity of regulating the police of the fisheries in the North Sea, outside territorial waters, have resolved to conclude for this purpose a Convention, and have named their Plenipotentiaries as follows:—

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland the Honourable William Stuart, Companion of the Most Honourable Order of the Bath, &c., Her Envoy Extraordinary and Minister Plenipotentiary at the Hague; Charles Malcolm Kennedy, Esq., Companion of the Most Honourable Order of the Bath, &c., Head of the Commercial Department of the Foreign Office; and Charles Cecil Trevor, Esq., Barrister at Law, Assistant Secretary to the Board of Trade, &c.;

His Majesty the Emperor of Germany, King of Prussia, Veit Richard von Schmidthals, Knight of the Order of the Red Eagle of the Third Class, and of the Order of St. John, &c., Councillor of Legation, his Chargé d'Affaires at the Hague; and Peter Christian Kinch Donner, Knight of the Order of the Red Eagle of the fourth class with the Sword, and of the Crown of the fourth class, &c., his Councillor of State, Captain in the Navy, on the Rèserve;

His Majesty the King of the Belgians, the Baron d'Anethan, Commander of the Order of Leopold, &c., his Envoy Extraordinary and Minister Plenipotentiary at the Hague; and M. Léopold Orban, Commander of the Order of Leopold, &c., his Envoy Extraordinary and Minister Plenipotentiary, Director-General of the Political Department in the Ministry of Foreign Affairs;

His Majesty the King of Denmark, Carl Adolph Bruun, Knight of the Order of the Danebrog, &c., Captain in the Navy;

The President of the French Republic, the Count Lefèbvre de Béhaine, Commander of the National Order of the Legion of Honour, &c., Envoy Extraordinary and Minister Plenipotentiary of the French Republic at the Hague; and M. Gustave Émile Mancel, Officer of the National Order of the Legion of Honour, &c., Commissary of Marine;

His Majesty the King of the Netherlands, the Jonkheer Willem Frederik Rochussen, Commander of the Order of the Lion of the Netherlands, &c., his Minister of Foreign Affairs; and Eduard Nicolaas Rahusen, Knight of the Order of the Lion of the Netherlands, &c., President of the Committee for Sea Fisheries;

Who, after having communicated the one to the other their full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The provisions of the present Convention, the object of which is to regulate the police of the fisheries in the North Sea outside territorial waters, shall apply to the subjects of the High Contracting Parties.

ARTICLE II.

The fishermen of each country shall enjoy the exclusive right of fishery within the distance of three miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays, the distance of three miles shall be measured from a straight line drawn across the bay, in the part nearest the entrance, at the first point where the width does not exceed ten miles.

The present Article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the Powers to whom the shore belongs.

ARTICLE III.

The miles mentioned in the preceding Article are geographical miles, whereof sixty make a degree of latitude.

ARTICLE IV.

For the purpose of applying the provisions of the present Convention, the limits of the North Sea shall be fixed as follows:—

1. On the north by the parallel of the 61st degree of latitude;

2. On the east and south:—

(1.) By the coast of Norway between the

parallel of the 61st degree of latitude and Lindesnaes Lighthouse (Norway);
(2.) By a straight line drawn from Lindesnaes Lighthouse (Norway) to Hanstholm Lighthouse (Denmark);
(3.) By the coasts of Denmark, Germany, the Netherlands, Belgium, and France, as far as Gris Nez Lighthouse;

3. On the west:—
(1.) By a straight line drawn from Gris Nez Lighthouse (France) to the easternmost lighthouse at South Foreland (England);
(2.) By the eastern coasts of England and Scotland:
(3.) By a straight line joining Duncansby Head (Scotland) and the southern point of South Ronaldsha (Orkney Islands);
(4.) By the eastern coast of the Orkney Islands;
(5.) By a straight line joining North Ronaldsha Lighthouse (Orkney Islands) and Sumburgh Head Lighthouse (Shetland Islands);
(6.) By the eastern coasts of the Shetland Islands;
(7.) By the meridian of North Unst Lighthouse (Shetland Islands) as far as the parallel of the 61st degree of latitude.

ARTICLE V.

The fishing boats of the high contracting parties shall be registered in accordance with the administrative regulations of each country. For each port there shall be a consecutive series of numbers, preceded by one or more initial letters, which shall be specified by the superior competent authority.

Each government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other contracting powers.

ARTICLE VI.

Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ARTICLE VII.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 8 centim. in height and 12 millim. in breadth.

ARTICLE VIII.

The letter or letters and numbers shall be placed on each bow of the boat, eight or ten centim. below the gunwale, and so as to be clearly visible. They shall be painted in white oil colour on a black ground.

The distance above mentioned shall not, however, be obligatory for boats of small burden, which may not have sufficient space below the gunwale.

For boats of fifteen tons burden and upwards the dimensions of the letters and numbers shall be forty-five centim. in height and 6 centim. in breadth.

For boats of less than fifteen tons burden the dimensions shall be twenty-five centim. in height and 4 centim. in breadth.

The same letter or letters and numbers shall also be painted on each side of the mainsail of the boat, immediately above the close reef, in black oil colour on white or tanned sails, and in white oil colour on black sails.

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ARTICLE IX.

Fishing boats may not have, either on their outside or on their sails, any names, letters, or numbers other than those prescribed by Articles VI., VII., and VIII. of the present Convention.

ARTICLE X.

The names, letters, and numbers placed on the boats and on their sails shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

ARTICLE XI.

All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter or letters and numbers of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owners of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ARTICLE XII.

The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or association to which she belongs.

ARTICLE XIII.

The nationality of a boat must not be concealed in any manner whatsoever.

ARTICLE XIV.

No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or of any other compulsory circumstances.

ARTICLE XV.

Boats arriving on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ARTICLE XVI.

Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

ARTICLE XVII.

No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

ARTICLE XVIII.

No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

ARTICLE XIX.

When trawl fishermen are in sight of drift-net or of long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused, the responsibility shall lie on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ARTICLE XX.

When nets belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease if the impossibility of disengaging the nets by any other means is proved.

ARTICLE XXI.

When a boat fishing with long lines entangles her lines in those of another boat, the person who hauls up the lines shall not cut them except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ARTICLE XXII.

Except in cases of salvage and the cases to which the two preceding articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

ARTICLE XXIII.

The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The high contracting parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

ARTICLE XXIV.

Fishing boats shall conform to the general rules respecting lights which have been, or may be, adopted by mutual arrangement between the high contracting parties with the view of preventing collisions at sea.

ARTICLE XXV.

All fishing boats, all their small boats, all rigging gear or other appurtenances of fishing boats, all nets, lines, buoys, floats, or other fishing implements whatsoever found or picked up at sea, whether marked or unmarked, shall as soon as possible be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Such authority shall inform the consul or consular agent of the country to which the boat of the salvor belongs, and of the nation of the owner of the articles found. They [the same authority] shall restore the articles to the owners thereof or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guaranteed.

The administrative or judicial authorities, according as the laws of the different countries may provide, shall fix the amount which the owners shall pay to the salvors.

It is, however, agreed that this provision shall not in any way prejudice such conventions respecting this matter as are already in force, and that the high contracting parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salved.

Fishing implements of any kind found unmarked shall be treated as wreck.

ARTICLE XXVI.

The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the high contracting parties. In the case of Belgium, such vessels may be vessels belonging to the State, commanded by captains who hold commissions.

ARTICLE XXVII.

The execution of the regulations respecting the document establishing nationality, the marking and numbering of boats, &c., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI., VII., VIII., IX., X., XI., XII., XIII., and XXIII., § 2), is placed under the exclusive superintendence of the cruizers of the nation of each fishing boat.

Nevertheless, the commanders of cruizers shall acquaint each other with any infractions of the above-mentioned regulations committed by the fishermen of another nation.

ARTICLE XXVIII.

The cruizers of all the high contracting parties shall be competent to authenticate all infractions of the regulations prescribed by the present convention, other than those referred to in Article XXVII., and all offences relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXIX.

When the commanders of cruizers have reason to believe that an infraction of the provisions of the present convention has been committed, they may require the master of the boat inculpated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be endorsed upon it immediately.

The commanders of cruizers shall not pursue further their visit or search on board a fishing boat which is not of their own nationalty, unless it should be necessary for the purpose of obtaining proof of an offence or of a contravention of regulations respecting the police of the fisheries.

ARTICLE XXX.

The commanders of the cruizers of the Signatory Powers shall exercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the high contracting parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declarations of the parties interested and from the testimony of those present.

The commander of the cruizer may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fishermen belong. He may even take on board the cruizer a part of the crew of the fishing boat in order to hand them over to the authorities of her nation.

ARTICLE XXXI.

The formal statement referred to in the preceding Article shall be drawn up in the language of the commander of the cruizer, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add, or to have added, to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ARTICLE XXXII.

Resistance to the directions of commanders of cruiziers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruizer, be considered as resistance to the authority of the nation of the fishing boat.

ARTICLE XXXIII.

When the act alleged is not of a serious character, but has nevertheless caused damage to any fisherman, the commanders of cruizers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid.

Where one of the parties is not in a position to settle the matter at once, the commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruizer, and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the commanders shall act in accordance with the provisions of Article XXX.

ARTICLE XXXIV.

The prosecutions for offences against, or contraventions of, the present convention shall be instituted by, or in the name of, the State.

ARTICLE XXXV.

The high contracting parties engage to propose to their respective Legislatures the necessary measures for insuring the execution of the present convention, and particularly for the punishment by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI. to XXIII. inclusive.

ARTICLE XXXVI.

In all cases of assault committed, or of wilful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offences against, and contraventions of, the present convention.

ARTICLE XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present convention shall take place as summarily as the laws and regulations in force will permit.

ARTICLE XXXVIII.

The present convention shall be ratified. The ratifications shall be exchanged at the Hague as soon as possible.

ARTICLE XXXIX.

The present convention shall be brought into force from and after a day to be agreed upon by the high contracting parties.

The convention shall continue in operation for five years from the above day; and, unless one of the high contracting parties shall, twelve months before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the Signatory Powers should give notice to terminate the convention, the same shall be maintained between the other contracting parties, unless they give a similar notice.

ADDITIONAL ARTICLE.

The Government of His Majesty the King of Sweden and Norway may adhere to the present convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other Signatory Powers.

In witness whereof the Plenipotentiaries have signed the present convention, and have affixed thereto their seals.

Done at the Hague, in six copies, the 6th May, 1882.

(L.S.) W. STUART.
(L.S.) C. M. KENNEDY.
(L.S.) C. CECIL TREVOR.
(L.S.) V. SCHMIDTHALS.
(L.S.) CHR. DONNER.
(L.S.) B^on A. D'ANETHAN.
(L.S.) LÉOPOLD ORBAN.
(L.S.) C. BRUUN.
(L.S.) C^te LEFÈBVRE DE BÉHAINE.
(L.S.) EM. MANCEL.
(L.S.) ROCHUSSEN.
(L.S.) E. N. RAHUSEN.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of an Act in this schedule is inclusive of the word, section, or other part first and last-mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

PART I.—*Enactments wholly repealed.*

Session and Chapter.	Title.	Extent of repeal.
6 & 7 Vict. c. 79.	An Act to carry into effect a Convention between Her Majesty and the King of the French concerning the Fisheries in the Seas between the British Islands and France.	So much of the schedule thereto as prohibits any French fishing-boat from approaching nearer to any part of the Coast of the United Kingdom than the limit of three miles, and so much of the rest of the Act as relates to the portion of the schedule hereby repealed.
31 & 32 Vict. c. 45.	The Sea Fisheries Act, 1868.	Section twenty-five. Section fifty-eight, from "in manner directed by law" to "the appeal shall be made," and from "for the county or place" to "costs to be paid by either party." Section seventy-one and the second schedule.
40 & 41 Vict. c. 42.	The Fisheries (Oyster, Crab, and Lobster) Act, 1877.	Section fifteen.

PART II.—*Enactments repealed provisionally.*

Session and Chapter.	Title.	Extent of repeal.
31 & 32 Vict. c. 45.	The Sea Fisheries Act, 1868.	Sections three and four. Section five, from "the term consular officer" to "construed to mean consular officer." Sections six to sixteen. Sections twenty and twenty-one. Section fifty-nine. Section sixty-one. Section sixty-three, from the beginning of the section to "the satisfaction of the court." The first schedule, except articles four to eight, article thirty-one, and the Declaration and List of Ports annexed to the Convention.
38 Vict. c. 15.	An Act to amend the Sea Fisheries Act, 1868.	Section three.

CHAP. 23.

Consolidated Fund (No. 4) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 15,182,707*l.* *out of the Consolidated Fund for the service of the year ending* 31*st March* 1884.
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of fifteen million one hundred and eighty-two thousand seven hundred and seven pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four. (2nd August 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four the sum of fifteen million one hundred and eighty-two thousand seven hundred and seven pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of fifteen million one hundred and eighty-two thousand seven hundred and seven pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 4) Act, 1883.

CHAP. 24.

Relief of Distressed Unions (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Power to make grants to distressed unions.*
2. *Extension of borrowing powers.*
3. *Power to borrow.*
4. *Confirmation of borrowing by Boards of Guardians and indemnity.*
5. *Short title.*

An Act to make temporary provision for the Relief of the destitute Poor in Ireland. (2nd August 1883.)

BE it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

1. The Commissioners of Public Works in Ireland may from time to time on the recommendation of the Local Government Board for Ireland (in this Act referred to as the Local Government Board) and with the sanction of the Commissioners of the Treasury, grant to the board of guardians of any union, out of any moneys in their hands, such sums as the Local Government Board may find necessary, having regard to the financial condition of such union and the pressure of distress within its limits, to aid in providing for the administration of relief for the destitute poor in the union.

Grants shall not be made under this Act after the thirty-first day of March one thousand eight hundred and eighty-four.

The total amount granted under this Act shall not exceed fifty thousand pounds.

Whenever any such grant is made, the Commissioners of the Treasury shall notify to the Irish Land Commission the sum so granted, and thereupon the Irish Land Commission shall out of the funds which they may raise on the security of their annual income under the Irish Church Act Amendment Act, 1881, pay over to the Commissioners of Public Works, the amount stated by the Commissioners of the Treasury on each such occasion to have been granted under the provisions of this Act.

2. The several provisions of the Irish Church Act, 1869, as amended by the Irish Church Act Amendment Act, 1881, with respect to the raising of money by the Irish Land Commission, and the giving of security for the repayment thereof, and of interest thereon, and with respect to the power of the Commissioners for the Reduction of the National Debt to make advances to the said Irish Land Commission, and with respect to the powers of the Commissioners of Her Majesty's Treasury in relation to the money so to be raised, shall be extended and shall apply to the purposes of this Act as fully as such provisions apply to the purposes of the Irish Church Act, 1869, as so amended as aforesaid.

Any advance made by the Commissioners for the Reduction of the National Debt to the Irish Land Commission for the purposes of this Act, shall be charged upon the property accruing to and shall be payable by the Irish Land Commission, as if it were part of the debt already owing by the Irish Land Commission to the Commissioners for the Reduction of the National Debt.

3. In addition to any power of borrowing vested in boards of guardians under the Acts in force at the time of the passing of this Act, the board of guardians of any union in Ireland may, with the sanction of the Local Government Board, for the purpose of defraying any costs, charges, or expenses incurred or to be incurred by them in the execution of the Acts relating to the relief of the poor, borrow and take up at interest for the use of any electoral division or divisions in the union, such sums of money as the Local Government Board may sanction.

In the case of every such loan the following provisions shall take effect:

(1.) For securing the repayment of any sums so borrowed, with interest thereon, the Board of Guardians may mortgage to the persons by or on behalf of whom such sums are advanced, the rates leviable on the electoral division or divisions for the use of which such money was borrowed.

(2.) The money shall be borrowed for such time not exceeding ten years as the guardians with the consent of the Local Government Board determine in each case.

(3.) It shall not be lawful for the Local Government Board to sanction any such loan after the 25th day of March one thousand eight hundred and eighty-four.

(4.) All sums so borrowed shall be repaid by such instalments as may be agreed on with the sanction of the Local Government Board.

4. Whereas before the passing of this Act the boards of guardians of certain unions in which the funds at the disposal of such boards respectively were inadequate for providing for the relief of the destitute poor in such unions, borrowed, with the approval of the Local Government Board, certain moneys repayable with interest, and are now indebted on account of such loans, and it is expedient to confirm such loans; therefore, all such loans and borrowing, and all proceedings of the several boards of guardians relating thereto, shall be and are hereby ratified and confirmed; and all persons who have acted in incurring such loans shall be released and indemnified from and against any penalties in relation thereto.

5. This Act may be cited as the Relief of Distressed Unions (Ireland) Act, 1883.

CHAP. 25.

Prison Service (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to explain and amend the thirty-second section of the General Prisons (Ireland) Act, 1877. (2nd August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. For the purposes of the thirty-second section of the General Prisons (Ireland) Act, 1877, relating to the superannuation of prison officers, the term "prison service" means, as respects the period before the first day of April one thousand eight hundred and seventy-eight, service in a particular prison, or in the prisons of the same grand jury or other prison authority, transferred to the General Prisons Board for Ireland; and as respects the period after the said first day of April one thousand eight hundred and seventy-eight, service in any such prison or in any other prison; and the said section shall be construed as if the term "prison service" had been so defined therein.

2. This Act may be cited as the Prison Service (Ireland) Act, 1883.

CHAP. 26.

Sea Fisheries (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to promote the Sea Fisheries of Ireland. (2nd August 1883.)

WHEREAS the promotion, improvement, and encouragement of the Irish fisheries are objects of great importance, not only to Ireland, but to the wealth and commercial prosperity and naval strength of the United Kingdom:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act may be cited for all purposes as the Sea Fisheries (Ireland) Act, 1883.

2. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-three, which date is referred to as the commencement of this Act.

3. The Irish Land Commission shall from time to time when required by the Commissioners of Public Works, out of the funds which they may raise on the security of their annual income under the Irish Church Act Amendment Act, 1881, pay over to the Com-

missioners of Public Works such sums, not exceeding in all the sum of two hundred and fifty thousand pounds, as the Commissioners may require for the purposes of this Act, and as the Treasury may sanction.

The sums so paid over to the Commissioners of Public Works are in this Act referred to as the Sea Fisheries Fund.

4. The several provisions of the Irish Church Act, 1869, as amended by the Irish Church Act Amendment Act, 1881, with respect to the raising of money by the Irish Land Commission, and the giving of security for the repayment thereof, and of interest thereon, and with respect to the power of the Commissioners for the Reduction of the National Debt to make advances to the said Irish Land Commission, and with respect to the powers of the Commissioners of Her Majesty's Treasury in relation to the money so to be raised, shall be extended and shall apply to the purposes of this Act as fully as such provisions apply to the purposes of the Irish Church Act, 1869, as so amended as aforesaid.

Any advance made by the Commissioners for the Reduction of the National Debt to the Irish Land Commission for the purposes of this Act shall be charged upon the property accruing to and shall be payable by the Irish Land Commission as if it were part of the debt already owing by the Irish Land Commission to the Commissioners for the Reduction of the National Debt.

5. The Commissioners of Public Works shall apply the Sea Fisheries Fund for the purposes of the Fishery Piers and Harbours Acts, but subject to the conditions contained in this Act.

The enactment contained in the second section of the Fishery Piers and Harbours Act, 1866, that a grant for any one work shall not exceed the sum of seven thousand five hundred pounds shall not apply to grants under this Act.

The enactment contained in the fourth subsection of the fourth section of the Fishery Piers and Harbours Act, 1846, that the amount of any grant shall not exceed three fourths of the cost of the work, and that such grant shall be made only upon the condition that the repayment of the residue of the total actual cost of the work, with interest, shall be secured or agreed to be secured in the manner therein referred to, shall not apply to grants under this Act.

The Commissioners of Public Works may, with the previous approval of the Treasury, out of the Sea Fisheries Fund make a free grant of the whole or any part of the cost of a work, or may advance the same by way of loan, upon the repayment thereof, with interest at such rate not exceeding three and a half per cent. per annum, as the Commissioners, with the approval of the Treasury, may determine, being secured in the manner provided by the Fishery Piers and Harbours Acts.

The amount which the Commissioners of Public Works may expend in any one period of twelve months, after the passing of this Act, in carrying this Act into effect shall not exceed fifty thousand pounds, unless the Treasury otherwise orders.

6. When any work has been done or constructed under this Act, the provisions of the Fishery Piers and Harbours Acts relative to maintenance and repair, and as to tolls and rates, and as to byelaws, rates, orders, and regulations, and otherwise, shall apply to such work as if it had been constructed or done under those Acts.

7. All sums paid from time to time to the Commissioners of Public Works in repayment of moneys advanced by them by way of loan under this Act, or for interest thereon, shall form part of the Sea Fisheries Fund, and shall be applied by the Commissioners for the purposes of this Act.

8. For the purpose of aiding the Commissioners of Public Works in carrying this Act into effect, a Commission shall be constituted, to be styled the Fishery Piers and Harbours Commission, consisting of the Inspectors of Irish Fisheries and of one other person, to be appointed by the Lord Lieutenant, who shall hold his office during the pleasure of the Lord Lieutenant, and shall be the chairman of the Commission, and shall have a casting vote. The person so appointed shall not be paid any salary or remuneration for his services, and shall not, by reason of such appointment, be disqualified from being elected or sitting as a member of the House of Commons, and, if he is a member of the House of Commons at the time of his appointment, shall not cease to be a member by reason of such appointment.

It shall be the duty of the Fishery Piers and Harbours Commission to give such assistance to the Commissioners of Public Works as the Inspectors of Irish Fisheries have heretofore given in the execution of the Fishery Piers and Harbours Acts; and to confer with the Commissioners of Public Works relative to the works proposed from time to time to be executed out of the Sea Fisheries Fund; and generally to aid in carrying this Act into

effect, in such manner as the Lord Lieutenant may from time to time direct.

The Commissioners of Public Works, before forwarding to the Treasury the report as to any proposed work which they are required to forward pursuant to the tenth section of the Fishery Piers and Harbours Act, 1846, shall furnish to the Fishery Piers and Harbours Commission a copy of the plans and specifications relating to the proposed work; and the Fishery Piers and Harbours Commission may make such observations relative to such plans and specifications, for the information of the Treasury, as they think fit.

9. In this Act—

The term "the Treasury" means the Commissioners of Her Majesty's Treasury:

The term "the Commissioners of Public Works" means the Commissioners of Public Works in Ireland:

The term "the Fishery Piers and Harbours Act, 1846," means the Act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter three, intituled "An Act to encourage the "sea fisheries of Ireland, by promoting "and aiding with grants of public money "the construction of piers, harbours, and "other works:"

The term "the Fishery Piers and Harbours Act, 1866," means the Act of the session of the twenty-ninth and thirtieth years of the reign of Her present Majesty, chapter forty-five, intituled "An Act to extend "the provisions of the Acts for the en-"couragement of the sea fisheries in "Ireland, by promoting and aiding with "grants of public money the construction "of piers, harbours, and other public "works:"

The term "the Fishery Piers and Harbours Acts" means both the above-mentioned Acts, and any Acts amending them.

CHAP. 27.

Metropolitan Board of Works (Money) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes.

(20th August 1883.)

WHEREAS by the Metropolitan Board of Works (Loans) Act, 1875, (in this Act referred to as "the Act of 1875,") the raising of money by the Metropolitan Board of Works (in this Act referred to as "the Board") for the purposes therein specified was regulated, and provision was made requiring that the borrowing powers granted to the Board by Parliament for the purposes therein named should for the future be limited both in time and amount:

And whereas by the Metropolitan Board of Works (Money) Act, 1882, (in this Act referred to as "the Act of 1882,") the Board were empowered to raise certain sums of money for the purposes in the said Act mentioned, and limits of time and amount within which the powers by the said Act granted might be exercised where fixed:

And whereas the powers for the raising of money by the Act of 1882 conferred upon the Board have been partially exercised, but it is expedient that the Board should have power to raise certain further sums of money specified in the First Schedule to this Act annexed for the purposes, upon the terms, and subject to the limitations herein-after mentioned, and that the Act of 1882 should be amended:

And whereas it is expedient that the Board should be empowered to raise any of the moneys which they are by this Act authorised to raise, and which it may be convenient to raise for a temporary period by the issue of bills, with the consent of the Treasury, for not less than three and not more than twelve months to be repaid out of moneys raised by the creation of consolidated stock under this Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Metropolitan Board of Works (Money) Act, 1883, and the Metropolitan Board of Works (Money) Acts, 1875 to 1882, and this Act, may be cited together as the Metropolitan Board of Works (Money) Acts, 1875 to 1883.

2. This Act shall be read and have effect as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1882.

3. The expression "Parks and Open Spaces Acts" in this Act shall mean the enactments specified in Part I. of the Second Schedule to this Act annexed.

The expression "Embankment Acts" in the Metropolitan Board of Works (Loans) Act, 1869, and in this Act, shall mean the series of Acts specified in Part II. of the Second Schedule to this Act annexed, and the Metropolitan Board of Works (Loans) Act, 1869, shall be construed accordingly.

The expression "Main Drainage Acts" in this Act shall have the same meaning as is assigned to the same term in the Metropolitan Board of Works (Loans) Act, 1869.

4. Subsection (*f*) of section ten of the Act of 1882 shall be read and construed as if the aggregate amount which the Board was thereby authorised to expend for the purposes of the Fire Brigade Act, 1865, had been limited to a sum not exceeding seventy thousand pounds instead of fifty thousand pounds.

5. Section fourteen of the Act of 1882 shall be read and construed as if the aggregate amount which the Board was thereby authorised to lend to Boards of Guardians had been limited to a sum not exceeding two hundred and fifty thousand pounds instead of two hundred thousand pounds.

6. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-four, expend for the purposes herein-after mentioned such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively.

For the purposes of the Metropolitan Street Improvements Act, 1883, seven hundred and eighty-two thousand seven hundred pounds;

For the purposes of the Metropolitan Board of Works (Bridges, &c.) Act, 1883, one hundred and thirty-four thousand pounds; and

For the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, with respect to Tench Street, St. George-in-the-East; Brook Street, Limehouse; Windmill Row, New Cut, Lambeth; and Trafalgar Road, Greenwich; if the same be respectively confirmed by Provisional Order and Act of Parliament, ninety-nine thousand pounds: Provided always, that the money to be raised and the consolidated stock to be created by the Board for the purposes mentioned in this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury

shall approve for the purpose of carrying out the provisions of the said Acts respectively in a proper and efficient manner.

7. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four expend for the purpose of contributing towards the expenses of the improvements for facilitating the passage of traffic at Hyde Park Corner, and of all works and other matters necessary or incidental thereto now commenced and partly completed by and under the authority of the First Commissioner of Her Majesty's Works and Public Buildings, such moneys as they may think fit, not exceeding the sum of ten thousand pounds, provided that the moneys expended by the Board for the said purposes under the authority of this section shall not, together with the moneys previously expended by the Board for the said purposes under the authority of section eight of the Act of 1882, exceed twenty thousand pounds. All moneys expended by the Board for the purposes aforesaid shall be deemed to be expended under the authority of section one hundred and forty-four of the Metropolis Management Act, 1855, and the enactments altering, amending, or affecting the same: Provided always, that the moneys to be expended and the consolidated stock to be created by the Board for the purposes mentioned in this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the said purposes.

8. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four expend for the purposes herein-after mentioned such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively:

(*a.*) For the purposes mentioned in section one hundred and forty-four of the Metropolis Management Act, 1855, and section seventy-two of the Metropolis Management Amendment Act, 1862, and for the purposes of the Metropolitan Street Improvements Act, 1872, and of the Embankment Acts, including the purchase and erection of lamp standards on such parts of such works as the Board may think fit, and of the Sun Street improvement under the Metropolitan Board of Works (Various Powers) Act, 1876, one hundred thousand pounds;

(*b.*) For the purposes of the Parks and Open Spaces Acts, fifteen thousand pounds;

(*c.*) For the purposes of the Metropolis Toll Bridges Act, 1877, including the cost of certain special works for the maintenance and repair of certain of the bridges acquired by the Board under the said Act, and the commutation of pensions, thirty thousand pounds;

(*d.*) For the purposes of providing station-houses, fire-engines, fire-escapes, and permanent plant for the purposes of the Fire Brigade Act, 1865, thirty-five thousand pounds;

(*e.*) For the purposes of the road to be made and fenced by the Board across Wormwood Scrubs, and for enabling the Board to contribute to the expenses of the Fulham District Board of Works on account of the roads from Shepherd's Bush Common and the Harrow Road respectively communicating with the said road across Wormwood Scrubs, six thousand pounds; provided that the moneys expended by the Board under the authority of this sub-section shall not, together with the moneys previously expended by the Board for the said purposes, exceed six thousand pounds;

(*f.*) For the purposes of the Metropolitan Street Improvements Act, 1877, seven hundred and fifty thousand pounds, or such further sum as the Treasury may approve, provided that the moneys expended by the Board under the authority of this sub-section shall not, together with all moneys previously expended by the Board for the said purposes, exceed three million seven hundred and twelve thousand five hundred and seven pounds;

(*g.*) For the purposes of the Thames River (Prevention of Floods) Act, 1879, ten thousand pounds, or such further sum as the Treasury may approve;

(*h.*) For the purposes of the Metropolitan Bridges Act, 1881, three hundred thousand pounds, provided that the moneys hereby expended by the Board under the authority of this sub-section shall not, together with all moneys previously expended by the Board for the said purposes, exceed seven hundred and sixty thousand pounds;

(*i.*) For the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, and confirmed by Provisional Order and Act of Parliament, thirty thousand pounds, or such further sum as the Treasury may approve;

(*k.*) For the purposes of sections ninety-one and ninety-two of the Metropolitan and District Railways (City Lines and Exten-

sions) Act, 1879, as amended by the Metropolitan and District Railways (City Lines and Extensions) Act, 1882, with respect to the construction of the new street and works in the said section ninety-one mentioned, and the payment of the contribution towards the expense of constructing the same after the completion and opening of the same for the use of the public as by the said enactments provided, five hundred thousand pounds; provided that the contribution of five hundred thousand pounds sanctioned by the Metropolitan Board of Works (Money) Act, 1882, has not been paid before the thirty-first day of December one thousand eight hundred and eighty-three;

(*l.*) For the purpose of acquiring a piece of land as an addition to Brook Green, in the parish of Hammersmith, an open space under the control and management of the Board, two thousand pounds; provided that the moneys expended by the Board under the authority of this sub-section shall not, together with all moneys previously expended by the Board for the said purposes, exceed two thousand pounds;

(*m.*) For the purposes of the Metropolitan Board of Works (Various Powers) Act, 1882, fifty-one thousand five hundred pounds:

Provided always, that the moneys to be expended and the consolidated stock to be created by the Board for the purposes mentioned in this section respectively shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the said purposes respectively.

9. The Board may from time to time up to the thirty-first day of December one thousand eight hundred and eighty-four, expend, for the purpose of adding to, extending, enlarging, improving, and completing the works authorised by the Main Drainage Acts, and for rendering the same efficient in such manner as to them may seem proper, and for extending, enlarging, and improving the main sewers transferred to and vested in the Board under and by virtue of the Metropolis Management Act, 1855, and for making such other sewers and works, and such alterations and diversions of such existing main sewers, as may to them seem proper for the purpose of relieving, supplementing, and rendering such main sewers efficient, and for carrying into effect the several provisions in relation thereto mentioned in the said Acts, such moneys as they may think fit, not exceeding one hundred and ninety thousand pounds, in addition to any moneys which they are authorised to expend under any Acts passed previously to the passing of this Act; and all the provisions of the Main Drainage Acts and the Metropolis Management Act, 1855, and the Acts altering or amending the same, for the time being in force relating to the execution of works authorised by the said Acts respectively shall continue in force, and shall extend and apply respectively to the works executed by means of money raised for the purposes of this section; and all stock created under the authority of this Act for such purposes shall be deemed to be created for the purposes of the abovementioned Acts respectively.

10. Where a vestry or district board constituted under the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four the Board may lend to the vestry or district board, and the vestry or district board may borrow from the Board, such money as the Board think fit, and as the vestry or district board are authorised and desire to borrow, not exceeding two hundred thousand pounds; and

Where any corporation, body of commissioners, burial board, or other public body (not being a vestry or district board constituted under the Metropolis Management Act, 1855, a board of guardians, the Managers of the Metropolitan Asylum District, or the School Board for London), having power to levy directly or indirectly rates in respect of lands in the metropolis, as defined in the Metropolis Management Act, 1855, or to make charges on rates leviable in the metropolis as so defined, or to take within the metropolis as so defined dues or impositions in the nature of rates, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four the Board may lend to the corporation, commissioners, burial board, or other

public body, and they may borrow from the Board, such money as the Board think fit, and as the corporation, commissioners, burial board, or other public body are authorised and desire to borrow, not exceeding one hundred thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding in the case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years.

11. Where a board of guardians of a union or parish wholly or for the greater part in the metropolis as defined in the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four the Board may lend to the board of guardians, and the board of guardians may borrow from the Board, such money as the Board think fit, and as the board of guardians are authorised and desire to borrow, not exceeding two hundred thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding thirty years.

12. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four lend to the Managers of the Metropolitan Asylum District, in addition to the sums heretofore authorised to be lent by the Board to the said Managers, such sums as the said Managers are from time to time authorised by the Local Government Board to borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts altering or amending the same for the time being in force, not exceeding in the whole fifty thousand pounds, as though the said sums were included in the amount authorised to be lent for such purposes by section thirty-seven of the Metropolitan Board of Works (Loans) Act, 1869, and the Acts amending the same.

13. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-four lend to the School Board for London, in accordance with the provisions of the Elementary Education Acts, 1870 and 1873, and any Act or Acts altering or amending the same for the time being in force, such sums as the said School Board are from time to time authorised to borrow by the Education Department in pursuance of the said Acts, not exceeding in the whole the sum of five hundred thousand pounds.

The moneys so lent by the Board shall be repaid to them by the said School Board, with interest, within such period not exceeding fifty years as may be agreed upon between the Board and the said School Board with the sanction of the Education Department, subject to the approval of the Treasury.

14. In order to raise money for the several purposes for which the Board are by this Act authorised to expend or lend money, the Board may from time to time create consolidated stock. Provided always, that—

Where the Board under the authority of this Act create consolidated stock to raise money for the purpose of the Fire Brigade Act, 1865, or to enable them to make a loan repayable within thirty years from the date of such loan, the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem within the period of thirty years from the date of the creation of such stock, or in the case of any such loan within any lesser period for which the same may be made, an amount of consolidated stock equal to that so created; and

Where the Board are by this Act authorised to make a loan repayable within thirty years from the date of the loan, the Board, instead of raising money for any such loan by the creation of consolidated stock, may use for any such loan any moneys for the time being forming part of the consolidated loans fund, and not required for the payment of the dividends on consolidated stock; and

Where the Board raise consolidated stock for the purpose of any scheme made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, or the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, and confirmed by Provisional Order and Act of Parliament, there shall be repaid (as provided by the Artizans and Labourers Dwellings Improvement Act, 1875,) to the consolidated rate out of the local rate as defined by the said last-mentioned Act, all moneys required for pay-

ment of dividends on and the redemption of all consolidated stock created for such purpose.

15. Notwithstanding anything in this Act or in any other Act relating to the Board contained, the Board, with the consent of the Treasury, may from time to time as they think fit raise any part of the moneys which they are by this Act authorised to raise, not exceeding in the whole the sum of five hundred thousand pounds, by the issue of bills under this Act.

16. A bill under this Act (in this Act referred to as a "metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum named therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill.

Interest shall be payable in respect of a metropolitan bill at such rate and in such manner as the Board with the consent of the Treasury may direct.

17. All moneys raised by the issue of any metropolitan bills shall be paid to the Board, and shall be expended by them for the purposes for which the same are by this Act authorised to be raised respectively. The principal money and interest expressed in any metropolitan bill to be payable shall be charged on the consolidated rate, and shall be payable out of the said rate, or as regards principal out of moneys raised by the creation of consolidated stock under this Act for the purpose for which such principal money has been expended, and as regards interest out of the consolidated loans fund.

18. With respect to the issue of metropolitan bills the following provisions shall have effect:

(1.) Metropolitan bills shall be issued under the authority of a warrant sealed by the Board and countersigned on behalf of the Treasury:

(2.) Each metropolitan bill shall be for the amount directed by the Board:

(3.) Each metropolitan bill shall be sealed by the Board, the sealing being attested by the clerk in his own name.

19. The Board may from time to time, with the consent of the Treasury, make, and when made rescind, alter, and add to, regulations for carrying into effect the provisions of this Act with respect to metropolitan bills, and in particular—

(1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of metropolitan bills:

(2.) For regulating the issue of a new metropolitan bill in lieu of one defaced, lost, or destroyed:

(3.) For preventing, by the use of counterfoils or of a special description of paper, or otherwise, fraud in relation to the metropolitan bills:

(4.) For the proper discharge to be given upon the payment of a metropolitan bill.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

20. For the purpose of paying off the principal money payable in respect of metropolitan bills the Board may raise any sum which they are by this Act empowered to raise by the creation of consolidated stock for the purposes for which such principal money has been expended not exceeding the amount of such principal money, but save as aforesaid the powers given to the Board by this Act to raise moneys for any purposes by the creation of consolidated stock shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorised by the Treasury to be raised for such purposes respectively by the issue of metropolitan bills.

21. Sections eight, nine, ten, and eleven of the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to "consolidate and amend the statute law of "England and Ireland relating to indictable "offences by forgery" (which sections relate to the forgery of and other frauds relating to Exchequer bills), shall apply to the metropolitan bills, and shall have effect as if "Exchequer bill" in those sections included "metropolitan bill."

22. The Board may enter into such arrangements with any bank approved by the Treasury for carrying into effect the provisions of this Act with respect to the issue of metropolitan bills, and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto, as they may think proper and as may be approved by the Treasury.

23. The limitation on the borrowing power of the Board contained in section thirty-eight of the Metropolitan Board of Works (Loans) Act, 1869, shall not extend to moneys raised

by the Board for purposes mentioned in this Act.

24. All sums received by the Board in respect of interest on or principal of any loan made by them under this Act shall be carried to the consolidated loans fund.

25. During the year ending the thirty-first day of December one thousand eight hundred and eighty-four the Board shall not (except for such temporary period, not exceeding six months, as the Treasury may from time to time sanction) raise otherwise than in conformity with and to the extent mentioned in this Act any money under any powers of borrowing conferred upon the Board either by this Act or any other Act whatsoever: Provided always, that the limitations contained in this section shall not extend to limit or control the raising of moneys under the authority of section thirty-four of the Metropolitan Board of Works (Loans) Act, 1869, or of section eight of the Metropolitan Board of Works (Loans) Act, 1875, for the purposes in the said sections respectively mentioned.

SCHEDULES.

FIRST SCHEDULE.

NEW MONEY POWERS CONFERRED IN THIS ACT.

Section of Act.	Purpose.	Amount. £	s.	d.
	SUPPLEMENTAL UP TO 31ST DEC. 1883.			
4	Fire Brigade (amount already sanctioned, £50,000)	20,000	0	0
5	Loans to Guardians (amount already sanctioned, £200,000)	50,000	0	0
	UP TO 31ST DECEMBER 1884.			
6	Metropolitan Street Improvements Act, 1883	782,700	0	0
6	Metropolitan Board of Works Bridges Act, 1883	134,000	0	0
6	Artizans' Dwellings	99,000	0	0
	1ST JAN. TO 31ST DEC. 1884.			
7	Hyde Park Corner Improvements	10,000	0	0
8 (*a*)	Minor Improvements, and Contributions to Local Improvements, including Street Improvements sanctioned by Parliament for which no provision is elsewhere made in this Bill	100,000	0	0
(*b*)	Parks, commons, and open spaces	15,000	0	0
(*c*)	Bridges including Commutation of Pensions (Act of 1877)	30,000	0	0
(*d*)	Fire Brigade	35,000	0	0
(*e*)	Road by Wormwood Scrubs	6,000	0	0
(*f*)	Streets under Act of 1877	750,000	0	0
(*g*)	Thames River Prevention of Floods	10,000	0	0
(*h*)	Bridges (Act 1881)	300,000	0	0
(*i*)	Artizans' Dwellings	30,000	0	0
(*k*)	New Street, &c., under the Metropolitan and District Railways (City Lines and Extensions) Act, 1879, and the Metropolitan and District Railways (City Lines and Extensions) Act, 1882	500,000	0	0
(*l*)	Brook Green (addition to)	2,000	0	0
(*m*)	Metropolitan Board of Works (Various Powers) Act, 1882	51,500	0	0
9	Main Drainage	190,000	0	0
10	Loans to vestries and district boards	200,000	0	0
10	Loans to other public bodies	100,000	0	0
11	Loans to guardians	200,000	0	0
12	Loans to Managers of Metropolitan Asylum District	50,000	0	0
13	Loans to School Board for London	500,000	0	0
		4,165,200	0	0

Section of Act.	Purpose.		Amount.
		£ s. d.	£ s. d.
	AMOUNTS included above which are re-grants of borrowing power previously granted:		4,165,200 0 0
	Minor Improvements	100,000 0 0	
	Hyde Park Corner Improvement	10,000 0 0	
	Parks, commons, and open spaces	15,000 0 0	
	Bridges, including Commutation of Pensions (Act of 1877)	30,000 0 0	
	Fire Brigade	15,155 0 0	
	Road by Wormwood Scrubs	6,000 0 0	
	Streets under Act of 1877	750,000 0 0	
	Thames River, Prevention of Floods	10,000 0 0	
	Bridges (Act of 1881)	300,000 0 0	
	Artizans' Dwellings	30,000 0 0	
	New Street, &c., under the Metropolitan and District Railways (City Lines and Extensions) Acts, 1879 and 1882	500,000 0 0	
	Brook Green (addition to)	2,000 0 0	
	Metropolitan Board of Works (Various Powers) Act, 1882	50,970 0 0	
	Main Drainage	190,000 0 0	
	Loans to vestries and district boards	76,400 0 0	
	Loans to other public bodies	19,000 0 0	
	Loans to Guardians	800 0 0	
	Loans to Managers of Metropolitan Asylum District	43,400 0 0	
	Loans to School Board for London	200,000 0 0	
			2,348,725 0 0
	New borrowing powers—		
	For Board £1,056,075 0 0		
	For Loans 760,400 0 0		1,816,475 0 0

SECOND SCHEDULE.

PARKS AND OPEN SPACES ACTS.

PART I.

The Finsbury Park Act, 1857, 20 & 21 Vict. c. cl.
,, Southwark Park Act, 1864, 27 Vict. c. iv.
,, Gardens in Towns Protection Act, 1863, 26 Vict. c. 13.
,, Leicester Square Act, 1874, 37 Vict. c. x.
,, Metropolitan Open Spaces Act, 1877, 40 & 41 Vict. c. 35.
,, Metropolitan Commons Act, 1866, 29 & 30 Vict. c. 122.
,, ,, ,, ,, Amendment Act, 1869, 32 & 33 Vict. c. 107.
,, ,, ,, ,, 1878, 41 & 42 Vict c. 71.
,, ,, ,, Supplemental Act, 1871 (Blackheath), 34 & 35 Vict. c. lvii.
,, ,, ,, ,, ,, 1871 (Shepherd's Bush), 34 & 35 Vict. c. lxiii.
,, ,, ,, ,, ,, 1872 (Hackney Commons), 35 & 36 Vict. c. xliii.
,, ,, ,, ,, 1873 (Tooting Beck Common), 36 & 37 Vict. c. lxxxvi.

The Metropolitan Board of Works (Various Powers, Act, 1875 (Tooting Graveney Common), 38 & 39 Vict. c. clxxix. sec. 14.
,, Hampstead Heath Act, 1871, 34 & 35 Vict. c. lxxvii.
,, Metropolitan Commons Supplemental Act, 1877 (Clapham Common and Bostall Heath), 40 & 41 Vict. c. cci.
,, Plumstead Common Act, 1878, 41 & 42 Vict. c. cxlv.
,, Wormwood Scrubs Act, 1879, 42 & 43 Vict. c. clx.
,, Metropolitan Commons Supplemental Act, 1881 (Brook Green, Eel Brook Common, &c.), 44 Vict. c. xviii.
,, Metropolitan Board of Works (Hackney Commons) Act, 1881, 44 & 45 Vict. c. cxlvii.
,, Metropolitan Open Spaces Act, 1881, 44 & 45 Vict. c. 34.
,, Various Powers Act, 1882 (Peckham Rye and Tooting Beck), 45 & 46 Vict. c. lvi.

PART II.—*Embankment Acts.*

The Thames Embankment (North) Act, 1862, 25 & 26 Vict. c. 93., 26 & 27 Vict. c. 45.
,, ,, (South) Act, 1863, 26 & 27 Vict. c. 75.
,, ,, Amendment Act, 1864, 27 & 28 Vict. c. cxxxv., 27 & 28 Vict. c. 61.
,, ,, (North and South) Act, 1868, 31 & 32 Vict. c. cxi., 31 & 32 Vict. c. 43.
,, ,, (Chelsea) Act, 1868, 31 & 32 Vict. c. cxxxv., 32 & 33 Vict. c. 134.
,, ,, (North) Act, 1870, 33 & 34 Vict. c. xcii.
,, ,, ,, ,, 1872, 35 & 36 Vict. c. lxvi.
,, ,, (Land) Act, 1873, 36 & 37 Vict. c. 40.
,, ,, (South) Act, 1873, 36 Vict. c. vii.
Charing Cross and Victoria Embankment Approach Act, 1873, 36 & 37 Vict. c. c.
Metropolitan Board of Works (Various Powers) Act, 1876 (Chelsea Embankment), 39 & 40 Vict. c. lxxix.

CHAP. 28.

Companies Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Companies Acts, 1862 and 1867. (20th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Companies Act, 1883.

2. This Act shall, so far as is consistent with the terms thereof, be construed as one with the Companies Acts, 1862 and 1867.

3. This Act shall come into force on the first day of September one thousand eight hundred and eighty-three.

4. In the distribution of the assets of any company being wound up under the Companies Acts, 1862 and 1867, there shall be paid in priority to other debts,—

(*a.*) All wages or salary of any clerk or servant in respect of service rendered to

the company during four months before the commencement of the winding up not exceeding fifty pounds; and

(*b.*) All wages of any labourer or workman in respect of services rendered to the company during two months before the commencement of the winding up.

5. The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

6. Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or liquidators or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when such assets come into the hands of such liquidator or liquidators or official liquidator.

CHAP. 29.

Supreme Court of Judicature (Funds, &c.) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to consolidate the Accounting Departments of the Supreme Court of Judicature, and for other purposes. (20th August 1883.)

WHEREAS it is expedient that there should be but one accounting department for the Supreme Court of Judicature and all the courts and divisions thereof, and it is further expedient to amend certain provisions of the Chancery Funds Act, 1872, and to provide for facilitating the business of the said department:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. From and after the commencement of this Act there shall be one accounting department for the Supreme Court of Judicature.

2. All securities and money at the time of the commencement of this Act vested in the Paymaster-General in pursuance of the Chancery Funds Act, 1872, and all securities and money at any time after the commencement of this Act transferred or paid into or deposited in court, to the credit of any cause, matter, or account, in the Chancery Division of the High Court of Justice, shall be vested in Her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature, and shall continue to be and be subject to all the provisions of the Chancery Funds Act, 1872, and to the rules heretofore made and now in force under that Act, subject to such alterations therein and to such other and further rules as shall from time to time be made as thereby provided.

3. (*a.*) The Lord Chancellor, with the concurrence of the Treasury, may at any time after the passing of this Act direct that all moneys in court, or to be hereafter paid into court, in any other division of the High Court of Justice, and all securities in court placed or to be placed to the credit of any cause, matter, or account, in any such division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature.

(*b.*) All moneys and securities transferred, paid, or placed to the said account or credit of the Paymaster-General under this section shall be held by the Paymaster-General for the

time being in trust to attend the orders of the Court in regard thereto, and subject to rules to be made under this Act.

(c.) The Consolidated Fund shall be liable to make good to the suitors of the Court the moneys and securities so transferred, paid, or placed to the account or credit of the Paymaster-General.

4. (1.) The Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for giving effect to the provisions of the last preceding section, and for regulating the manner in which, subject to the orders of the court, the said moneys and securities shall be dealt with by the Paymaster-General, and may at any time revoke or alter any such rules.

(2.) The Treasury shall cause to be kept by the Paymaster-General such books and accounts, and in such form and manner, as they may from time to time direct, for the purpose of duly recording the transactions under the last preceding section; and the accounts kept by the Paymaster-General in respect of such transactions shall be audited by the Comptroller and Auditor-General in the manner and subject to the conditions prescribed in section twenty of the Chancery Funds Act, 1872.

5. All acts done by the Paymaster-General with reference to money and securities in Court (whether such money and securities be paid, transferred, or delivered into Court under this Act or under the provisions of the Chancery Funds Act, 1872), pursuant to and in accordance with the provisions of any general rules of the Supreme Court of Judicature made under the provisions of the Supreme Court of Judicature Act, 1875, and Acts amending the same, shall be as valid and effectual as if they had been done in pursuance of an order of the High Court of Justice or of the Court of Appeal.

6. If under any rules made by the Lord Chancellor with the concurrence of the Treasury, or any regulations of the Treasury, the Paymaster-General be authorised to make payments of money to persons entitled thereto upon their request by transmitting by post to such persons crossed cheques or other documents intended to enable such persons to obtain payment of the sums expressed therein, the posting of a letter containing such cheque or document, and addressed to any such person entitled thereto at the address given by him in his request, shall, as respects the liability of the Paymaster-General and of the Consolidated Fund respectively, be equivalent to the delivery of such cheque or document to such person himself.

7. Any rules made by the Lord Chancellor with the concurrence of the Treasury under the provisions of the Chancery Funds Act, 1872, or this Act, may determine what evidence of an order of the High Court of Justice or Court of Appeal, and of the directions contained in such order, shall be necessary or sufficient, or necessary and sufficient to authorise the Governor and Company of the Bank of England or any other person to transfer on sale or otherwise, or to deliver out, any securities or other things standing in the books of or deposited with such bank or person to the credit or account of the said Paymaster-General for the time being under this or the aforesaid Act; and such securities or things shall be transferred or delivered out accordingly, on behalf of the Paymaster-General, by some officer of such bank or person, anything in section ten of the Chancery Funds Act, 1872, to the contrary thereof notwithstanding.

8. This Act may be cited as the Supreme Court of Judicature (Funds, &c.) Act, 1883.

CHAP. 30.

Companies (Colonial Registers) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to authorise Companies registered under the Companies Act, 1862, to keep Local Registers of their Members in British Colonies.

(20th August 1883.)

WHEREAS many companies registered under the Companies Act, 1862, carry on business in British colonies, and dealings in their shares are frequent in such colonies, but delay, inconvenience, and expense are occasioned by reason of the absence of any legal provision for keeping local registers of members, and it is expedient that such provisions as this Act contains be made in that behalf:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Companies (Colonial Registers) Act, 1883; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 to 1880, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1883.

2. In this Act the term "company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "shares" includes stock; the term "colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions.

3. (1.) Any company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations, as originally framed or as altered by special resolution, cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

(2.) The company shall give to the registrar of joint stock companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be primâ facie evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880, with this qualification, that the advertisement mentioned in section thirty-three of the Companies Act, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five of the Companies Act, 1862, vested, as respects a register, in England and Ireland in Her Majesty's superior courts of law or equity, and that all offences under section thirty-two of the Companies Act, 1862, may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(*a.*) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp duty.

(*b.*) Upon the death of a member registered in a colonial register under this Act, the

share or other interest of the deceased member shall for the purposes of this Act so far as relates to British duties be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration, is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the Company.

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of colonial registers.

CHAP. 31.

Payment of Wages in Public-houses Prohibition Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to prohibit the Payment of Wages to Workmen in Public-houses and certain other places.

(20th August 1883.)

WHEREAS by the Coal Mines Regulations Act, 1872, and the Metalliferous Mines Regulation Act, 1872, the payment in public-houses, beer-shops, or other places in the said Acts mentioned of wages to persons employed in or about any mines to which the said Acts apply is prohibited, and it is expedient to extend such prohibition to the payment in public-houses, beer-shops, and other places in England and Scotland of wages to all workmen as defined by this Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Payment of Wages in Public-houses Prohibition Act, 1883.

2. In this Act the expression "workman" means any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, applies.

3. From and after the passing of this Act no wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cyder, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman bonâ fide employed by him.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.

4. Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts, and in Scotland in the manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

5. This Act shall not apply to Ireland.

CHAP. 32.

Greenwich Hospital Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make further provision respecting the application of the Revenues of Greenwich Hospital, and for other purposes.

(20th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Greenwich Hospital Act, 1883, and this Act and the Greenwich Hospital Acts, 1865 to 1872, shall be read and have effect together as one Act, and may be cited together as the Greenwich Hospital Acts, 1865 to 1883.

Powers for grant of Pensions, &c. out of Greenwich Hospital Funds.

2. The Admiralty may out of the funds of Greenwich Hospital from time to time grant pensions to widows and allowances to children of—

(*a.*) Non-commissioned officers and petty officers and men of the Royal Navy and Marines killed or drowned in the service of the Crown, or on lifeboat service; and of

(*b.*) Men of the Royal Naval Volunteers killed or drowned in the service of the Crown; and of

(*c.*) Men killed or drowned in the service of the Crown while serving in the Seamen Pensioners' Reserve; and of

(*d.*) Men of the Royal Naval Artillery Volunteer Force killed or drowned in the service of the Crown.

The Admiralty may out of the said funds from time to time grant gratuities to parents or other relatives dependent on any such non-commissioned officer, petty officer, or man, as aforesaid, killed, drowned, or deceased as aforesaid, so, however, that the total expenditure in such gratuities shall not exceed in any one year the sum of five hundred pounds.

The Admiralty may, if they see fit, by regulations made as herein-after mentioned, extend the powers and provisions of this section to cases where such non-commissioned officers, petty officers, or men as aforesaid, die from the effects of any injury or disease caused by extraordinary exposure or exertion in the service of the Crown.

No person shall be eligible to receive any benefit under this section on account of the decease of any such non-commissioned officer, petty officer, or man as aforesaid, which took place before the fourth day of June one thousand eight hundred and eighty.

3. The Admiralty may out of the funds of Greenwich Hospital from time to time provide wholly or in part for the education and maintenance of sons of deceased or incapacitated warrant officers, non-commissioned officers, petty officers, and men of the Royal Navy and Marines, and also for the education and maintenance of sons of men of the Royal Naval Volunteers and Royal Naval Artillery Volunteer Force killed or drowned in the service of the Crown.

4. Subject to the provisions of this Act, the

Admiralty may from time to time make such regulations as may seem fit for determining the nature and amount of the pensions, allowances, gratuities, and payments for education and maintenance to be granted or made under the powers of this Act, according to the circumstances of different cases, and for governing the selection of the persons to receive the benefit of this Act. Regulations made by the Admiralty under this Act shall not have effect unless and until they are approved by Her Majesty in Council.

5. All pensions allowances gratuities and payments granted or made under the authority of this Act, shall be in the first instance defrayed out of money provided by Parliament for that purpose, and shall be repaid to the Consolidated Fund of the United Kingdom from the Greenwich Hospital Income Account in like manner as money expended out of money provided by Parliament for the purposes of the Greenwich Hospital Act, 1865, is repaid thereto.

6. All gratuities or allowances purporting to have been granted or made before the passing of this Act under the authority of an Order of her Majesty in Council dated the fourth day of February one thousand eight hundred and seventy-five, shall be deemed to have been authorised by the Greenwich Hospital Act, 1865.

7. The decision of the Admiralty respecting the eligibility of any person to receive any benefit under the Acts, Orders in Council, and regulations which govern the administration of the revenues of Greenwich Hospital, or respecting any other question arising as to the appointment or grant of any pension, allowance, gratuity, or benefit under those Acts, Orders, and regulations, shall be binding and conclusive to and for all intents and purposes.

Vesting of Property Mortgaged to Admiralty.

8. All lands, rates, and other property which have been or been expressed to be conveyed, assigned, or assured by way of mortgage to the Admiralty or to trustees on behalf of the Admiralty, by any instrument in force at the time of the passing of this Act, shall by virtue of this Act continue to be or be vested in the Admiralty for the time being for the same estates, but subject to the equities of redemption subsisting in or affecting the same respectively; and all lands, rates, and other property conveyed, assigned, or assured after the passing of this Act by way of mortgage to secure any moneys advanced by the Admiralty shall be conveyed, assigned, or assured to and vest in the Admiralty for the time being; and all lands, rates, and other property vested in the Admiralty under this section shall go to and be held by the Lord High Admiral for the time being or the Commissioners for the time being for executing the office of Lord High Admiral in succession, in trust for Her Majesty, her heirs and successors, for the exclusive benefit of Greenwich Hospital.

CHAP. 33.

Irish Reproductive Loan Fund Amendment Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Irish Reproductive Loan Fund Act, 1874.

(20th August 1883.)

WHEREAS under the provisions of an Act of Parliament passed in the session of the thirty-seventh and thirty-eighth years of the reign of Her present Majesty, chapter eighty-six, intituled the Irish Reproductive Loan Fund Act, 1874, as amended by an Act of Parliament passed in the forty-fifth year of the reign of Her present Majesty, intituled "An Act "to amend the Irish Reproductive Loan "Fund Act, 1874," the property in the fund known as the Irish Reproductive Loan Fund was passed to and vested in the Commissioners of Public Works in Ireland upon trust that the said Commissioners should dispose of the same by way of loan for the promotion of such purposes or objects of public utility not otherwise provided for in whole or in part by local rate or assessment, including the instruction in and the promotion of agricultural science in the counties of Clare, Cork, Galway, Kerry, Leitrim, Limerick, Mayo, Roscommon, Sligo, and Tipperary:

And whereas it was by the said Acts further enacted that in eight of the said counties referred to in the former of the said Acts as "maritime counties" (being the counties above enumerated with the exception of the counties of Roscommon and Tipperary), such purposes should be deemed to include purposes defined in the said Acts as "fishery purposes," for which fishery purposes the Commissioners were empowered to advance by way of loan such amount not exceeding in the whole the amount standing to the credit of each of the eight counties in any year as the Inspectors of Irish Fisheries might from time to time recommend:

And whereas doubts have arisen with regard to the scope and meaning of the expression "such purposes of public utility not other-"wise provided for in whole or in part by "local rate or assessment," and by reason of such doubts the counties of Roscommon and Tipperary, not being maritime counties, have been debarred from participating in the benefits of the said Irish Reproductive Loan Fund:

And whereas it is desirable that the counties of Roscommon and Tipperary should be enabled to participate in the benefit of such portions of the said funds as may stand to the credit of each of such counties respectively in any year:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Irish Reproductive Loan Fund Amendment Act, 1883.

2. As regards the counties of Roscommon and Tipperary the words contained in the fourth section of the Act thirty-seventh and thirty-eighth Victoria, chapter eighty-six, "not otherwise provided for in whole or in "part by local rate or assessment," are hereby repealed.

3. Subject to the provisions of this Act it shall be lawful for the Commissioners of Public Works in Ireland to advance by way of loan to the town commissioners of every town situated wholly or partially within the counties of Roscommon or Tipperary which has adopted the provisions of the Towns Improvement (Ireland) Act, 1854, such amount of the Irish Reproductive Loan Fund, not exceeding in the whole the amount standing to the credit of each of the said counties respectively in any year, as the Commissioners, with the consent of the Treasury, may from time to time think proper for such objects of public utility as may be approved by the Treasury.

4. Prior to the advance of any such loan as is in the last section mentioned, the town commissioners requiring a loan shall forward a written representation to the Commissioners of Public Works stating the object of public utility for which the loan is required, accompanied by an estimate of the amount to be expended upon the proposed works or objects, and by such maps, plans, and explanations as may be sufficient to satisfy the Commissioners of the public utility of the proposed works or objects, and that the amount required to be advanced is reasonably adequate to carry out the proposed works or objects; the town commissioners shall likewise specify the period within which they propose that the said loan should be repaid and the fund or rate upon which it is intended to be secured, and shall satisfy the Commissioners of the adequacy of such security.

5. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations:—

(1.) Money shall not be borrowed except for permanent objects of public utility (including under the expression any works of which the cost ought in the opinion of the Commissioners to be spread over a term of years):

(2.) The money may be borrowed for such time not exceeding thirty-five years as the Commissioners determine in each case, and subject as aforesaid the town commissioners shall repay the moneys so borrowed in such manner as the Commissioners, with the consent of the Treasury, may from time to time determine:

(3.) There shall be charged by way of interest in respect of loans such interest (if any) not exceeding two pounds ten shillings per centum as the Commissioners may from time to time determine:

(4.) No money shall be expended under this Act on any institution having for its object the reformation of criminals.

6. It shall be lawful for the town commissioners of any town to which a loan is made in pursuance of the provisions of this Act in case no fund exists or no sufficient portion of the rates of such town is available for the repayment of such loan to levy a rate for the purpose of repaying such loan, provided that the rate levied under this section does not exceed one penny in the pound upon the entire assessable value of the area over which the jurisdiction to levy rates of such town commissioners extends, and such town commissioners shall have all such powers to enforce the payment of any rate levied in pursuance of this section as are now possessed by them to enforce payment of the ordinary rates payable in respect of such town.

7. The town commissioners of any town requiring a loan under the provisions of this Act are hereby authorised and empowered to charge and mortgage to the Commissioners any portion of the rates of such town or the special rate levied in pursuance of the last preceding section for securing the repayment of such loan with interest at the time or times specified by the Commissioners, and in the event of the non-payment of such loan or any part thereof at the time or times so specified it shall be lawful for the Commissioners to sequester such portion of the rates or such special rate as may have been mortgaged or charged to them for the purposes aforesaid, and to collect the same until the loan or the portion thereof unpaid shall have been satisfied, and for this purpose the Commissioners shall have and are hereby empowered to use all the remedies possessed by the town commissioners for the collection and enforcement of such rates or special rate.

8. In this Act, if not inconsistent with the context, the following terms have the meanings hereby respectively assigned to them; that is to say,

"Commissioners" means the Commissioners of Public Works in Ireland.

"Town commissioners" means the commissioners appointed under the Towns Improvement (Ireland) Act, 1854, and any Act amending the same; and in the case of towns in which the governing body is a town council, but in which the Towns Improvement (Ireland) Act, 1854, is in force, the term "town commissioners" includes such town council.

"Town" means any town as defined by section one of the Towns Improvement (Ireland) Act, 1854, which has adopted that Act.

"Treasury" means the Commissioners of Her Majesty's Treasury.

9. This Act and the Act thirty-seventh and thirty-eighth Victoria, chapter eighty-six, shall be read and construed as one Act, except in so far as the provisions of the said Act are inconsistent with or repealed by the provisions of the present Act.

CHAP. 34.

Cheap Trains Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Law relating to Railway Passengers Duty, and to amend and consolidate the Law relating to the Conveyance of the Queen's Forces by Railway.

(20th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Cheap Trains Act, 1883.

2. After the commencement of this Act the duties now payable in respect of passengers conveyed for hire on a railway shall, subject to the provisions of this Act, be varied as follows:

(1.) Fares not exceeding the rate of one penny a mile shall be exempt from duty; but fares for return or periodical tickets shall be exempt from duty only where the ordinary fare for the single journey does not exceed that rate:

(2.) Duty shall be payable at the rate of two per cent. on fares exceeding the rate of one penny a mile for conveyance between railway stations within one urban district certified so to be in manner provided in this section.

(3.) Where the Board of Trade are satisfied that any two or more railway stations are within an area which has a continuous urban as distinguished from a rural or suburban character, and contains a population of not less than one hundred thousand inhabitants, the Board of Trade may certify that those stations are within one urban district for the purposes of this Act. The Board of Trade may from time to time and at any time rescind or vary any certificate given by them under this section.

3. (1.) If at any time the Board of Trade have reason to believe—

(*a.*) that upon any railway or part of a railway, or upon any line or system of railways, whether belonging to one company or to two or more companies, which forms a continuous means of communication, a due and sufficient proportion of the accommodation provided by such company or companies is not provided for passengers at fares not exceeding the rate of one penny a mile; or

(*b.*) that upon any railway carrying passengers proper and sufficient workmen's trains are not provided for workmen going to and returning from their work at such fares and at such times between six o'clock in the evening and eight o'clock in morning as appear to the Board of Trade to be reasonable,

then and in either case the Board of Trade may make such inquiry as they think necessary, or may, if required by the company or any of the companies concerned, refer the matter for the 'decision of the Railway Commissioners, who shall have the same power therein as if it had been referred to their decision in pursuance of the Regulation of Railways Act, 1873.

(2.) If on an inquiry under this Act it is proved to the satisfaction of the Board of Trade or the Railway Commissioners, as the case may be, that such proper and sufficient accommodation or workmen's trains as aforesaid are not provided by any railway company, the Board of Trade or the Railway Commissioners, as the case may be, may order the company to provide such accommodation or workmen's trains at such fares as, having regard to the circumstances, may appear to the said Board or the Commissioners to be reasonable.

(3.) If any company on whom an order is made under this Act to provide proper and sufficient accommodation or workmen's trains refuse, or, at any time after the expiration of one month from the making thereof, neglect to comply with the order, the Board of Trade shall issue a certificate to that effect to the Commissioners of Inland Revenue, and after the date of such certificate the company shall lose the benefit of this Act and be liable to pay in respect of the fares received after such date the same amount of passenger duty as would be payable if the passenger duty had not been varied as provided by this Act, and shall continue so liable in respect of all fares received up to the date at which the Board of Trade certify that the company has complied with the said order. Where two or more companies are concerned, the certificate shall state whether both or all, or one or more, and which of them is in default.

(4.) A company on whom an order is made by the Board of Trade under this section may within six months after the making of the order appeal to the Railway Commissioners, who shall have the same power in the matter as if it had been originally referred to their decision.

(5.) The Board of Trade or the Railway Commissioners, as the case may be, may rescind

or vary any order made by them under this section.

4. (1.) Where any Act of Parliament allows a number of miles greater than the actual number of miles to be reckoned for the purpose of calculating the fares on any part of a railway, the mileage so allowed shall be deemed for the purposes of this Act to be the mileage of that part of the railway.

(2.) Where any Act of Parliament allows special or exceptional charges upon any part of a railway, that part shall for the purpose of calculating fares under this Act be deemed to be a separate railway.

5. For the purposes of this Act fares shall not be deemed to exceed the rate of one penny a mile which do not exceed one penny for a single journey of any distance less than a mile, or, where the distance travelled, being more than one mile, is any number of complete half-miles and a fraction not less than a quarter of a mile, do not exceed one halfpenny for every half-mile and one halfpenny for the fraction; but for a child between three and twelve years of age the fare shall not exceed half an adult's fare, and children under three years of age shall be conveyed free of charge: Provided that a railway company shall not be bound to charge less than one penny to any person over three years of age for any single journey.

Any charge or fare which by any local and personal Act relating to any railway is declared to be a charge or fare consistent with the provisions of the enactments relating to passenger duty which are repealed by this Act shall be deemed for the purposes of this Act to be a fare not exceeding the rate of one penny a mile.

6. (1.) For the purpose of moving by railway on any occasion of the public service—

(*a*) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

(*b*) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and

(*c*) any officers or men of any police force;

(all and any of which officers, soldiers, and men are in this Act called "the forces");

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessaries and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority, and subject to or in default of agreement on the following terms:

(i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation:

(ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three fourths; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three fourths, as for four officers and one hundred and forty-six soldiers or other persons; and for the numbers in excess of the said one hundred and fifty, one half:

(iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult:

(iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed; and any excess of weight shall be conveyed at not more than two thirds of the rate charged to the public for excess luggage:

(v.) The said public baggage, stores, arms, ammunition, necessaries, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same:

(vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty

or one of Her Majesty's Principal Secretaries of State, as the case may be.

(2.) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority.

(3.) Fares payable under this section shall be exempt from passenger duty.

(4.) Where a company has by refusal or neglect to comply with an order of the Board of Trade or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed.

7. The Act of the fifth and sixth years of Her Majesty's reign, chapter seventy-nine, intituled "An Act to repeal the duties payable "on stage carriages and on passengers con- "veyed upon railways and certain other stamp "duties in Great Britain, and to grant other "duties in lieu thereof, and also to amend the "laws relating to the stamp duties," is hereby amended in the following respects:—

(*a.*) In lieu of the affidavit required by section four of the said Act in verification of accounts rendered for the purposes of railway passenger duty, every such account shall be certified to be a full and true account under the hand of the person by whom the affidavit would have been made if this Act had not been passed.

(*b.*) The Commissioners of Inland Revenue may, at their discretion, dispense with the security by bond required by section seven of the said Act.

8. In this Act, unless a contrary intention appears from the context—

The term "fare" includes all sums received or charged for the hire, fare, or conveyance of passengers upon or along any railway:

The term "railway company" includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament:

The term "the Admiralty" means the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral:

The term "police force" means the police force of the metropolitan police district or any county, borough, or place maintaining a separate police force:

The term "police authority" means the Secretary of State, quarter sessions, watch committee, police committee, police commissioners, or other authority having the management of a police force.

Anything which the Board of Trade is by this Act empowered or required to do may be done by writing under the hand of the President or Secretary or one of the Assistant Secretaries of the Board.

9. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

10. Without prejudice to anything done or suffered, or any right acquired or liability incurred before the commencement of this Act, the Acts specified in the Schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent specified in the third column of the Schedule, except so far as such Acts apply to Ireland, and except as respecting the conveyance of forces by companies who lose the benefit of this Act.

11. This Act shall not extend to Ireland.

SCHEDULE.

Session and chapter.	Title.	Extent of Repeal.
5 & 6 Vict. c. 55. -	An Act for the better regulation of railways and for the conveyance of troops.	Section twenty.
7 & 8 Vict. 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.	Sections six, seven, eight, nine, ten, and twelve.
16 & 17 Vict. c. 69. -	An Act to make better provision concerning the entry and service of seamen, and otherwise to amend the laws concerning Her Majesty's Navy.	Section eighteen.
21 & 22 Vict. c. 75. -	An Act to amend the law relating to cheap trains, and to restrain the exercise of certain powers by canal companies being also railway companies.	Sections one and two.
26 & 27 Vict. c. 33. -	An Act for granting to Her Majesty certain duties of inland revenue; and to amend the laws relating to the inland revenue.	Section fourteen.

CHAP. 35.

Diseases Prevention (Metropolis) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make better provision as regards the Metropolis for the isolation and treatment of persons suffering from Cholera and other Infectious Diseases; and for other purposes.

(20th August 1883.)

WHEREAS it is expedient that further powers be conferred on certain local authorities in the metropolis for the provision of hospital accommodation, and the isolation and treatment in suitable hospitals of persons suffering from cholera and other infectious diseases; and that better provision be made respecting the powers of the port sanitary authority of the port of London, and other matters:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Diseases Prevention (Metropolis) Act, 1883.

2. The managers of the Metropolitan Asylum District (in this Act referred to as "the managers") shall be within that district a local authority under the Diseases Prevention Act, 1855, for such purposes of the said Act, and with such powers and duties as may from time to time be specified by regulations of the Local Government Board.

Subject to such regulations the managers may from time to time utilise any of their buildings, ambulances, and other property, and their staff, for the execution of any powers or duties conferred or imposed on them under the said Act and this Act.

3. Any authority or body of persons having the management and control of any hospital, infirmary, asylum, or workhouse may from time to time let the same or any part thereof to the managers; or may enter into and carry into effect contracts with the managers for the reception, treatment, and maintenance therein of persons suffering from cholera within the district of the managers.

Provided that the power conferred by this section shall not, without the consent of the Local Government Board, be exercised with respect to any asylum under the Metropolitan Poor Act, 1867, or any workhouse.

4. All expenses incurred by the managers in the execution of any powers and duties conferred or imposed on them under the Diseases Prevention Act, 1855, and this Act, shall be defrayed in the same manner as the expenses mentioned in section thirty-one of the Metropolitan Poor Act, 1867, are to be defrayed under that section; and shall be raised and be recoverable in the same manner as expenses under the last-mentioned Act.

The amount expended by any local authority in the metropolis under the Diseases Prevention Act, 1855, other than the managers, in providing any building for the reception of patients or other persons under that Act, shall, to such extent as may be determined by the Local Government Board, together with two thirds of the salaries or remuneration of any officers or servants employed in any such building under that Act, be repaid to them from the Metropolitan Common Poor Fund by the receiver of that fund, out of any moneys for the time being in his hands, upon the precept of the said Board, to be issued by them after the production of such evidence in support of the expenditure as they may deem satisfactory, and the Board may require contributions for the purpose of raising the sums so repayable.

5. The provision of hospital accommodation under the Sanitary Act, 1866, shall be deemed to be a purpose for which vestries and district boards in the metropolis are authorised to borrow under the Metropolis Management Act, 1855, and sections one hundred and eighty-three to one hundred and ninety-one (both included) of that Act shall apply and have effect accordingly.

6. Whereas it is necessary in order to facilitate the conveyance by water to hospital ships and hospitals on or near the Thames of persons suffering from infectious disease, that the managers should provide wharves or landing places for that purpose: Be it therefore enacted that it shall be the duty of the managers and they are hereby required to provide on the banks of the said river wharves or landing places, not exceeding three in number, within the metropolis, and one wharf or landing place beyond the metropolis, with convenient approaches thereto respectively, for the embarkation and landing of persons removed to or from any hospital ship or hospital belonging to the managers, and for any other purpose in relation thereto. The provision of such wharves or landing places and approaches shall be deemed to be a purpose of the Metropolitan Poor Act, 1867, and so much of the Lands Clauses Acts as relates to the purchase of lands otherwise than by agreement may be put in force for such purpose in the manner provided by section fifty-three of that Act, but not without such advertisements and notices as are mentioned in section fifty-four of the same Act; and when such wharves or landing places and approaches have been provided on sites approved by order of the Local Government Board, the same shall be deemed to be expressly authorised by this Act.

7. The admission of a person suffering from infectious disease into any hospital or hospital ship provided by the managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent of any person, and no such person or his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disability or disqualification.

8. The Local Government Board shall be deemed to have been empowered to assign to

the port sanitary authority of the port of London for the whole of the said port the powers rights duties capacities liabilities and obligations which they have assigned to them; and the said Board may, from time to time, assign to the said port sanitary authority for the whole of the said port any powers rights duties capacities liabilities and obligations of an urban sanitary authority under the Public Health Act, 1875, with such modifications and additions (if any) as may appear to the Board to be required.

The said port sanitary authority may acquire and hold land for the purposes of their constitution without any license in mortmain.

9. Nothing in this Act shall be deemed or construed to exempt any local authority in the metropolis from the performance of any duties or liabilities assigned to them by regulations of the Local Government Board under the Diseases Prevention Act, 1855.

10. The power of the Local Government Board to issue directions and regulations under the Diseases Prevention Act, 1855, shall extend to issuing directions and regulations with respect to the powers and duties of the managers as a local authority under the Diseases Prevention Act, 1855, and with respect to the adjustment of their functions relatively to those of other local authorities under the said Act and this Act.

11. The Diseases Prevention Act, 1855, shall be deemed to apply to the hamlet of Mottingham, in the county of Kent, and the rural sanitary authority of the Lewisham Union shall (subject to the provisions of this Act) be the local authority for the execution of the said Act in the said parish, and their expenses shall be defrayed in like manner as their general expenses in the execution of the Public Health Act, 1875.

12. In and for the purposes of this Act, words and expressions have the same meanings, unless inconsistent with the context, as they have in the Metropolitan Poor Act, 1867.

"Cholera" includes choleraic diarrhœa.

"Diseases Prevention Act, 1855," includes any Act or Acts amending the same.

13. This Act shall not continue in force after the first day of September one thousand eight hundred and eighty-four, except so far as regards any property acquired, act done, or liability incurred under it prior to that date, and except as regards the Port Sanitary Authority of London.

CHAP. 36.

City of London Parochial Charities Act, 1883.

ABSTRACT OF THE ENACTMENTS.

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Diseases Prevention (Metropolis) Act, 1883.

2. The managers of the Metropolitan Asylum District (in this Act referred to as "the managers") shall be within that district a local authority under the Diseases Prevention Act, 1855, for such purposes of the said Act, and with such powers and duties as may from time to time be specified by regulations of the Local Government Board.

Subject to such regulations the managers may from time to time utilise any of their buildings, ambulances, and other property, and their staff, for the execution of any powers or duties conferred or imposed on them under the said Act and this Act.

3. Any authority or body of persons having the management and control of any hospital, infirmary, asylum, or workhouse may from time to time let the same or any part thereof to the managers; or may enter into and carry into effect contracts with the managers for the reception, treatment, and maintenance therein of persons suffering from cholera within the district of the managers.

Provided that the power conferred by this section shall not, without the consent of the Local Government Board, be exercised with respect to any asylum under the Metropolitan Poor Act, 1867, or any workhouse.

4. All expenses incurred by the managers in the execution of any powers and duties conferred or imposed on them under the Diseases Prevention Act, 1855, and this Act, shall be defrayed in the same manner as the expenses mentioned in section thirty-one of the Metropolitan Poor Act, 1867, are to be defrayed under that section; and shall be raised and be recoverable in the same manner as expenses under the last-mentioned Act.

The amount expended by any local authority in the metropolis under the Diseases Prevention Act, 1855, other than the managers, in providing any building for the reception of patients or other persons under that Act, shall, to such extent as may be determined by the Local Government Board, together with two thirds of the salaries or remuneration of any officers or servants employed in any such building under that Act, be repaid to them from the Metropolitan Common Poor Fund by the receiver of that fund, out of any moneys for the time being in his hands, upon the precept of the said Board, to be issued by them after the production of such evidence in support of the expenditure as they may deem satisfactory, and the Board may require contributions for the purpose of raising the sums so repayable.

5. The provision of hospital accommodation under the Sanitary Act, 1866, shall be deemed to be a purpose for which vestries and district boards in the metropolis are authorised to borrow under the Metropolis Management Act, 1855, and sections one hundred and eighty-three to one hundred and ninety-one (both included) of that Act shall apply and have effect accordingly.

6. Whereas it is necessary in order to facilitate the conveyance by water to hospital ships and hospitals on or near the Thames of persons suffering from infectious disease, that the managers should provide wharves or landing places for that purpose: Be it therefore enacted that it shall be the duty of the managers and they are hereby required to provide on the banks of the said river wharves or landing places, not exceeding three in number, within the metropolis, and one wharf or landing place beyond the metropolis, with convenient approaches thereto respectively, for the embarkation and landing of persons removed to or from any hospital ship or hospital belonging to the managers, and for any other purpose in relation thereto. The provision of such wharves or landing places and approaches shall be deemed to be a purpose of the Metropolitan Poor Act, 1867, and so much of the Lands Clauses Acts as relates to the purchase of lands otherwise than by agreement may be put in force for such purpose in the manner provided by section fifty-three of that Act, but not without such advertisements and notices as are mentioned in section fifty-four of the same Act; and when such wharves or landing places and approaches have been provided on sites approved by order of the Local Government Board, the same shall be deemed to be expressly authorised by this Act.

7. The admission of a person suffering from infectious disease into any hospital or hospital ship provided by the managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent of any person, and no such person or his parent shall by reason thereof be deprived of any right or privilege, or be subject to any disability or disqualification. .

8. The Local Government Board shall be deemed to have been empowered to assign to

the port sanitary authority of the port of London for the whole of the said port the powers rights duties capacities liabilities and obligations which they have assigned to them; and the said Board may, from time to time, assign to the said port sanitary authority for the whole of the said port any powers rights duties capacities liabilities and obligations of an urban sanitary authority under the Public Health Act, 1875, with such modifications and additions (if any) as may appear to the Board to be required.

The said port sanitary authority may acquire and hold land for the purposes of their constitution without any license in mortmain.

9. Nothing in this Act shall be deemed or construed to exempt any local authority in the metropolis from the performance of any duties or liabilities assigned to them by regulations of the Local Government Board under the Diseases Prevention Act, 1855.

10. The power of the Local Government Board to issue directions and regulations under the Diseases Prevention Act, 1855, shall extend to issuing directions and regulations with respect to the powers and duties of the managers as a local authority under the Diseases Prevention Act, 1855, and with respect to the adjustment of their functions relatively to those of other local authorities under the said Act and this Act.

11. The Diseases Prevention Act, 1855, shall be deemed to apply to the hamlet of Mottingham, in the county of Kent, and the rural sanitary authority of the Lewisham Union shall (subject to the provisions of this Act) be the local authority for the execution of the said Act in the said parish, and their expenses shall be defrayed in like manner as their general expenses in the execution of the Public Health Act, 1875.

12. In and for the purposes of this Act, words and expressions have the same meanings, unless inconsistent with the context, as they have in the Metropolitan Poor Act, 1867.

"Cholera" includes choleraic diarrhœa.

"Diseases Prevention Act, 1855," includes any Act or Acts amending the same.

13. This Act shall not continue in force after the first day of September one thousand eight hundred and eighty-four, except so far as regards any property acquired, act done, or liability incurred under it prior to that date, and except as regards the Port Sanitary Authority of London.

CHAP. 36.

City of London Parochial Charities Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to provide for the better application and management of the Parochial Charities of the City of London.

(20th August 1883.)

WHEREAS it is desirable to make provision for the better application and management of the parochial charities of the City of London:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the City of London Parochial Charities Act, 1883.

I.—*Appointment and Powers of Commissioners.*

2. The Charity Commissioners for England and Wales (herein-after called the Commissioners) shall be Commissioners under this Act and have the following powers for the purposes thereof, viz.:

(1.) Power to exercise, without application, any of the powers vested in them by the Charitable Trusts Act, 1853, and the Acts amending the same:

(2.) The like power, jurisdiction, and authority to summon or order persons to give evidence, or bring, produce, or give inspection of documents, and to administer oaths, and to take affidavits and declarations, and to enforce their orders or directions, and generally all such power, jurisdiction, and authority as might be exercised by the High Court of Justice if the matters and questions referred to them had come before that Court, and in relation to the taking of oaths and the making of affidavits and declarations the proceedings before them shall deem to be judicial proceedings.

(3.) Power to determine whether any property is or is not charity property subject to the powers of this Act.

3. Her Majesty and her successors may at any time after the passing of this Act, by warrant under Her Sign Manual, appoint any number of persons, not exceeding two, to be paid Charity Commissioners for England and Wales, who shall hold office during Her Majesty's pleasure, and their salaries shall, unless otherwise directed by Parliament, cease to be paid after the expiration of the period prescribed by this Act for the duration of the powers and duties vested in or imposed upon the Charity Commissioners for England and Wales by this Act.

Save as in this section mentioned, the additional Commissioners shall have the same powers, and perform the same duties, and stand in all respects in the same position as the other paid Charity Commissioners, with the exception of the Chief Commissioner.

The Commissioners of Her Majesty's Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, clerks, architects, actuaries, surveyors, and other officers as the Commissioners of Her Majesty's Treasury may think necessary for the purpose of enabling the Charity Commissioners to perform the additional duties imposed upon them by this Act.

4. The powers of the Commissioners conferred by this Act shall continue until the end of the year one thousand eight hundred and eighty-seven, but it shall be lawful for Her Majesty the Queen from time to time, with the advice of Her Privy Council, to continue the powers of the Commissioners for such time as Her Majesty thinks fit, but not beyond the end of the year one thousand eight hundred and eighty-nine.

II.—*Inquiry and Statement.*

5. The Commissioners shall as soon as may be proceed to inquire into the nature, tenure, and value of all the property and endowments belonging to the charities mentioned in the Digest of Parochial Charities of the City of London, referred to in the Thirteenth Report of the Charity Commissioners for England and Wales, and every of them, and every other charity the property or income of which is applicable or applied to or for the benefit of any parish or part of a parish within the City of London or of any inhabitant or inhabitants thereof (herein-after called the said parochial charities), and the purposes or trusts for or upon which the same have heretofore been or are now held or enjoyed and to which the income thereof has been or is now applied, and shall classify the said property in two schedules. They shall place in one of such schedules all property (herein-after called "ecclesiastical charity property") which shall be proved to their satisfaction to have been originally given to or for, or to have been duly ordered by any Act of Parliament, judgment of a court, or other authority competent in that behalf, to be applied to or for, and to have been accordingly applied to or for any spiritual purpose which is now a legal purpose, or for the benefit of any spiritual person as

such, or for the erection, maintenance, or repair of any ecclesiastical buildings, or for the maintenance of divine service therein, even although such purpose may now have failed, but the user of property for an ecclesiastical or any other purpose shall not be conclusive evidence that such property was originally given for such a purpose, but shall be taken into account by the Commissioners in determining whether in each case such property is or is not to be deemed to have been originally given for such a purpose, provided that no property shall be deemed to be ecclesiastical which shall not have been given or applied to or for or in connexion with the Church of England. In the other of such schedules they shall place all other charity property (herein-after called "general charity property"). The Commissioners shall specify in the said schedules the objects or purposes to or for which the said property is now applied, and all vested interests now existing in or upon or in anywise affecting any part of such property.

6. Where property scheduled by the Commissioners as ecclesiastical has been mixed with property scheduled by them as general charity property, or where the income of any property is considered by them to be partly ecclesiastical and partly general, the Commissioners shall determine and state how much of such property or income, as the case may be, shall be taken to be ecclesiastical, and how much of the same shall be taken to be general.

7. No person shall be deemed to have any vested interest within the meaning of this Act if the office which he may hold or the emolument which he may receive shall be one tenable or receivable at the pleasure of some other person or persons, but the Commissioners shall consider and may declare what person or persons have, in their opinion, owing to the circumstances of the position of such person or persons, or generally on moral grounds, any fair or equitable claim to continue to receive any emolument now received by him or them out of any endowment.

8. The Commissioners shall in such form as they may think most convenient print and publish a statement or successive statements containing the findings and determinations at which they shall have arrived in the course of the inquiry aforesaid.

9. The Commissioners shall send a copy of every such statement to the governing body of every endowment affected by such statement, and also to the vestry clerk of every parish in which any endowment affected by such statement is applicable, and also to the Remembrancer of the City of London.

10. Any person claiming any vested interest affecting any endowment mentioned in any such statement, and alleging that the Commissioners have not duly recognised such vested interest, or any person or persons alleging that any property which the Commissioners have determined to be charity property within the meaning of this Act is not charity property, but that he or they is or are entitled to the same free from any charitable trust affecting the same, may within two months from the date of the publication of such statement apply to the High Court of Justice, by petition or summons at chambers, asking for a declaration that he has a vested interest affecting such endowment or that such property is not charity property (as the case may be). The Commissioners may appear upon any such proceedings, and the decision of the judge before whom such petition or summons is heard shall be final (unless special leave to appeal shall be by him given). The judge shall make a declaration in conformity with the justice of the case, and shall have power to order that the costs of the application shall be paid out of the endowment or property in question or by any party to the application as he may think right. Whenever necessary the Commissioners shall amend their statement so as to make it conform to the judge's declaration.

III.—*Schemes for better application of Charity Funds.*

11. The Commissioners shall, as soon as may be after the publication of the statement or statements aforesaid, proceed to prepare a scheme or schemes for the future application and management of the charity property and endowments so classified by them as hereinbefore directed.

12. In every such scheme the Commissioners shall provide for the following objects; that is to say,

(*a.*) For the vesting in the official trustee of charity lands appointed under the Charitable Trusts Acts, 1853 to 1869, of all real property and chattels real belonging to the charity or charities dealt with in the scheme, and for the vesting in the official trustees of charitable funds appointed under the last-mentioned Acts of all personal property belonging to the charity or charities dealt with in the scheme, upon trust to hold the same real and personal property respectively as in the said Acts

and herein-after provided, but subject to all quit-rents, leases, tenancies, equities, reservations, charges, and all other incumbrances and liabilities affecting the same :

(*b.*) For carrying over to a separate account a sum of money out of the charity property and endowments dealt with by the scheme to answer and provide for the expenses incurred by the Commissioners in carrying out this Act:

(*c.*) For saving the vested interest of or making due compensation to every person whom the Commissioners may have declared entitled to any vested interest which may be prejudiced by the scheme, and for making compensation to any person whom the Commissioners may have considered as aforesaid to have a fair or equitable claim to any emolument taken away by the scheme.

13. In every scheme relating to the charity property or endowments belonging to or now applicable in the parishes enumerated in the First Schedule to this Act, the Commissioners shall, subject to the carrying over and to the provision for saving or making compensation herein-before contained, provide for the following objects; that is to say,

(*a.*) For the application of the property scheduled as ecclesiastical charity property, or any part of the income thereof, to the maintenance of the fabric and the services of the church, or to such other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the Commissioners, still beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, to such other ecclesiastical purposes within the parish to which such property and endowments belong as the Commissioners may think most conducive to the spiritual benefit of the inhabitants of the said parish:

(*b.*) For the application of the property scheduled as general charity property (to such extent as the Commissioners may think desirable) to such of the objects and purposes to or for which the same is now applied as the Commissioners may consider proper and legal and substantially beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, for the application of such property to any one or more of the following objects, either within the parish to which the property belongs or in which it is now applicable, or within any parish which was formerly united with or formed part of such parish, or in such manner as to secure to the inhabitants of such parish, and to persons employed in such parish though not resident therein, the benefit of such application; that is to say,

To the promotion and improvement of the education of the poorer inhabitants of such parish, and other persons as aforesaid, whether by means of exhibitions, or of technical instruction, or of secondary education, or of art education, or of evening lectures, or otherwise, as to the Commissioners may seem good;

To the establishment and maintenance of libraries under such provisions as may make them useful to such poorer inhabitants and other persons as aforesaid;

To the preserving, providing, and maintaining of open spaces and recreation grounds or drill grounds;

To the promotion and extension, in such manner as the Commissioners may think desirable, of provident institutions and of working men's and women's institutes for the benefit of such poorer inhabitants and other persons as aforesaid;

And generally to the physical, moral, and social improvement of the poorer inhabitants and other persons as aforesaid of such parishes by such means as the Commissioners may think suitable.

14. In every scheme relating to the property or endowments belonging to or now applicable in the parishes enumerated in the Second Schedule to this Act, the Commissioners shall, subject to the carrying over and to the provision for saving or making compensation herein-before contained, provide for the following objects; that is to say,

(*a.*) For the application of the property, or any part of the income thereof, scheduled as ecclesiastical charity property, to the maintenance of the fabric and the services of the church, if any, in each parish possessed of ecclesiastical charity property applicable to such purposes or to such other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the Commissioners, still beneficial, and to the maintenance of the fabric and monuments of any churches within the City of London of architectural or historical interest which may not already possess sufficient funds available for that purpose; and, subject thereto, for payment to the Ecclesiastical Commissioners of the surplus income of the

said ecclesiastical property, to be by them applied to the maintenance of the fabric of churches, or to the better endowment of existing benefices, or to giving theological instruction to persons preparing for holy orders, or generally to extending the benefit of clerical or spiritual ministrations in accordance with the doctrines or by the ministers of the Church of England as by law established in the more populous districts of the Metropolis:

(*b.*) For the administration and management of the property scheduled as general charity property by the New Governing Body herein-after constituted, except in cases where the Commissioners may provide as herein-after mentioned for the administration and management of any property by any existing body or bodies of trustees thereof:

(*c.*) For the application by the said New Governing Body, or by any such existing body or bodies of trustees as lastly hereinbefore mentioned in any such case or cases as last aforesaid, of such last-mentioned property (to such extent as the Commissioners may think desirable) to such of the objects or purposes to or for which the same are now applied as the Commissioners may think proper and legal and substantially beneficial to the inhabitants of the parish in which the same is now applicable, or to any class thereof, or in such manner as to secure to the inhabitants of the said parishes, and to persons employed though not resident therein, for the benefit of any one or more of the applications in this section herein-after mentioned; and, subject thereto, for the application by the said New Governing Body of such property to any one or more of the following objects within the Metropolis in manner to be specified by the said scheme or schemes; that is to say,

To the promoting the education of the poorer inhabitants of the Metropolis, whether by means of exhibitions, or of technical instruction, or of secondary education, or of art education, or evening lectures, or otherwise, as to the Commissioners may seem good;

To the establishment and maintenance of libraries, or museums, or art collections within the Metropolis under such provisions as may make them useful to the poorer inhabitants thereof;

To the preserving, providing, and maintaining of open spaces and recreation grounds or drill grounds within the Metropolis;

To the promotion and extension, in such manner as the Commissioners may think desirable, of provident institutions and of working men's and women's institutes for the benefit of the poorer classes of the Metropolis;

To the establishment and maintenance, in such places as the Commissioners may think suitable, of convalescent hospitals for the benefit of the poorer classes of the Metropolis;

And generally to the improving, by the above or any other means which to the Commissioners may seem good, the physical, social, and moral condition of the poorer inhabitants of the Metropolis.

15. In any scheme relating to the property or endowments belonging to or now applicable in the parishes enumerated in the First Schedule to this Act the Commissioners may, if they think fit, provide for the union of any existing governing bodies of two or more endowments into one new governing body for each of the said parishes, or for the creation of a new governing body or bodies in each such parish, and for the transfer to such new governing body or bodies (if created) of the control and management of the charity property and endowments belonging to or applicable in such parishes.

16. In any scheme providing for the application of the property scheduled as general charity property now belonging to or applicable in the parishes mentioned in the Second Schedule to this Act, the Commissioners may, if they shall think fit, provide for the payment by the said New Governing Body of any capital or annual sum or sums of money to the trustees or managers of any institution now existing, or which may hereafter exist, for any of the charitable purposes to or for which such general charity property is hereby made applicable, to be applied by such trustees or managers to or for such purpose; and may, in the case of any scheme relating to an open space or recreation ground or drill ground, provide that any lands or hereditaments purchased in pursuance of such scheme shall be conveyed to and vested in the Metropolitan Board of Works or other proper local authority, and that any moneys to be paid for the maintenance of such space or ground shall be paid to the said Board or other local authority (as the case may be) in which the legal estate in such open space or ground may be vested.

17. In any scheme relating to the general

charity property now belonging to or applicable in the parishes mentioned in the said Second Schedule, the Commissioners may (if they shall think fit) provide for the creation of a new body or bodies of trustees, either in a defined local area in the Metropolis or for any one or more of the charitable purposes to or for which such property is hereby made applicable, or in both of these ways, and may also provide for the payment to such new body or bodies of trustees by the said New Governing Body of such capital or annual sum or sums of money as the scheme may direct, to be applied by such new body or bodies of trustees in pursuance of the scheme. Where any such scheme provides for the creation of such a new body of trustees in or for any such defined local area, the Commissioners shall, so far as conveniently may be, provide for the representation on such new body of trustees of the inhabitants of such local area.

18. In framing any scheme relating to the general charity property now belonging to or applicable in the parishes mentioned in the said second schedule, the Commissioners shall consider and declare whether it is for the public advantage that any of the property or endowments belonging to the charity or charities dealt with by the scheme shall continue to be administered and managed by the body or bodies of trustees now administering and managing the same; and the Commissioners may in any such case provide that such property or endowments shall continue to be administered and managed by such body or bodies, and in any such case may alter the constitution of any such existing body or bodies of trustees, and, if they shall think fit, unite such bodies or body with any other body or bodies of trustees so as to create a new body or bodies of trustees for the administration, management, and application of such property and endowments in the said parishes, or any one or more of them, or for the application of such property and endowments, or any part of them, to any one or more of the objects to which such property and endowments may be applicable under the fourteenth section of this Act.

19. The Commissioners shall not be bound to provide in any one scheme for all the objects aforesaid, but may make provision for such objects, or any one or more of them, by one or by more schemes in the manner they shall judge most convenient, nor shall anything herein be construed to prevent the Commissioners from providing in any such scheme or schemes for any other object which shall upon inquiry appear to them to be necessary or desirable for the purposes of this Act, nor from proposing in any scheme any such modifications and variations as to matters of detail and regulation as shall not be substantially repugnant to any of the provisions of this Act.

20. The Commissioners shall not be bound to specify in any scheme the precise objects to which or the manner in which the general charity property shall be applied by the New Governing Body, but they may (if they shall think fit) specify such objects or manner with such particularity as they may think necessary, and may (if they shall think fit) leave the details of such application to be subsequently settled by the New Governing Body in manner herein-after mentioned.

21. No scheme shall be so framed as to affect or shall affect any endowment or part of an endowment (as the case may be) originally given to charitable uses less than fifty years before the commencement of this Act, unless the governing body of such endowment assent to the scheme.

22. In making schemes for the application of charity property or endowments to educational purposes the Commissioners shall have as much regard to the educational interests of girls as of boys.

23. It shall not be obligatory upon the Commissioners to prepare a scheme under this Act for any endowment, or part of an endowment, which is an educational endowment as defined by section five of the Endowed Schools Act, 1869.

IV.—*Procedure for approving Schemes.*

24. When the Commissioners have prepared the draft of a scheme they shall cause it to be printed, and printed copies of it to be sent to the governing body of every endowment to which it relates, and to the vestry clerk of the parish in which such endowment is now applicable, and to the Remembrancer of the City of London, and shall also cause the draft, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all persons interested.

25. During two months after the first publication of the draft of a scheme, or any longer time which they may appoint, the Commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall duly consider the same.

26. After the expiration of the two months, or such longer time as to the Commissioners may seem proper, the Commissioners shall proceed to revise the scheme, and may, if they think fit, amend the same, and republish it and send copies of it as republished to the persons before mentioned, and shall submit the scheme for the approval of the Committee of Council on Education.

27. The Committee of Council on Education, as soon as a scheme is submitted to them, shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme. After the expiration of the said month the Committee of Council on Education may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the Commissioners.

The Committee of Council on Education as soon as they approve a scheme shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented to the Committee of Council on Education, such scheme may be approved by Her Majesty without being laid before Parliament.

During the said two months a petition praying that the scheme may be laid before Parliament may be presented to the Committee of Council on Education by the governing body of any endowment to which the scheme relates, or by not less than twenty inhabitant ratepayers of the parish in which the endowment is now applicable.

28. Any person conceiving himself aggrieved by any provision of a scheme, on the ground of its not making due compensation for any vested interest to which he has been declared entitled as aforesaid, may, within two months from the publication of such scheme when approved as aforesaid, petition Her Majesty in Council stating the grounds of the petition and praying Her Majesty to withhold her approval from the whole or any part of the scheme. Her Majesty may refer any such petition for the consideration and advice of three members at the least of Her Privy Council, of whom one shall be a member of the Judicial Committee, and such three members may, if they think fit, admit counsel to be heard in support of and against the petition, and shall have the same power with respect to the costs of all parties to the petition as the High Court of Justice would have if the petition were a proceeding therein for obtaining a scheme. Any petition not proceeded with in accordance with the regulations made with respect to petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn.

It shall be lawful for Her Majesty by Order in Council to declare that no cause has been shown why she should withhold her approval from the said scheme or to remit it to the Commissioners with such declaration as the nature of the case may require.

29. Where a scheme is remitted with a declaration the Commissioners may either proceed to prepare another scheme in the matter in the same manner as if no scheme had been previously prepared, or may submit for the approval of the Committee of Council on Education such amendments in the scheme as will bring it into conformity with the declaration.

The Committee may, if they think fit, approve the scheme with such amendments, and the same shall be published and circulated in the same manner and subject to the same right of petition to Her Majesty in Council as is before directed in the case of the approval of a scheme, and so on from time to time as often as occasion may require.

30. If within the said two months from the publication of the scheme, when approved as aforesaid, no petition praying that the scheme be laid before Parliament has been presented in pursuance of this Act to the Committee of Council on Education, it shall be lawful for Her Majesty by Order in Council to declare her approbation of such scheme without the same being laid before Parliament.

If any petition praying that the scheme be laid before Parliament has been presented, but no petition to Her Majesty in Council is presented, then the scheme shall be laid before both Houses of Parliament after the expiration of the time for the presentation of a petition to Her Majesty in Council. If a petition is presented to Her Majesty in Council against the scheme, as well as a petition praying that the scheme be laid before Parliament, then the scheme shall be laid before Parliament after any later date at which the petition is withdrawn or Her Majesty in Council has declared as aforesaid that no cause has been shown why

she should withhold her approval from the scheme. If Parliament be then sitting the scheme shall be so laid before it forthwith. If Parliament be not then sitting, the scheme shall be so laid within three weeks after the beginning of the next ensuing session of Parliament; and if such scheme has lain before Parliament for not less than two months during the same session, then, unless an Address has been presented within such two months by one or other of the Houses of Parliament praying Her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for Her Majesty by Order in Council to declare her approbation of such scheme or any part thereof to which such Address does not relate.

31. Where a scheme relates to an endowment or endowments which or each of which (as the case may be) during the three years preceding the commencement of this Act has had an average annual gross income of not more than one hundred pounds, no petition shall be presented to Her Majesty in Council with reference to such scheme so far as it relates to any such endowment or endowments. The statement of the Commissioners shall be conclusive evidence for the purpose of this section of the income of an endowment.

32. If any scheme, or any part thereof, is not approved by Her Majesty, the Commissioners may thereupon proceed to prepare another scheme in the matter, and so on from time to time as often as occasion may require.

33. Schemes may be from time to time framed and approved for amending any scheme approved under this Act, and all the provisions of this Act relative to an original scheme shall apply also to an amending scheme, mutatis mutandis.

V.—*Supplemental Provisions.*

34. No scheme shall of itself have any operation, but the same, when and as approved by Her Majesty in Council, shall, from the date specified in the scheme, or if no date is specified then from the date of the Order in Council, have full operation and effect in the same manner as if it had been enacted in this Act.

Where a scheme shall have been so framed as to make it necessary that any further acts should be done in order to carry out the arrangements prescribed by such scheme, the Commissioners shall have power, immediately after the making of such Order in Council, to do and execute, or cause to be done and executed, all such acts and deeds, and all such conveyances and assurances in the law whatsoever, as may in their judgment be necessary for carrying out the provisions of the scheme approved by such order, and for securing the application of the property dealt with by such scheme to the purposes to which such scheme may direct it to be applied.

35. Upon a scheme coming into operation every Act of Parliament, letters patent, statute, deed, instrument, trust, or direction relating to the subject matter of the scheme, and expressed by such scheme to be repealed and abrogated, shall, by virtue of the scheme and of this Act, be repealed and abrogated from the date in that behalf specified, or if no date is specified, from the date of the scheme coming into operation, and all property purporting to be transferred by such scheme shall, without any other conveyance or act in the law (so far as may be), vest in the transferees, and so far as it cannot be so vested shall be held in trust for the transferees.

36. The Order in Council approving a scheme shall be conclusive evidence that such scheme was within the scope of and made in conformity with this Act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever.

37. A scheme of the Commissioners shall not be submitted to the Committee of Council on Education unless it has been approved at a meeting of the Commissioners at which there are present not less than three Commissioners, but in all other respects one Commissioner may act under this Act.

38. Section eleven of the Charitable Trusts Act, 1853 (which relates to the production of documents by public officers), and sections six, seven, eight, and nine of the Charitable Trusts Act, 1855 (which relate to evidence and the attendance and examination of witnesses) shall extend to the Assistant Commissioners under this Act, as if they were the inspectors mentioned in those sections.

39. Whenever it shall appear to the Commissioners that any part of the charity property and endowments subject to the provisions of this Act, may with advantage be sold and realised, they may direct such property to be sold upon such terms and conditions and to such purchasers as they may think fit, and the trustee or trustees for the time being of such property shall effect such sale, which shall require no further sanction than the order of the Commissioners under their seal directing the same, and the proceeds of every such sale

shall be paid to the official trustees of charitable funds and invested in their names in Government or parliamentary securities.

40. During the continuance of the power of making schemes under this Act, no court or judge shall, with respect to any charity property or endowment which can be dealt with by a scheme under this Act, make any scheme or appoint any new trustees without the consent of the Commissioners.

41. Every interest, right, privilege, or preference, or increased interest, right, privilege, or preference, which any person may acquire after the passing of this Act in or relative to any charity or endowment which can be dealt with by a scheme under this Act, or in the governing body thereof, or as member of any such governing body, or in or relative to any office, place, employment, pension, compensation, allowance, or emolument in the gift of any such governing body, or paid out of the funds of any such charity or endowment, shall be subject to the provisions of any scheme made under this Act; and the governing body of any such charity or endowment shall not, during the continuance of the power of making schemes under this Act, begin to build, rebuild, alter, or enlarge any buildings connected therewith, except with the written consent of the Commissioners or under the directions of such a scheme; and no moneys arising from any such charity or endowment shall after the passing of this Act be applied to the payment of any poor rate or other rate or public charge whatsoever, or to the payment to any parish official of any salary or remuneration, except so far as he may be entitled to receive the same in respect of duties actually performed in connexion with the services of the church, or of services actually rendered in or about the management of any parochial charity, or of duties actually performed in connexion with public worship in the church of the parish.

42. Notices and documents required to be served on or sent to a governing body or vestry clerk for the purposes of this Act may be served or sent by being left at the office, if any, of such governing body or vestry clerk, or being served on or sent to the chairman, secretary, clerk, or other officer of such governing body, or if there is no office, chairman, secretary, clerk, or other officer, or none known to the Commissioners (after reasonble inquiry), by being publicly advertised in such newspapers as the Commissioners shall think fit, or by being served upon such person or persons and in such manner as the Commissioners shall in their discretion think best calculated to give proper notice to the persons concerned with the management of the endowment dealt with by the scheme.

43. Notices and documents required to be served or sent for the purposes of this Act may be served or sent by post, and shall be deemed to be served and received at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notices or documents was properly addressed and put into the post office.

44. The salaries paid and expenses incurred in carrying into effect this Act shall in the first instance be defrayed out of moneys to be provided by Parliament, but shall be ultimately repaid to the Commissioners of Her Majesty's Treasury out of the sums carried over to a separate account as herein-before directed. The Commissioners shall determine, by orders under their seal, in what proportions such salaries and expenses are to fall upon the several sums so carried over under each scheme, having regard to the respective values of the endowments dealt with by such schemes respectively. If there shall be any surplus of the sums so carried over as aforesaid under each such scheme after making such repayment, such surplus shall form part of the endowments the application whereof is prescribed by each such scheme. If there shall be any deficiency, such deficiency shall be made up to the Commissioners of Her Majesty's Treasury by the New Governing Body herein-after constituted, out of the funds under their management and control.

45. All requisitions and directions made by the Commissioners under the authority of this Act shall be made by the order of the Commissioners under their seal.

46. All orders made by the Commissioners shall be enforceable by the same means and be subject to the same provisions as orders of the Board of Charity Commissioners under the Charitable Trusts Acts, 1853 to 1869.

47. The report of the Commissioners made under section sixty of the Charitable Trusts Act, 1853, shall describe the proceedings of the Commissioners under this Act during the year preceding the thirty-first day of December then last past, and there shall be annexed

to such report copies of the schemes approved by Her Majesty in Council under this Act during such year, and of any orders made by the Commissioners during such year under the forty-fourth section of this Act.

VI.—*New Governing Body.*

48. There shall be established a New Governing Body under this Act, which shall be called "The Trustees of the London Parochial Charities," and shall be a body corporate, with perpetual succession and a common seal. Such New Governing Body shall administer the property herein-before directed to be placed by schemes to be framed by the Commissioners under its administration and management, and shall consist of twenty-one persons, of whom five shall be nominated by the Crown, four by the Corporation of the City of London, and the remainder (four of whom shall, in the first instance, be chosen from among the persons who are now trustees of the Parochial Charities of the City of London) in such manner or by such persons or bodies as the Commissioners shall by scheme provide, regard being had by them to the interest of the various classes of the community who are or may hereafter be interested in the charity property to be administered by such New Governing Body.

Each member shall hold office for six years, but shall be re-eligible.

Every member who shall not have attended a meeting for the period of two years shall vacate his office, but shall be re-eligible.

49. The Commissioners shall by a scheme make regulations prescribing the time and manner of the nominating or electing of the members of the New Governing Body and regarding the vacating of their office by a certain number of the first members thereof, so as to provide that some of them shall vacate their office at the end of two, others at the end of four, and the rest at the end of six years, and with respect to the filling up of vacancies arising from death or resignation, and generally with respect to the constitution of the New Governing Body, and the conduct by it of its business, and the making by it of regulations or byelaws, whether varying or merely subsidiary to the rules and regulations made by the Commissioners. The Commissioners shall also fix the date upon which the functions and powers of the New Governing Body shall commence.

50. In all schemes framed under this Act affecting general charity property which is not expressly limited, by the deed of foundation, to spiritual purposes of any religious denomination no preference shall be shown to any person on account of membership of any church, nor shall conformity to any church be made the condition of enjoying any benefits, nor shall it be made a condition in appointing a master or mistress to any school founded or reformed under this Act, that he or she shall be a member of any church, nor shall endowments under this Act be attached to any institution, admission to which, or to the governing body of which, is limited to the members of any denomination.

51. The Commissioners shall ascertain what costs, charges, and expenses have been reasonably incurred by the existing trustees of the City Parochial Charities, or any of them, in relation to this Act, or the Bills of similar name in the sessions of 1881 and 1882, and shall direct the New Governing Body to pay to such trustees, or any two of them, to be chosen for that purpose by the Commissioners the amount of the costs, charges, and expenses so incurred as aforesaid out of the first moneys which shall come to their hands or be placed at the disposal of the said Governing Body.

52. Nothing in this Act shall apply to any endowment or part of any endowment which, or the income whereof, is applicable, or is applied for the benefit of children maintained or educated by the Governors of Christ's Hospital, in the City of London, and presented thereto by any parochial authority in the City of London or otherwise.

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

The term "Metropolis" means the places for the time being constituting the Metropolitan Police District, together with the City of London and the liberties thereof:

The term "governing body" means any body corporate, persons, or person, who hold or holds, or who have or has any power of control or management over, any charity property or endowment dealt with by this Act:

The term "endowment" means every description of property, real, personal, or mixed, which is dedicated to any such charitable uses as are referred to in this Act, in whomsoever such property may be vested and in whosesoever name it may be standing, and whether such property is in possession or reversion, or a thing in action:

The term "Committee of Council on Education" means the Lords of the Committee of Her Majesty's Privy Council on Education:

The term "person" includes any body of persons, whether corporate or unincorporate.

54. This Act, so far as is consistent with the tenor thereof, shall be construed together with the Charitable Trusts Acts, 1853 to 1869.

SCHEDULES.

The FIRST SCHEDULE.

Saint Andrew, Holborn.
Saint Botolph, Aldgate.
Saint Botolph, Bishopsgate.
Saint Bride, Fleet Street.
Saint Giles, Cripplegate.

The SECOND SCHEDULE.

Allhallows, Barking.
Allhallows, Bread Street.
Allhallows the Great.
Allhallows the Less.
Allhallows, Honey-Lane.
Allhallows, Lombard Street.
Allhallows, London Wall.
Allhallows, Staining.
Christ Church, Newgate Street.
Saint Alban, Wood Street.
Saint Alphage, London Wall.
Saint Andrew by the Wardrobe.
Saint Andrew Hubbard.
Saint Andrew Undershaft.
Saint Anne and Saint Agnes.
Saint Anne, Blackfriars.
Saint Antholin.
Saint Augustine.
Saint Bartholomew the Great.
Saint Bartholomew the Less.
Saint Bartholomew, Exchange.
Saint Bartholomew, Moor Lane.
Saint Bene't, Fink.
Saint Bene't, Gracechurch.
Saint Bene't, Paul's Wharf.
Saint Bene't, Sherehog.
Saint Botolph, Aldersgate.
Saint Botolph, Billingsgate.
Saint Botolph, Glasshouse Yard.
Saint Christopher le Stocks.
Saint Clement, Eastcheap.
Saint Dionis, Backchurch.
Saint Dunstan in the East.
Saint Dunstan in the West.
Saint Edmund the King and Martyr.
Saint Ethelburga.
Saint Faith under Saint Paul's.
Saint Gabriel, Fenchurch.
Saint George, Botolph Lane.
Saint Gregory by Saint Paul.
Saint Helen, Bishopsgate.
Saint James, Garlickhythe.
Saint James within Aldgate.
Saint John the Baptist, upon Walbrook.
Saint John the Evangelist.
Saint John Zachary.
Saint Katherine Coleman.
Saint Katherine Cree.
Saint Lawrence, Jewry.
Saint Lawrence, Pountney.
Saint Leonard, East Cheap.
Saint Leonard, Foster Lane.
Saint Magnus the Martyr.
Saint Margaret Moyses.
Saint Margaret, Lothbury.
Saint Margaret, New Fish Street.
Saint Margaret Pattens.
Saint Martin, Ludgate.
Saint Martin, Orgars.
Saint Martin, Outwich.
Saint Martin, Pomeroy.
Saint Martin, Vintry.
Saint Mary, Abchurch.
Saint Mary, Aldermanbury.
Saint Mary, Aldermary.
Saint Mary-at-Hill.
Saint Mary, Bothaw.
Saint Mary, Colechurch.
Saint Mary-le-Bow.
Saint Mary Magdalen, Milk Street.
Saint Mary Magdalen, Old Fish Street.
Saint Mary, Mounthaw.
Saint Mary, Somerset.
Saint Mary, Staining.
Saint Mary, Woolchurch Haw.
Saint Mary, Woolnoth.
Saint Matthew, Friday Street.
Saint Michael, Basishaw.
Saint Michael, Cornhill.
Saint Michael, Crooked Lane.
Saint Michael-le-Querne.
Saint Michael, Paternoster Royal.

Saint Michael, Queenhithe.
Saint Michael, Wood Street.
Saint Mildred, Bread Street.
Saint Mildred the Virgin, Poultry.
Saint Nicholas, Acons.
Saint Nicholas, Coleabbey.
Saint Nicholas, Olave.
Saint Olave, Hart Street, with Saint Nicholas in the Shambles.
Saint Olave, Old Jewry.
Saint Olave, Silver Street.
Saint Pancras, Soper Lane.
Saint Peter, Cornhill.
Saint Peter-le-Poer.
Saint Peter, Paul's Wharf.
Saint Peter, West Cheap.
Saint Sepulchre.
Saint Stephen, Coleman Street.
Saint Stephen, Walbrook.
Saint Swithin, London Stone.
Saint Thomas Apostle.
Saint Thomas in the Rolls.
Saint Vedast, Foster.
Holy Trinity the Less.
Holy Trinity, Minories.
Holy Trinity, Gough Square.

CHAP. 37.

Public Health Act, 1875, (*Support of Sewers*,) *Amendment Act*, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Public Health Act, 1875, and to make provision with respect to the support of public sewers and sewage works in mining districts. (25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Health Act, 1875, (Support of Sewers,) Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875, (in this Act called the Principal Act,) as amended by the Acts for the time being in force amending the same.

2. In this Act,—

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the Principal Act or of any General or Local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

The expression "support" includes vertical and lateral support:

The expression "Sanitary Act" means the Act or Provisional Order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this Act:

The expression "person" includes a body corporate.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), with respect to mines, shall, in relation to any sanitary work of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say):—

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers"

CHAP. 39.

Statute Law Revision Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act for further promoting the Revision of the Statute Law by repealing certain Enactments which have ceased to be in force or have become unnecessary. (25th August 1883.)

WHEREAS, with a view to the revision of the Statute Law, and particularly to the continuation of the Revised Edition of the Statutes, it is expedient that certain enactments (mentioned in the schedule to this Act) which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have, by lapse of time or otherwise, become unnecessary, should be expressly and specifically repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions and qualifications in the schedule mentioned:

Provided that where any enactment not comprised in the schedule has been repealed, confirmed, revived, or perpetuated by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act:

and the repeal by this Act of any enactment or schedule shall not affect any enactment in which such enactment or schedule has been applied, incorporated, or referred to;

nor shall such repeal of any enactment affect any right to any hereditary revenues of the Crown, or affect any charges thereupon, or prevent any such enactment from being put in force for the collection of any such revenues, or otherwise in relation thereto;

and this Act shall not affect the validity, invalidity, effect, or consequences of anything already done or suffered,—or any existing status or capacity,—or any right, title, obligation, or liability already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof,—or any release or discharge of or from any debt, penalty, obligation, liability, claim, or demand,—or any indemnity,—or the proof of any past act or thing:

nor shall this Act affect any principle or rule of law or equity, or established jurisdiction, form or course of pleading, practice, or procedure, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office, appointment, payment, allowance, emolument, or benefit, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived by, in, or from any enactment hereby repealed;

nor shall this Act revive or restore any jurisdiction, office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not now existing or in force;

and this Act shall not extend to repeal any enactment so far as the same may be in force in any part of Her Majesty's Dominions out of the United Kingdom, except where otherwise expressed in the said schedule.

2. This Act may be cited as the Statute Law Revision Act, 1883.

SCHEDULE.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

VICTORIA.

32 & 33 Vict. c. 1.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the years ending the Thirty-first Day of March, One thousand eight hundred and sixty-eight, One thousand eight hundred and sixty-nine, and One thousand eight hundred and seventy.
c. 4.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 5.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on Shore.
c. 6.	An Act to repeal so much of the Regulation of Railways Act, 1868, as relates to the approval by Meetings of incorporated Railway Companies of Bills and Certificates for conferring further powers on those Companies.
c. 8.	An Act to apply the Sum of Seventeen million one hundred thousand Pounds out of the Consolidated Fund to the Service of the Year ending the thirty-first day of March, One thousand eight hundred and seventy.
c. 10. in part.	An Act for authorising the Removal of Prisoners from One Colony to another for the purposes of Punishment - - - - - } in part; namely,— Sections Three and Eight. Repealed as to all Her Majesty's Dominions.
c. 11. in part.	An Act for amending the Law relating to the Coasting Trade and Merchant Shipping in British Possessions - - - - } in part; namely,— Section Five. Repealed as to all Her Majesty's Dominions.
c. 14. in part.	An Act to grant certain Duties of Customs and Inland Revenue and to repeal and alter other Duties of Customs and Inland Revenue - } in part; namely,— Sections One to Fourteen, Sixteen, Seventeen, and Thirty-four to Thirty-nine. Schedules (A.) to (E.).
c. 15. in part.	An Act to remove Doubts as to the Qualification of Persons holding Civil Service Pensions, or receiving Superannuation Allowances, to sit in Parliament - - - - - } in part; namely,— Section Two from "or of" to end of that section.
c. 16.	An Act to amend so much of the Act of the Session of the Sixth and Seventh Years of the Reign of Her present Majesty, chapter Thirty-five, as provides that Norfolk Island is to be part of the Diocese of Tasmania. Repealed as to all Her Majesty's Dominions.
c. 18. in part.	An Act to amend the Lands Clauses Consolidation Act - - - - - - } in part; namely,— Section Two.
c. 19. in part.	An Act for amending the Law relating to Mining Partnerships within the Stannaries of Devon and Cornwall, and to the Court of the Vice-Warden of the Stannaries - - - } in part; namely,— Section Thirty-nine to "be it enacted, that".

CHAP. 39.

Statute Law Revision Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act for further promoting the Revision of the Statute Law by repealing certain Enactments which have ceased to be in force or have become unnecessary.

(25th August 1883.)

WHEREAS, with a view to the revision of the Statute Law, and particularly to the continuation of the Revised Edition of the Statutes, it is expedient that certain enactments (mentioned in the schedule to this Act) which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have, by lapse of time or otherwise, become unnecessary, should be expressly and specifically repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions and qualifications in the schedule mentioned:

Provided that where any enactment not comprised in the schedule has been repealed, confirmed, revived, or perpetuated by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act:

and the repeal by this Act of any enactment or schedule shall not affect any enactment in which such enactment or schedule has been applied, incorporated, or referred to;

nor shall such repeal of any enactment affect any right to any hereditary revenues of the Crown, or affect any charges thereupon, or prevent any such enactment from being put in force for the collection of any such revenues, or otherwise in relation thereto;

and this Act shall not affect the validity, invalidity, effect, or consequences of anything already done or suffered,—or any existing status or capacity,—or any right, title, obligation, or liability already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof,—or any release or discharge of or from any debt, penalty, obligation, liability, claim, or demand,—or any indemnity,—or the proof of any past act or thing:

nor shall this Act affect any principle or rule of law or equity, or established jurisdiction, form or course of pleading, practice, or procedure, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office, appointment, payment, allowance, emolument, or benefit, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived by, in, or from any enactment hereby repealed;

nor shall this Act revive or restore any jurisdiction, office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not now existing or in force;

and this Act shall not extend to repeal any enactment so far as the same may be in force in any part of Her Majesty's Dominions out of the United Kingdom, except where otherwise expressed in the said schedule.

2. This Act may be cited as the Statute Law Revision Act, 1883.

SCHEDULE.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

VICTORIA.

32 & 33 Vict. c. 1.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the years ending the Thirty-first Day of March, One thousand eight hundred and sixty-eight, One thousand eight hundred and sixty-nine, and One thousand eight hundred and seventy.	
c. 4.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.	
c. 5.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on Shore.	
c. 6.	An Act to repeal so much of the Regulation of Railways Act, 1868, as relates to the approval by Meetings of incorporated Railway Companies of Bills and Certificates for conferring further powers on those Companies.	
c. 8.	An Act to apply the Sum of Seventeen million one hundred thousand Pounds out of the Consolidated Fund to the Service of the Year ending the thirty-first day of March, One thousand eight hundred and seventy.	
c. 10. in part.	An Act for authorising the Removal of Prisoners from One Colony to another for the purposes of Punishment Sections Three and Eight. Repealed as to all Her Majesty's Dominions.	in part; namely,—
c. 11. in part.	An Act for amending the Law relating to the Coasting Trade and Merchant Shipping in British Possessions Section Five. Repealed as to all Her Majesty's Dominions.	in part; namely,—
c. 14. in part.	An Act to grant certain Duties of Customs and Inland Revenue and to repeal and alter other Duties of Customs and Inland Revenue Sections One to Fourteen, Sixteen, Seventeen, and Thirty-four to Thirty-nine. Schedules (A.) to (E.).	in part; namely,—
c. 15. in part.	An Act to remove Doubts as to the Qualification of Persons holding Civil Service Pensions, or receiving Superannuation Allowances, to sit in Parliament Section Two from "or of" to end of that section.	in part; namely,—
c. 16.	An Act to amend so much of the Act of the Session of the Sixth and Seventh Years of the Reign of Her present Majesty, chapter Thirty-five, as provides that Norfolk Island is to be part of the Diocese of Tasmania. Repealed as to all Her Majesty's Dominions.	
c. 18. in part.	An Act to amend the Lands Clauses Consolidation Act Section Two.	in part; namely,—
c. 19. in part.	An Act for amending the Law relating to Mining Partnerships within the Stannaries of Devon and Cornwall, and to the Court of the Vice-Warden of the Stannaries Section Thirty-nine to "be it enacted, that".	in part; namely,—

32 & 33 Vict. c. 20.	An Act to remove Doubts as to the Validity of certain Statutes made by the Convocation of the University of Oxford.
c. 22.	An Act for raising the Sum of Two million three hundred thousand Pounds by Exchequer Bonds for the Service of the Year ending on the Thirty-first day of March, One thousand eight hundred and seventy.
c. 24. in part.	An Act to repeal certain Enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Typefounders, and Reading Rooms - - - - - } in part; namely,— Section One from "and this" to end of that section.
c. 27. in part.	An Act to amend the Law for licensing Beer-houses, and to make certain Alterations with respect to the Sale by retail of Beer, Cider, and Wine - - - - - - } in part; namely,— Sections Ten and Twenty-one. The Second Schedule.
c. 29.	An Act to render valid certain Title Deeds for Inam Lands. Repealed as to all Her Majesty's Dominions.
c. 33. in part.	An Act to provide for the Collection of Judicial Statistics in Scotland - - - - } in part; namely,— Section Six.
c. 34. in part.	An Act to amend the Law concerning the Appointment of Deputies by Stipendiary Magistrates - - - - - - } in part; namely,— Section One.
c. 37.	An Act to authorise the Appointment of District Prothonotaries of the Court of Common Pleas of the County Palatine of Lancaster, and to provide for the better Despatch of Business therein.
c. 39.	An Act to make provision for the better Government and Administration of Hospitals and other endowed Institutions in Scotland.
c. 41. in part.	An Act for amending the Law with respect to the Rating of Occupiers for short terms, and the making and collecting of the Poor's Rate - } in part; namely,— Section Sixteen from "and the twelfth" to the end of that section.
c. 43. in part.	An Act to provide for the Payment of Diplomatic Salaries, Allowances and Pensions - - } in part; namely,— Section Four, the first paragraph.
c. 44. in part.	An Act to make better Provision respecting Greenwich Hospital, and the Application of the Revenues thereof - - - - } in part; namely,— Sections Two, Ten, and Twelve. The Schedule.
c. 45. in part.	An Act to amend the Law relating to the Repayment of Loans to Poor Law Unions - - } in part; namely,— Section Six to "thenceforth" and from "(*Seal of the Poor Law Board*)" to "eight hundred and".
c. 47. in part.	An Act to provide for the Discharge of the Duties heretofore performed by High Constables, and for the Abolition of such Office, with certain exceptions - - - - - } in part; namely,— Section Six.
c. 53. in part.	An Act to amend the Cinque Ports Act - - in part; namely,— Sections Two, Three, and Five.
c. 54. in part.	An Act to amend the Act of the first and second years of Victoria, chapter Fifty-six, intituled "An Act for the more effectual Relief of the destitute Poor in Ireland" - - - } in part; namely,— Section One from "or if" to "prosecuted", Sections Two and Four.

32 & 33 Vict. c. 58. in part.	An Act for amending the Public Schools Act, 1868 - in part; namely,— The Preamble. Section One.
c. 59. in part.	An Act to amend the Laws relating to the Investments for Saving Banks and Post Office Savings Banks - - - - - - in part; namely,— Section Two from "from time" to "such annuities". Sections Three and Eight. The Schedules.
c. 62. in part.	An Act for the Abolition of Imprisonment for Debt, for the Punishment of Fraudulent Debtors, and for other purposes - - - in part; namely,— Section Seven.
c. 63. in part.	An Act to amend the Metropolitan Poor Act, 1867 - in part; namely,— Section One from "and so much" to "repealed;". Section Five from "and the seventeenth" to end of that section. Section Eight from "but this" to end of that section. Section Nine to "repealed, and". Sections Ten and Twenty.
c. 65.	An Act for appointing Commissioners to Inquire into the Existence of Corrupt Practices amongst the Freemen Electors of the City of Dublin.
c. 67. in part.	An Act to provide for Uniformity in the Assessment of Rateable Property in the Metropolis - in part; namely,— Section Seventy-seven to "to this Act and", the word "other" (where it next occurs), the proviso, and the Fifth Schedule except as to the repeal of so much of any Act as applies the provisions thereby repealed of 25 & 26 Vict. c. 102.
c. 68. in part.	An Act for the further Amendment of the Law of Evidence - - - - - - - in part; namely,— Section One.
c. 71. in part.	An Act to Consolidate and Amend the Law of Bankruptcy - - - - - - in part; namely,— Section Sixty-one, the second paragraph. Section Sixty-eight from "whether the same" to "appropriated and". Section One hundred and twenty-eight. Section One hundred and twenty-nine from "The Lord Chancellor may by order make" to "made by the Lord Chancellor." Section One hundred and thirty, the first paragraph. Section One hundred and thirty-two.
c. 78. in part.	An Act to amend the Law relating to Criminal Lunatics - - - - - - - in part; namely,— Section Two from "and all orders" to "valid accordingly;".
c. 82. in part.	An Act to amend the Metropolitan Building Act, 1855 - - - - - - - in part; namely,— Section Six. The Schedule.
c. 83. in part.	An Act to provide for the Winding-up of the Business of the late Court for the Relief of Insolvent Debtors in England, and to repeal Enactments relating to Insolvency, Bankruptcy, Imprisonment for Debt, and matters connected therewith - - - - - - in part; namely,— Sections Eleven and Twenty. The Schedule.
c. 85.	An Act to continue various Expiring Laws.

32 & 33 Vict. c. 90. in part.	An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provisions concerning Turnpike Roads - - - - -:—
	Except Sections Seven and Eight.
c. 91. in part.	An Act for amending the Law relating to the Salaries, Expenses, and Funds of Courts of Law in England - - - - - in part; namely,—
	Section Eight, from "and all moneys" to end of that section.
	Section Nine.
	Section Twelve, so far as it relates to the Fourth Schedule.
	Section Thirty to "said governor and company."
	Section Thirty-one from "and such accounts" to end of that section.
	Section Thirty-three from "and for enforcing" to "under this Act,".
	Section Thirty-four.
	The Third Schedule, Part I. the words "Lords Justices of Appeal," and Part II. the words "gentleman of the chamber, purse bearer", and "and messenger to Great Seal."
	The Fourth Schedule, Part I.
	The Fifth Schedule.
c. 92. in part.	An Act to amend the Laws relating to the Fisheries of Ireland - - - - - in part; namely,—
	Schedule A. so far as it relates to 9 & 10 Vict. c. 114.
	Schedule B. so far as it relates to 10 & 11 Vict. c. 75.
c. 93.	An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the service of the year ending the Thirty-first day of March One thousand eight hundred and seventy, and to appropriate the Supplies granted in this Session of Parliament.
c. 96. in part.	An Act to amend the Contagious Diseases Act, 1866 - - - - - - in part; namely,—
	Section Four from "provided that all" to end of that section.
	Section Twelve.
c. 97. in part.	An Act to amend in certain respects the Act for the better Government of India - - in part; namely,—
	Section Five.
	Section Eight from "which" to "meeting".
c. 98. in part.	An Act to define the Powers of the Governor General of India in Council at Meetings for making Laws and Regulations for certain Purposes - - - - - - in part; namely,—
	Section Two.
	Repealed as to all Her Majesty's Dominions.
c. 100. in part.	An Act to facilitate the borrowing Money in certain Cases for the purpose of the Sanitary Act, 1866, and the Acts amending the same; and for other purposes - - - - in part; namely,—
	Section Three, so far as it relates to a sewer authority and a local board.
	Section Nine, the words and figures "the Local Government Act, 1858" (where they first occur) and "the Sewage Utilization Acts, 1865, 1867".
	Repealed except as to the parish of Woolwich.
c. 102. in part.	An Act for making further provision respecting the borrowing of Money by the Metropolitan Board of Works, and for other purposes connected therewith - - - - in part; namely,—
	Section Twelve.
	Section Sixteen, paragraph (5).
	Section Eighteen.

32 & 33 Vict. c. 102. in part—*cont.*	Section Forty-six, paragraph (7). Section Fifty. The Third Schedule.	
c. 103. in part.	An Act to amend the Law relating to the Warehousing of Wines and Spirits in Customs and Excise Warehouses, and for other purposes relating to Customs and Inland Revenue -	in part; namely,—
	Sections Two to Six. Section Seven, the words "customs or" (wherever they occur) from "*For goods*" to "goods - - 0 5 0" and from "according" to end of that section. Sections Eight to Sixteen.	
c. 108.	An Act to amend "The Sanitary Act, 1866," so far as the same relates to Ireland.	
c. 109. in part.	*An Act the title of which begins with the words,*— An Act for repealing part of an Act of the first year of the Reign of their Majesties King William and Queen Mary,—*and ends with the words,*—benefices, and to the Penalties and Forfeitures consequent on non-residence -	in part; namely,—
	Section One.	
c. 110. in part.	An Act for amending the Charitable Trusts Acts -	in part; namely,—
	Section Sixteen from "and may direct" to "appropriated". Section Seventeen. The Schedule.	
c. 111. in part.	An Act for the Relief of Archbishops and Bishops when incapacitated by infirmity - -	in part; namely,—
	Section Two, subsection (1), the proviso. Section Fifteen.	
c. 112. in part.	An Act to prevent the Adulteration of Seeds -	in part; namely,—
	Section Six from "and a warrant" to end of that section.	
c. 114. in part.	An Act to amend the Law relating to the Abandonment of Railways and the Dissolution of Railway Companies - - - -	in part; namely,—
	Section Ten.	
c. 116. in part.	An Act to amend "The Titles to Land Consolidation (Scotland) Act, 1868" - - -	in part; namely,—
	Section Two "to enacted that". Section Three "to enacted that". Section Five to "enacted that". Section Six to "enacted that". Section Seven to "enacted that". Section Eight to "enacted that". Section Nine to "enacted that".	
c. 117. in part.	An Act to amend "The Pharmacy Act, 1868" -	in part; namely,—
	Sections Two and Four. Schedule (A.).	
33 & 34 Vict. c. 3. in part.	An Act to make better provision for making Laws and Regulations for certain parts of India, and for certain other purposes relating thereto - - - - - -	in part; namely,—
	Section Four. Repealed as to all Her Majesty's Dominions.	
c. 5.	An Act to apply certain Sums out of the Consolidated Fund to the service of the years ending on the Thirty-first day of March One thousand eight hundred and sixty-nine, One thousand eight hundred and seventy, and One thousand eight hundred and seventy-one, and preceding years.	
c. 7.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.	

33 & 34 Vict. c. 8.	An Act for the regulation of Her Majesty's Royal Marine Forces while on Shore.
c. 9.	An Act to amend "The Peace Preservation (Ireland) Act, 1856," and for other purposes relating to the Preservation of Peace in Ireland.
c. 13. in part.	An Act to amend the Law relating to the Surveys of Great Britain, Ireland, and the Isle of Man - - - - - - - in part; namely,— Section Four. Section Five from "(except" to "perpetual)". The Schedule.
c. 14. in part.	An Act to amend the Law relating to the legal condition of Aliens and British Subjects - in part; namely,— Section Eighteen. The Schedule.
c. 15. in part.	An Act to transfer to the Commissioners of Her Majesty's Works and Public Buildings the property in and control over the Buildings and Property of the County Courts in England, and for other purposes relating thereto - - in part; namely,— Section Five. The Schedule.
c. 16. in part.	An Act to define the Boundary between the Counties of Inverness and Elgin or Moray, in the District of Strathspey; and for other purposes - - - - - - in part; namely,— Sections Eleven, Twelve, Fifteen, and Sixteen.
c. 19. in part.	An Act to amend "The Railway Companies Powers Act, 1864," and "The Railway Construction Facilities Act, 1864" - - - in part; namely,— Section Two. Section Four, the third paragraph. Section Five to "repealed, and".
c. 20. in part.	An Act to amend "The Mortgage Debenture Act, 1865" - - - - - in part; namely,— Section Three.
c. 23. in part.	An Act to abolish Forfeitures for Treason and Felony, and to otherwise amend the Law relating thereto - - - - - in part; namely,— Section Thirty-one.
c. 24. in part.	An Act for making further provision respecting the borrowing of Money by the Metropolitan Board of Works - - - - in part; namely,— Section Two.
c. 27. in part.	An Act for the Protection of Inventions exhibited at International Exhibitions in the United Kingdom - - - - in part; namely,— Section Four from "the Workmen's" to "fifty-one; also".
c. 29. in part.	An Act to amend and continue "The Wine and Beerhouse Act, 1869" - - - - in part; namely,— Section Four, subsection (5.) to "repealed, and". Section Sixteen.
c. 31.	An Act to apply the sum of Nine million pounds out of the Consolidated Fund to the service of the year ending the Thirty-first day of March, One thousand eight hundred and seventy-one.
c. 32. in part.	An Act to grant certain Duties of Customs and Inland Revenue, and to repeal and alter other Duties of Customs and Inland Revenue - - - - :— Except Sections One, Four, and Five.

33 & 34 Vict. c. 41.	An Act for raising the sum of One million three hundred thousand pounds by Exchequer Bonds for the service of the year ending on the Thirty-first day of March One thousand eight hundred and seventy-one.
c. 44.	An Act to declare the Stamp Duty chargeable on certain Leases.
c. 45.	An Act for establishing a District Registrar of the High Court of Admiralty in England at Liverpool.
c. 46. in part.	An Act to amend the Law relating to the Occupation and Ownership of Land in Ireland - } in part; namely,— Section Thirty-one. Section Sixty-seven from "or under" to end of that section.
c. 50.	An Act to amend "The Shipping Dues Exemption Act, 1867."
c. 51.	An Act to repeal an Act intituled "An Act to alter the mode of giving Notices for the holding of Vestries, of making Proclamation in cases of Outlawry, and of giving Notices on Sundays in respect to various matters," so far as such Act relates to the Isle of Man.
c. 52. in part.	An Act for amending the Law relating to the Extradition of Criminals - - - } in part; namely,— Section Twenty-seven, the last paragraph. Repealed as to all Her Majesty's Dominions.
c. 53. in part.	An Act to amend certain provisions in the Sanitary and Sewage Utilization Acts - } in part; namely,— Sections Three and Four. Repealed except as to the parish of Woolwich.
c. 59. in part.	An Act to render valid certain Contracts informally executed in India - - - } in part; namely,— Section One. Repealed as to all Her Majesty's Dominions.
c. 60. in part.	An Act to relieve the Brokers of the City of London from the supervision of the Court of Mayor and Aldermen of the said City - } in part; namely,— Sections Three and Four.
c. 61. in part.	An Act to amend the Law relating to Life Assurance Companies - - - - } in part; namely,— Section Eight from "on or before" to "thereafter", from "whether such" to "to the passing of this Act" and subsection (1).
c. 65. in part.	An Act to amend the Law relating to Advertisements respecting Stolen Goods - - } in part; namely,— Section Four.
c. 71. in part.	An Act for consolidating, with Amendments, certain Enactments relating to the National Debt - - - - - } in part; namely,— Section Twenty, the last paragraph. The Second Schedule, Part II.
c. 73. in part.	An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provisions concerning Turnpike Roads } :— Except Sections Ten to Fourteen.
c. 77. in part.	An Act to amend the Laws relating to the Qualifications, Summoning, Attendance, and Remuneration of Special and Common Juries - } in part; namely,— Section Seven to "enacted, that".
c. 79. in part.	An Act for further Regulation of Duties of Postage, and for other purposes relating to the Post Office - - - - - } in part; namely,— Sections Four, Five, and Nine. Section Ten so far as it relates to 3 & 4 Vict. c. 96. s 17.

33 & 34 Vict. c. 79. in part—*cont.*	Sections Twelve, Thirteen, and Sixteen. Section Eighteen, the last paragraph. The First Schedule except so far as it describes the Acts firstly, secondly, and lastly therein mentioned.
c. 80.	An Act for taking the Census of Ireland.
c. 83. in part.	An Act to make better Provision for the Police Force in the City of Londonderry, and to amend the Acts relating to the Royal Irish Constabulary Force - - - - } in part; namely,— Section One from "and all persons" to "accordingly". Sections Seven, Eight, and Ten. Section Eleven to "repealed, and". Section Twelve.
c. 84.	An Act to amend the Public Schools Act, 1868.
c. 86. in part.	*An Act the title of which begins with the words,*— An Act to amend and extend the Act Sixteenth and Seventeenth Victoria, Chapter Ninety-two,—*and ends with the words,*—Sheriffs and Sheriffs Substitute in Scotland - - - } in part; namely,— Section Eleven from "to be paid" to end of that section. Section Thirteen from "and so much" to "repealed but".
c. 90. in part.	An Act to regulate the Conduct of Her Majesty's Subjects during the existence of Hostilities between Foreign States with which Her Majesty is at peace - - - } in part; namely,— Section Thirty-one. Repealed as to all Her Majesty's Dominions.
c. 96. in part.	An Act to apply a Sum out of the Consolidated Fund to the service of the year ending the Thirty-first day of March One thousand eight hundred and seventy-one, and to appropriate the supplies granted in this Session of Parliament - - - - - } :— Except Sections Six and Eight.
c. 97. in part.	An Act for granting certain Stamp Duties in lieu of Duties of the same kind now payable under various Acts, and consolidating and amending provisions relating thereto - - - } in part; namely,— Sections Thirty-three to Thirty-five and Thirty-seven. The Schedule in part, namely:— The subjects of the headings beginning as follows (with the duties specified in connexion therewith):— ADMISSION to ecclesiastical benefices. ADMISSION and APPOINTMENT. APPOINTMENT whether by way of Donation APPOINTMENTS to offices COLLATION COMMISSION or DEPUTATION CURACY DEPUTATION by the Commissioners DONATION ECCLESIASTICAL BENEFICE INSTITUTION PERPETUAL CURACY PRESENTATION the words "under the authority of any Act of Parliament" in Exemption (7) under heading beginning "BILL OF EXCHANGE of any other kind." and paragraph (1) under heading beginning LETTER OR POWER OF ATTORNEY.

33 & 34 Vict. c. 98. in part.	An Act for consolidating and amending the Law relating to the Management of Stamp Duties - } in part; namely,— Section Fourteen, sub-section (5.), paragraph (*a*).
c. 103.	An Act to continue various expiring Laws.
c. 105.	An Act for appointing a Commission to inquire into the alleged prevalence of the Truck System, and the disregard of the Acts of Parliament prohibiting such System, and for giving such Commission the powers necessary for conducting such Inquiry.
c. 107.	An Act for taking the Census of England.
c. 108.	An Act for taking the Census in Scotland.
c. 109. in part.	An Act to abolish certain Real Actions in the Superior Courts of Common Law in Ireland, and further to amend the Procedure in the said Courts; and for other purposes - - } in part; namely,— Section Four, the last paragraph.
c. 110. in part.	An Act to provide for the administration of the Law relating to Matrimonial Causes and Matters, and to amend the Law relating to Marriages, in Ireland - - - - } in part; namely,— Sections Five, Nineteen, Twenty, and Twenty-two. Section Thirty-nine to "void; but".
c. 111. in part.	An Act to make provision in relation to certain Beer-houses not duly qualified according to Law - - - - - - } in part; namely,— Section One so far as it relates to the fifteenth section of 3 & 4 Vict. c. 61. and the closing hour.
c. 112. in part.	*An Act the title of which begins with the words,*— An Act to amend the Act of the first and second years of the Reign of His late Majesty King William the Fourth,—*and ends with the words,* —Lands for Glebes, in Ireland - - - } in part; namely,— Section Three, from "out of" to "annexed mentioned." Section Six from "and all the provisions" to end of that section. Section Nine. The Schedule. Provided that the repeal of the Schedule shall not affect the reference thereto in 34 & 35 Vict. c. 100. s. 11.
34 & 35 Vict. c. 3. in part.	An Act to empower Committees on Bills confirming or giving effect to Provisional Orders to award Costs, and examine Witnesses on Oath - } in part; namely,— Section One.
c. 5.	An Act to make provision for the Assessment of Income Tax.
c. 6.	An Act to apply the Sum of Four hundred and sixty-two thousand five hundred and eighty pounds nine shillings and eleven pence out of the Consolidated Fund to the Service of the Years ending the Thirty-first day of March One thousand eight hundred and seventy and One thousand eight hundred and seventy-one.
c. 7.	An Act to apply the Sum of Five million four hundred and eleven thousand nine hundred pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-two.
c. 9.	An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.
c. 10.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on Shore.
c. 18. in part.	An Act to amend the Law disqualifying Attorneys, Solicitors, and Proctors in practice from being Justices of the Peace for Counties - - } in part; namely,— Section One to "repealed; but".

34 & 35 Vict. c. 20.	An Act to apply the Sum of Seven million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-two.
c. 21.	An Act to grant Duties of Customs and Income Tax.
c. 22. in part.	*An Act the title of which begins with the words,*—An Act to amend the Law in Ireland relating to Commissions of Lunacy,—*and ends with the words,*—and for other purposes - - - in part; namely,— Section Five from "and every person who is by" to end of that section. Section Six from "and every person who is by" to "been fixed". Section Twenty. Section One hundred and fifteen, from "Provided always" to end of that section. Section One hundred and eighteen, the last paragraph. Schedule I.
c. 25.	*An Act the title of which begins with the words,*—An Act to empower the Lord Lieutenant,—*and ends with the words,*—and to continue "The Peace Preservation (Ireland) Act, 1870."
c. 26. in part.	An Act to alter the Law respecting Religious Tests in the Universities of Oxford, Cambridge, and Durham, and in the Halls and Colleges of those Universities - - - - in part; namely,— Section Eight to "mentioned; and". The Schedule.
c. 29. in part.	An Act to facilitate the payment of Dividends on India Stocks - - - - - in part; namely,— So far as the Act applies 33 & 34 Vict. c. 71. s. 20., the last paragraph.
c. 30. in part.	An Act for the further Regulation of the Duties on Postage - - - - - in part; namely,— Section One. Section Two from "and the Acts" to end of that section. Section Four. Schedule Two.
c. 31. in part.	An Act to amend the Law relating to Trades Unions - - - - - in part; namely,— Section Twenty-four.
c. 33. in part.	An Act to explain and amend the Burial Acts - in part; namely,— Section One, the last paragraph.
c. 35. in part.	An Act to transfer to the Commissioners of Her Majesty's Works and Public Buildings the property in and control over the Buildings and Property of the Police Courts of the Metropolis, and for other purposes relating thereto - in part; namely,— Section Five. The Schedule.
c. 36. in part.	An Act to extend the Provisions of the Pension Commutation Acts, 1869 and 1870, to certain Public Civil Officers, and to consolidate and amend the said Acts - - - - in part; namely,— Section Thirteen to "this Act, and". Section Fourteen.
c. 37. in part.	An Act to amend the Law relating to the Tables of Lessons and Psalter contained in the Prayer Book - - - - - - in part; namely,— Section Two from "Provided that the Table" to "therefor; and".

34 & 35 Vict. c. 38. in part.	An Act for amending the Public Health (Scotland) Act, 1867 - - - - - -	in part; namely,— Section One to "declared that".
c. 46.	An Act for amending the Law relating to the Appointment of the Gaoler, Chaplain, and Matron of the Prison of the City of Bath.	
c. 47. in part.	An Act for amending the Acts regulating the borrowing of Money by the Metropolitan Board of Works; and for other purposes relating thereto - - - - - - -	in part; namely,— Sections Ten, Fourteen, and Seventeen.
c. 48. in part.	An Act to repeal divers Enactments relating to Oaths and Declarations which are not in force; and for other purposes connected therewith -	in part; namely,— Section One to end of subsection (1). The Schedules.
c. 49. in part.	An Act to amend the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870	in part; namely,— Sections Four and Seventeen.
c. 51.	An Act to apply the Sum of Ten million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-two.	
c. 52.	An Act for raising the sum of Seven hundred thousand pounds by Exchequer Bonds for the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-two.	
c. 58. in part.	An Act to amend the Life Assurance Companies Act, 1870 - - - - - -	in part; namely,— Section One.
c. 59. in part.	An Act to amend "The Public Libraries (Scotland) Act, 1867," and to give additional Facilities to the Local Authorities entrusted with carrying the same into execution - -	in part; namely,— Section One.
c. 60. in part.	An Act to amend the Public Schools Act, 1868 -	in part; namely,— The Preamble. Section Two. Section Three, except the last proviso. Section Four.
c. 62. in part.	An Act to enable Her Majesty to make Regulations relative to the leave of absence of Indian Bishops on Furlough and Medical Certificates -	in part; namely,— From "and provided" to end of Act. Repealed as to all Her Majesty's Dominions.
c. 65. in part.	An Act to amend and consolidate the Laws relating to Juries in Ireland - - - - -	in part; namely,— Section Four, from "the several" to "repealed and", the word "other" (wherever it occurs), and from "except as to anything" to end of that section. Sections Five and Eleven. The First Schedule. The Third Schedule, Form A. to Form C. The Fourth and Fifth Schedules. Except as to section Four and First Schedule, repealed so long as 39 & 40 Vict. c. 21. ss. 2, 4, 5, continue in force.
c. 68. in part.	An Act to determine the Boundaries of the Barony and Regality of Glasgow for purposes of Registration - - - - - -	in part; namely,— Sections Two to Four.
c. 69.	An Act to enable the Board of Trade to dispense with certain provisions of the Tramways Act, 1870, in respect of certain Provisional Orders.	

34 & 35 Vict. c. 72. in part.	An Act for the further protection of Purchasers against Crown Debts, and for amending the laws relating to the Office of the Registrar of Judgments and other Offices of the Court of Chancery, Ireland - - - - -	in part; namely,—
	Section One.	
	Schedule A.	
c. 73. in part.	An Act for making Regulations as to the Office of Clerk of the Peace for the County Palatine of Lancaster - - - - -	in part; namely,—
	Section Four to "repealed, and".	
	Section Seven.	
c. 76. in part.	An Act to amend the Law relating to the Recovery of Small Debts and to Summary Jurisdiction in Ireland - - - -	in part; namely,—
	Preamble, the first two paragraphs.	
	Section Three.	
c. 78. in part.	An Act to amend the Law respecting the Inspection and Regulation of Railways - -	in part; namely,—
	Section Thirteen, the last paragraph.	
	Section Fourteen, the last paragraph.	
	Section Seventeen.	
	Schedule Two, the third column.	
c. 81.	An Act to abolish Reductions ex capite lecti in Scotland.	
c. 82.	Church Building Acts Amendment Act, 1871.	
c. 83. in part.	An Act for enabling the House of Commons and any Committee thereof to administer Oaths to Witnesses - - - - -	in part; namely,—
	Section Two.	
c. 84. in part.	An Act to amend "The Limited Owners Residences Act, 1870" - - - -	in part; namely,—
	Section Two.	
c. 86. in part.	An Act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown; and for other purposes relating thereto - -	in part; namely,—
	Section Two.	
c. 89.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-two, and to appropriate the Supplies granted in this Session of Parliament.	
c. 91. in part.	An Act to make further provision for the Despatch of Business by the Judicial Committee of the Privy Council - - - - -	in part; namely,—
	Section One, the first two paragraphs.	
	Section Two.	
c. 94.	An Act to amend Paragraph Three of the Second Schedule of the Elementary Education Act, 1870.	
c. 95.	An Act to continue various expiring Laws.	
c. 96. in part.	An Act for granting Certificates to Pedlars -	in part; namely,—
	Section Twenty-five.	
	Schedule Two, Form C.	
c. 97.	An Act for making Provision for facilitating the Manœuvres of Troops to be assembled during the ensuing Autumn.	
c. 98. in part.	An Act to amend the Vaccination Act, 1867 -	in part; namely,—
	Section Seventeen.	
	The Schedule.	
c. 99. in part.	An Act to amend the Procedure in the Civil Bill Courts in Ireland - - - -	in part; namely,—
	Section Eight.	

34 & 35 Vict. c. 100. in part.	An Act to amend "The Glebe Loan (Ireland) Act, 1870" - - - - - - - Section Fourteen.	in part; namely,—
c. 101. in part.	An Act to amend the Law respecting the proving and sale of Chain Cables and Anchors - - Sections Seven and Nine. The Third Schedule.	in part; namely,—
c. 102. in part.	An Act to amend the Laws of Charitable Donations and Bequests in Ireland - - - Section Two from "Provided" to end of that section. Section Four to "repealed, and". Section Six to "repealed; and". Section Eight to "repealed; and".	in part; namely,—
c. 103. in part.	An Act to amend the Law relating to the Customs and Inland Revenue - - - - - - - - Except Sections Twenty-six and Thirty-one.	:—
c. 105. in part.	An Act for the safe keeping of Petroleum and other Substances of a like Nature - - Section Seventeen. The Schedules.	in part; namely,—
c. 109. in part.	An Act to amend the Law relating to the Local Government of Towns and populous Places in Ireland - - - - - - - Section Twenty-six.	in part; namely,—
c. 110. in part.	An Act to amend the Merchant Shipping Acts - Section Twelve.	in part; namely,—
c. 111. in part.	An Act to amend "The Beerhouses (Ireland) Act, 1864," and for other purposes relating thereto Section Four from "affect the" to "such repeal". Section Five.	in part; namely,—
c. 112. in part.	An Act for the more effectual Prevention of Crime - - - - - - - Section Twenty-one.	in part; namely,—
c. 113. in part.	An Act to amend "The Metropolis Water Act, 1852;" and to make further Provision for the due Supply of Water to the Metropolis and certain Places in the Neighbourhood thereof - Section Five. Section Thirty-nine from "Notwithstanding" to end of that section. Section Fifty-one. Schedules B. and C.	in part; namely,—
c. 115. in part.	An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further Provisions concerning Turnpike Roads - - - - - - Sections One to Fourteen. Section Fifteen, the last paragraph. Section Sixteen, the words and figures "or the Annual Turnpike Acts Continuance Act, 1868," and the last paragraph. The Schedules.	in part; namely,—
35 & 36 Vict. c. 1.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the Years ending the Thirty-first day of March One thousand eight hundred and seventy-one, One thousand eight hundred and seventy-two, and One thousand eight hundred and seventy-three.	
c. 2. in part.	An Act to extend and explain the Law relating to Loans for purposes connected with the Relief of the Poor - - - - - - Section Three.	in part; namely,—

35 & 36 Vict. c. 3.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 4.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
c. 5. in part.	An Act to amend the Charter under which the Governor and Company of the Bank of Ireland is incorporated - - - - - - } in part; namely,— Section Seven.
c. 9. in part.	An Act to continue the Appointment and Jurisdiction of the Commissioners for the Sale of Incumbered Estates in the West Indies - } in part; namely,— Section Three. Repealed as to all Her Majesty's Dominions.
c. 11.	An Act to apply the Sum of Six million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-three.
c. 14. in part.	An Act for the alteration of Boundaries of Dioceses - - - - - - - } in part; namely,— Section One.
c. 20. in part.	An Act to grant certain Duties of Customs and Inland Revenue and to alter other Duties - } in part; namely,— Sections Two to Four. Section Six from "and no person" to end of that section. Sections Seven to Thirteen.
c. 22.	An Act to repeal an Act intituled "An Act to restrain Party Processions in Ireland."
c. 23. in part.	An Act for amending the Law relating to the Harbours and Coasts of the Isle of Man - } in part; namely,— Sections Twenty-four and Thirty-three. The Second Schedule.
c. 25. in part.	An Act to amend the Juries Act (Ireland), 1871 - in part; namely,— Sections One, Four, and Six. The Schedule. Except as to Section One repealed so long as 39 & 40 Vict. c. 21. ss. 2, 3, 5, continue in force.
c. 30. in part.	An Act to suspend the compulsory Operation of the Chain Cables and Anchors Act, 1871 - } in part; namely,— Section One to "repealed and" and the last two paragraphs.
c. 37.	An Act to apply the Sum of Eight million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-three.
c. 40.	An Act for continuing the Bishops Resignation Act, 1869.
c. 43.	An Act to enable the Board of Trade to dispense with certain Provisions of the Tramways Act, 1870, in respect of certain Provisional Orders.
c. 44. in part.	*An Act the title of which begins with the words,*—An Act to abolish the Office of Accountant General of the High Court of Chancery,—*and ends with the words,*—Moneys and Effects of the Suitors thereof - - - - - - } in part; namely,— Section Four from "the office" to "abolished, and". Section Twenty-two. Section Twenty-six, the first paragraph, and subsection (1) of the proviso. Schedule Two.

35 & 36 Vict. c. 47. in part.	An Act to amend the Act of the thirtieth and thirty-first years of Victoria, chapter eighty-five, intituled "An Act to include the whole of the Burgh of Galashiels within the County, Sheriffdom, and Commissariot of Selkirk" -	in part; namely,—
	Section Two.	
c. 54.	An Act to amend the Public Schools Act, 1868.	
c. 55. in part.	An Act for making better provision for the erection of Lighthouses on the Great Basses Rock, and on the Little Basses Rock in the Colony of Ceylon - - - - - - -	in part; namely,—
	Section Eight.	
c. 57. in part.	An Act for the Abolition of Imprisonment for Debt in Ireland, and for the Punishment of fraudulent Debtors, and for other purposes relating thereto - - - - - -	in part; namely,—
	Section Six, the last paragraph.	
	Section Twenty-seven.	
c. 58. in part.	An Act for the Amendment of the Law of Bankruptcy in Ireland - - - - -	in part; namely,—
	Section Five.	
	Section Twenty-one, subsection (3), the second paragraph, and subsection (8).	
	Schedule A.	
c. 59.	An Act to amend Paragraph Three of the Second Schedule of the Elementary Education Act, 1870.	
c. 60. in part.	An Act for the better prevention of Corrupt Practices at Municipal Elections, and for establishing a Tribunal for the trial of the Validity of such Elections - - - - -	in part; namely,—
	Section Twenty-nine.	
	The Schedule.	
c. 62. in part.	An Act to amend and extend the provisions of the Law of Scotland on the subject of Education - - - - - - -	in part; namely,—
	Section Three from "to endure" in the first paragraph to end of subsection (5).	
	Sections Four, Six, and Seven.	
	Section Twelve, except the last paragraph.	
	Section Twenty-seven from "and should any school board" to end of that section.	
	Section Twenty-nine to "Board of Education, or".	
	Section Thirty-seven from "And for the purpose" to end of that section.	
	Section Forty-six from "provided always" to end of that section.	
	Section Seventy-eight.	
	Schedule B., Rule 4.	
c. 64.	An Act for making provision for facilitating the Manœuvres of Troops to be assembled during the ensuing Autumn.	
c. 65. in part.	An Act to amend the Bastardy Laws - -	in part; namely,—
	Section Two.	
	The First Schedule.	
c. 69. in part.	*An Act the title of which begins with the words*,—An Act for constituting a Local Government Board in Ireland,—*and ends with the words*,—Relief of the Poor in Ireland - - - -	in part; namely,—
	Section Twelve from "section" to "1871, and".	
	The Schedule, except so far as it relates to 17 & 18 Vict. c. 103. and 34 & 35 Vict. c. 109.	

35 & 36 Vict. c. 70. in part.	An Act to make better provision respecting certain Fees payable to the Law Officers of the Crown for England - - - - } in part; namely,— Section Two from "but this" to end of that section.
c. 73. in part.	An Act to amend the Merchant Shipping Acts and the Passenger Acts - - - - } in part; namely,— Section Three from "and the fourth" to "1871". Section Five to "repealed, and". Section Eight to "repealed and". Section Ten from "the Trinity House of Deptford Strond shall" to "per annum; and that".
c. 76. in part.	An Act to consolidate and amend the Acts relating to the Regulation of Coal Mines and certain other Mines - - - - - } in part; namely,— Section Nineteen, the words "The Weights and Measures Act, or" and the second paragraph (including the subsections). Sections Twenty-three, Twenty-four, and Seventy-six. Schedule Three.
c. 77. in part.	An Act to consolidate and amend the Law relating to Metaliferous Mines - - - - } in part; namely,— Section Forty-five. The Schedule.
c. 79. in part.	An Act to amend the Law relating to Public Health:— Except Sections One, Two, Twenty, Fifty-one, Fifty-two, and Fifty-nine, and Section Sixty, so far as it relates to the interpretation of the terms "The Metropolis" and "Local Government Acts" and the terms following the last-mentioned term. Repealed except as to the parish of Woolwich.
c. 80.	*An Act the title of which begins with the words*,—An Act to enable the Commissioners of Her Majesty's Treasury,—*and ends with the words*,—"The Kensington Station and North and South London Junction Railway Act, 1859."
c. 83.	An Act to extend the provisions of the Pensions Commutation Act, 1871, to Officers and Clerks of Telegraph Companies who are entitled to Annuities.
c. 85. in part.	An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and to make further provisions concerning Turnpike Roads - - - } in part; namely,— Sections One to Eleven. The Schedules. Provided that the repeal shall take effect with respect to 13 & 14 Vict. c. lxvi. (mentioned in the Tenth Schedule) from the date mentioned for the continuation thereof.
c. 87.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-three, and to appropriate the Supplies granted in this Session of Parliament.
c. 88.	An Act to continue various expiring Laws.
c. 91. in part.	An Act to authorise the application of Funds of Municipal Corporations and other Governing Bodies in certain cases - - - - } in part; namely,— Section Nine.
c. 92. in part.	An Act to render unnecessary the general Appointment of Parish Constables - - } in part; namely,— Section Three from "and the twelfth" to "repealed,". Section Thirteen.

35 & 36 Vict. c. 93. in part.	An Act for consolidating, with Amendments, the Acts relating to Pawnbrokers in Great Britain } in part; namely,— Section Four from "but this repeal" to end of that section. Section Fifty-four.
c. 94. in part.	An Act for regulating the Sale of Intoxicating Liquors - - - - - - } in part; namely,— Section Twenty-eight from "and where other" to "nine of the clock;". Section Thirty-seven, the last paragraph. Section Thirty-eight from "Provided that" to end of sub-section 2. Section Forty, the last paragraph to "had not passed". Section Sixty-nine from "Provided that" to end of that section. Section Seventy-four from "Police district means" to "him in that behalf:". Section Seventy-five to end of subsection (6). Section Seventy-seven as to the interpretation of the terms "License," "Licensing justices," "register of licenses," and "clerk to the licensing justices". Section Eighty. The Second Schedule.
36 & 37 Vict. c. 2. in part.	An Act to make special provisions in relation to the Constitution of certain Polling Districts at Parliamentary Elections in Ireland - - } in part; namely,— Section One. Section Two, subsections (1) to (5). Section Three to "be it enacted that". The Schedule.
c. 3.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the Years ending the Thirty-first day of March One thousand eight hundred and seventy-two, One thousand eight hundred and seventy-three, and One thousand eight hundred and seventy-four.
c. 7.	An Act to enlarge the Time within which an Address by either House of Parliament against certain Schemes made under the Endowed Schools Act, 1869, may be presented to Her Majesty.
c. 8.	An Act to make provision for the Assessment of Income Tax, and as to Assessors in the Metropolis.
c. 9. in part.	An Act to amend the Bastardy Laws - - in part; namely,— Section Two. Section Three, the first subsection, and the word "And" next following. Section Eight.
c. 10.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 11.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
c. 12. in part.	An Act to amend the Law as to the Custody of Infants - - - - - } in part; namely,— Section Three.
c. 13.	An Act to discontinue the Office of Special Commissioners of Salmon Fisheries in England.
c. 14. in part.	An Act to repeal the Acts relating to the Harbour of Portpatrick in Scotland, and to vest the Lighthouse of Portpatrick in the Commissioners of Northern Lighthouses - - - } :— Except Section Four.

36 & 37 Vict. c. 17. in part.	*An Act the title of which begins with the words,*—An Act to provide for the Redemption or Commutation of the Dividend on the Capital Stock of the East India Company,—*and ends with the words,*—Dissolution of the East India Company } in part; namely,— Sections Three to Nine. Section Ten to "shall think fit; and". Sections Eleven to Fifteen, Nineteen to Twenty-three, Twenty-six, Thirty-five, and Thirty-six. Provided that, without prejudice to the general savings in this Act, this repeal shall not affect any jurisdiction or procedure given or authorised by the enactments repealed with reference to questions arising in consequence of any commutation or payment, or affect any protection thereby conferred in reference to any act, matter, or thing done by any trustee, executor, administrator, or other person.
c. 18. in part.	An Act to grant certain Duties of Customs and Inland Revenue, and to alter other Duties - - - - - } :— Except Sections One, Four, and Five.
c. 19. in part.	An Act for making better provision for the management in certain cases of Lands allotted under Local Acts of Inclosure for the benefit of the Poor - - - - - } in part; namely,— Section Ten.
c. 21. in part.	An Act to abolish Tests in Trinity College and the University of Dublin - - - } in part; namely,— The last section. The Schedule.
c. 23.	*An Act the title of which begins with the words,*—An Act to amend the law relating to the Grant of Superannuation,—*and ends with the words,*—One thousand eight hundred and seventy.
c. 24.	An Act to continue the Peace Preservation (Ireland) Act, 1870, and the Protection of Life and Property in certain Parts of Ireland Act, 1871.
c. 26.	An Act to apply the Sum of Twelve million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-four.
c. 27.	An Act to amend the Law relating to Juries in Ireland.
c. 30. in part.	An Act to amend the Law of Registration in Ireland so far as relates to the year One thousand eight hundred and seventy-three, and for other purposes relating thereto - - } :— Except Sections One and Six.
c. 32. in part.	An Act to enable the Secretary of State in Council of India to raise Money in the United Kingdom for the Service of the Government of India - - - - - - } in part; namely,— Section One, the last paragraph.
c. 37. in part.	An Act to amend the Law relating to Fairs in England and Wales - - - - } in part; namely,— Section Five.
c. 38. in part.	*An Act the title of which begins with the words,*—An Act to amend an Act passed in the fifth year of the reign of His Majesty George the Fourth,—*and ends with the words,*—"The Vagrant Act Amendment Act, 1868" - } in part; namely,— Section Five.

36 & 37 Vict. c. 41. in part.	An Act to amend the Public Schools Act, 1868, as to the Property of Shrewsbury and Harrow Schools - - - - - -	in part; namely,—
	Section Two from "with reference to Shrewsbury" to "Shrewsbury, and".	
	Sections Three, Four, and Six to Eight.	
c. 42. in part.	An Act for amending the Tithe Commutation Acts with respect to Market Gardens - -	in part; namely,—
	Section Two.	
c. 45. in part.	*An Act the title of which begins with the words,*— An Act to authorise the Commissioners of Her Majesty's Treasury to guarantee,—*and ends with the words,*—Canada Defences Loan Act, 1870 - - - - - -	in part; namely,—
	Section Nine.	
c. 47.	*An Act the title of which begins with the words,*—An Act to amend an Act passed in the session of Parliament held in the thirtieth and thirty-first years,—*and ends with the words,*—Cork and Waterford; and for other purposes relating thereto.	
c. 48. in part.	An Act to make better provision for carrying into effect the Railway and Canal Traffic Act, 1854, and for other purposes connected therewith -	in part; namely,—
	Section Thirty-three.	
c. 51. in part.	An Act to amend the Law relating to the Superannuation of Prison Officers in Ireland -	in part; namely,—
	Section Three.	
	The Schedule.	
c. 53. in part.	*An Act the title of which begins with the words,*— An Act to make better provision respecting certain Sums payable to Schoolmasters of Highland Schools,—*and ends with the words,*— endowment of additional Schools in Scotland -	in part; namely,—
	Section Three, the last two paragraphs.	
	Sections Four and Five.	
c. 54.	An Act to raise the Sum of One million six hundred thousand pounds sterling by Exchequer Bonds for the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-four.	
c. 58.	An Act for making provision for facilitating the Manœuvres of Troops to be assembled during the ensuing Autumn.	
c. 59. in part.	*An Act the title of which begins with the words,*— An Act for regulating and extending the Jurisdiction in matters connected with the Slave Trade,—*and ends with the words,*—under future Treaties - - - - - -	in part; namely,—
	Section Eight.	
	The Schedule.	
c. 62. in part.	An Act to amend Section Twenty-four of the Public Schools Act, 1868, with respect to the Property of Eton College - - -	in part; namely,—
	The Preamble.	
	Section One except the last two paragraphs of that section.	
c. 63. in part.	An Act to amend the Law relating to Law Agents practising in Scotland - - -	in part; namely,—
	Sections Three, Four, Ten, Twenty-four, and Twenty-five.	
	Provided that, without prejudice to the general savings in this Act, this repeal shall not affect the obligation under Section Three or Section Four on the Registrar to enrol as a Law Agent any person and to grant to him a certificate of enrolment.	

36 & 37 Vict. c. 66. in part.	*An Act the title of which begins with the words,*— An Act for the constitution of a Supreme Court, — *and ends with the words,* — Judicial Committee of Her Majesty's Privy Council - in part; namely,— Section Five, the second paragraph, the words "the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron" and from "shall be styled" to "of Justice, and". Section Thirteen from "the Lord Chief Justice of the Common Pleas" to "Exchequer". Section Fourteen from "the Lord Chief Justice of the Common Pleas" to "Exchequer,". Section Thirty-one, the paragraph beginning "Any deficiency". Section Thirty-seven, the words "Common Pleas, or Exchequer". Section Thirty-eight. Section Forty from "A Divisional Court" to "three such Judges". Section Forty-two to "Admiralty respectively; and". Section Forty-three. Section Forty-four to "a Divisional Court". Section Forty-seven from "or five" to "be part". Section Seventy-eight from "and the existing Prothonotaries" to end of that section. Section Seventy-nine from "the Lord Chief Justice of the Common Pleas" to "Exchequer,". Section Eighty. Section Ninety-six from "The same order" to end of that section. Section One hundred, the paragraph beginning "London Court of Bankruptcy".
c. 70. in part.	An Act to amend the Law relating to the appointment of Revising Barristers and the holding of Revision Courts - - - - - in part; namely,— Section Two. The Schedule.
c. 71. in part.	An Act to amend the Law relating to Salmon Fisheries in England and Wales - - in part; namely,— Section Four from "The definition" to "repealed, and". Section Fifty-five from "that sections" to "repealed, and". Section Sixty-five.
c. 73.	An Act to amend so much of section four of the Public Health Act, 1872, as relates to the Cambridge Commissioners.
c. 74.	An Act to amend the Laws relating to the Pay of the Royal Irish Constabulary.
c. 75.	An Act to continue various expiring Laws.
c. 79.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-four, and to appropriate the Supplies granted in this Session of Parliament.
c. 81. in part.	An Act to authorise the division of the Wapentake of Langbaurgh in the county of York into Districts for the purpose of Coroners jurisdiction, and the appointment of additional Coroners for the said Wapentake - - - - in part; namely,— Section Six.
c. 85. in part.	An Act to amend the Merchant Shipping Acts - in part; namely,— Section Thirty-three.
c. 86. in part.	An Act to amend the Elementary Education Act (1870), and for other purposes connected therewith - - - - - - in part; namely,— Section Four. Section Six from "but the said" to end of that section.

36 & 37 Vict. c. 86. in part—*cont.*	Section Ten, the last paragraph. Section Sixteen, the last paragraph. Section Eighteen, the last paragraph. Section Twenty-one from "but such substitution" to end of that section. Section Twenty-four, subsections (1.) and (2.) Section Twenty-eight. The Fourth Schedule.
c. 87. in part.	An Act to continue and amend the Endowed Schools Act, 1869 - - - - } in part; namely,— Section Nine. Section Fourteen, the last paragraph. Sections Nineteen and Twenty. The Schedule.
c. 88. in part.	An Act for consolidating with Amendments the Acts for carrying into effect Treaties for the more effectual Suppression of the Slave Trade, and for other purposes connected with the Slave Trade - - - - - - } in part; namely,— Section Thirty. The Second Schedule.
c. 89. in part.	An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870 - } in part; namely,— Sections Two to Eleven. The Schedule.
c. 90. in part.	An Act to continue certain Turnpike Acts in Great Britain, to repeal certain other Turnpike Acts, and for other purposes connected therewith - - - - - - } in part; namely,— Sections One to Twelve. The Schedules.
37 & 38 Vict. c. 1.	*An Act the title of which begins with the words,*—An Act to apply the Sum of,—*and ends with the words,*—One thousand eight hundred and seventy-four.
c. 2.	An Act to apply the Sum of Seven Million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-five.
c. 3. in part.	An Act to enable the Secretary of State in Council of India to raise Money in the United Kingdom for the Service of the Government of India } in part; namely,— Section Fourteen. Section Fifteen from "and the provisions" to end of that section. Section Eighteen.
c. 4.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 5.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
c. 7. in part.	An Act to amend the Law respecting the payment of the Assistant Judge of the Court of the Sessions of the Peace for the county of Middlesex, and his Deputy, and the Chairman of the Second Court at such Sessions - - - - } in part; namely,— Section Five. The Second Schedule.
c. 9.	*An Act the title of which begins with the words,*—An Act to authorise an Advance out of the Consolidated Fund,—*and ends with the words,*—Elementary Education Act, 1873.
c. 10.	An Act to apply the Sum of Thirteen million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-five.

37 & 38 Vict. c. 13.	An Act to extend to the present Bishop of Calcutta the Regulations made by Her Majesty as to the Leave of Absence of Indian Bishops. Repealed as to all Her Majesty's Dominions.
c. 15. in part.	An Act to amend the Act of sixteenth and seventeenth Victoria, chapter one hundred and nineteen, intituled "An Act for the Suppression of Betting Houses" - - - - } in part; namely,— Section Four to " repealed, and ".
c. 16.	An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.
c. 21. in part.	An Act for the discontinuance of the Four Courts Marshalsea (Dublin), and the removal of Prisoners therefrom - - - - } in part; namely,— Section Five, the proviso. Section Six. Section Seven, the words " removed or ". Section Eight to end of Act.
c. 22.	An Act to relieve Revenue Officers from remaining Electoral Disabilities.
c. 23. in part.	An Act to amend the Acts regulating the Salaries of Resident Magistrates in Ireland and the Salaries of the Chief Commissioner and Assistant Commissioner of Police of the Police District of Dublin Metropolis - - - } in part; namely,— Section One. Section Six, the second paragraph. Section Seven to " enacted, that " and from " Provided always " to end of that Section. Schedule B.
c. 24. in part.	An Act to empower the Public Works Loan Commissioners to advance a Sum of Money, by way of Loan, for the improvement of the Harbour of Colombo in the Colony of Ceylon - - } in part; namely,— Section Six.
c. 25. in part.	An Act to remove the Restrictions contained in the British White Herring Fishery Acts in regard to the use of Fir Wood for Herring Barrels - - - - - - } in part; namely,— Section One to " is hereby repealed; and ".
c. 28.	An Act to further amend the Law relating to Juries in Ireland.
c. 34. in part.	An Act to amend the Act of the fifty-fifth year of King George the Third, chapter one hundred and ninety-four, intituled "An Act for better regulating the Practice of Apothecaries in England and Wales" - - - - } in part; namely,— Section Two.
c. 40. in part.	*An Act the title of which begins with the words,*—An Act to amend the powers of the Board of Trade,—*and ends with the words,*—reference of Differences to the Railway Commissioners in lieu of Arbitrators - - - - } in part; namely,— Section Five.
c. 42. in part.	An Act to consolidate and amend the Laws relating to Building Societies - - - } in part; namely,— Section Twenty-seven, the word " now ". Section Forty-four from " The registrar " to end of that section. The Schedule from " FORMS OF CERTIFICATE " to end.

37 & 38 Vict. c. 45. in part.	*An Act the title of which begins with the words,*—An Act for altering the Boundaries between the Liberty of St. Alban,—*and ends with the words,*—Justice at Quarter Sessions in that County - - - - - - in part; namely,— Section Ten, the last paragraph. Section Fourteen, the words "of the county prison at Hertford, and" (where they first occur), the word "other" (where it next occurs) and from "A governor" to "and other". Section Fifteen, the words "of the county prison at St. Albans and" (where they first occur), the word "other" (when it next occurs) and from "A governor" to "and other". Section Eighteen, the sixth paragraph. Section Twenty-one, the last paragraph. Sections Twenty-seven, Thirty to Thirty-five, and Forty-three.
c. 46. in part.	An Act to consolidate and amend the Duties of Customs in the Isle of Man - - - in part; namely,— Section Six. Schedule A.
c. 49. in part.	An Act to amend the Laws relating to the Sale and Consumption of Intoxicating Liquors - in part; namely,— Section Two, the words "and as to the provision repealing section twenty-four of the principal Act,". Section Four from "and so much" to end of that section. Section Twelve to "enacted, that". Section Twenty-seven to "enactment, and". Section Thirty-three.
c. 51. in part.	An Act to amend the Law respecting the Proving and Sale of Chain Cables and Anchors - - in part; namely,— Section Six to "in lieu thereof". Section Eight. The Schedule.
c. 53. in part.	An Act to amend the Law relating to the payment of Revising Barristers - - - in part; namely,— Section Five. The Schedule.
c. 54. in part.	An Act to amend the Law respecting the Liability and Valuation of certain Property for the purpose of Rates - - - - - in part; namely,— Section Fourteen.
c. 56.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the thirty-first day of March One thousand eight hundred and seventy-five, and to appropriate the Supplies granted in this Session of Parliament.
c. 57. in part.	An Act for the further Limitation of Actions and Suits relating to Real Property - - in part; namely,— Section Nine from "(which several" to "repealed)".
c. 58.	An Act to make further provision respecting the contribution out of Moneys provided by Parliament towards the Expenses of the Police Force in the Metropolitan Police District, and elsewhere in Great Britain.
c. 60.	An Act to amend and enlarge the Powers of the Acts relating to the Navigation of the River Shannon; and for other purposes relating thereto.
c. 61. in part.	An Act for granting Compensation to Officers of the Royal (late Indian) Ordnance Corps - in part; namely,— Sections Three to Five.

37 & 38 Vict. c. 64. in part.	An Act to further alter and amend the Law of Evidence in Scotland, and to provide for the recording, by means of Short-hand Writing, of Evidence in Civil Causes in Sheriff Courts in Scotland - - - - - - -	in part; namely,—
	Section One.	
c. 67. in part.	An Act to regulate and otherwise deal with Slaughter-houses and certain other Businesses in the Metropolis - - - - -	in part; namely,—
	Sections Eleven and Fourteen.	
c. 69. in part.	An Act to amend the Laws relating to the Sale and Consumption of Intoxicating Liquors in Ireland - - - - - -	in part; namely,—
	Section Three.	
	Section Twenty to "enacted, that".	
	Section Thirty-seven, the last paragraph.	
	Section Thirty-eight.	
c. 70. in part.	An Act to amend the Law relating to the Valuation of Rateable Property in Ireland - -	in part; namely,—
	Section Four.	
c. 72. in part.	An Act to explain and amend the Fines Act (Ireland), 1851, and for other purposes relating thereto - - - - - -	in part; namely,—
	Section Three.	
c. 73. in part.	An Act to amend the Law relating to the Payment to and Repayment by the Commissioners for the Reduction of the National Debt of Moneys received in and to the accounts relating to the Post Office Savings Bank - -	in part; namely,—
	Section Three from "Section twelve" to end of that section.	
c. 74. in part.	An Act to amend the Law respecting certain Receipts and Expenses connected with Private Lunatic Asylums in Ireland - - -	in part; namely,—
	Section Three.	
	The Schedule.	
c. 76.	An Act to continue various expiring Laws.	
c. 77. in part.	An Act respecting Colonial and certain other Clergy - - - - - -	in part; namely,—
	Sections Two and Ten.	
	The Schedules.	
	Repealed as to all Her Majesty's Dominions.	
c. 80. in part.	An Act to amend the Laws relating to the Royal Irish Constabulary - - - -	in part; namely,—
	Section Two from paragraph numbered 4. to end of that section.	
	Section Thirteen.	
	The Schedule.	
c. 81. in part.	An Act to provide for the abolition of certain Offices connected with the Great Seal, and to make better provision respecting the Office of the Clerk of the Crown in Chancery - -	in part; namely,—
	Section Four, the first paragraph.	
	Section Six, the first paragraph.	
	Section Nine, the words "and the Public Offices Fees Act, 1866, shall apply to all such fees".	
	Section Twelve.	
	The Schedule.	
c. 82. in part.	An Act to alter and amend the Laws relating to the Appointment of Ministers to Parishes in Scotland - - - - - -	in part; namely,—
	Section Three from "the said Acts" to "repealed, and".	

37 & 38 Vict. c. 82. in part—*cont.*	Sections Four to Six. Section Seven, the second paragraph. Section Eight from "nor shall anything" to end of that section. Section Nine from "the word guardian shall include" to "public capacity;" and from "heritors shall mean" to end of that section.	
c. 83. in part.	An Act for delaying the coming into operation of the Supreme Court of Judicature Act, 1873 -	in part; namely,—
	Section One.	
c. 86. in part.	An Act to amend the Law relating to the Irish Reproductive Loan Fund - - - -	in part; namely,—
	Sections Six and Eight.	
c. 87. in part.	An Act to amend the Endowed Schools Acts -	in part; namely,—
	Section One, the last paragraph. Section Three to "inspectors; and". Sections Seven and Eight. The Schedule.	
c. 88. in part.	An Act to amend the Law relating to the Registration of Births and Deaths in England, and to consolidate the Law respecting the Registration of Births and Deaths at Sea - -	in part; namely,—
	Section Fifty-four. The Fifth Schedule.	
c. 89. in part.	An Act to amend and extend the Sanitary Laws -	in part; namely,—
	Sections One to Eighteen and Twenty-one to Forty-five. Section Forty-six to "Sanitary Acts; and". Section Forty-eight. Section Forty-nine so far as it relates to slaughter-houses. Section Fifty-seven, the last two paragraphs. Repealed except as to the parish of Woolwich.	
c. 92. in part.	An Act to provide for the Transfer to the Admiralty and the Secretary of State for the War Department of Alderney Harbour and certain Lands near it - - - - -	in part; namely,—
	Section Four.	
c. 94. in part.	An Act to amend the Law relating to Land Rights and Conveyancing, and to facilitate the Transfer of Land in Scotland - - - -	in part; namely,—
	Section Thirty-three. Section Thirty-four from "and shall not be pleadable" to "and seventy-nine:" (where those words next occur). Section Fifty-five. Section Fifty-seven to "His Majesty's service; and". Section Sixty-one to "is hereby repealed; and". Section Sixty-two to "and in place thereof". Section Sixty-three to "and in place thereof". Section Sixty-four to "and in place thereof". Section Sixty-five to "and in place thereof".	
c. 95. in part.	An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - -	in part; namely,—
	Sections One to Nine. The Schedules. Provided that the repeal shall take effect with respect to 4 W. 4. c. xxxi., 15 & 16 Vict. c. cliv., 7 G. 4. c. xvi., 3 W. 4. c. lvii., and 14 Vict. c. xli. (mentioned in the Fifth and Sixth Schedules) from the dates mentioned for the continuation thereof.	

38 & 39 Vict. c. 1.	*An Act the title of which begins with the words,*—An Act to apply the Sum,—*and ends with the words,*—One thousand eight hundred and seventy-five.
c. 2.	An Act to apply the Sum of Seven million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-six.
c. 3. in part.	An Act to make further provision with respect to the Salaries of the Magistrates of the Police Courts in the Metropolitan Police District - in part; namely,— Section Two. The Schedule.
c. 5. in part.	An Act to amend the Law relating to the Registry of Deeds Office, Ireland - - - in part; namely,— Section One to "Provided that".
c. 7.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 8.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
c. 9. in part.	An Act to repeal Section Eight of the Building Societies Act, 1874, and make other provision in lieu thereof - - - - - in part; namely,— Section One.
c. 10.	An Act to apply the sum of Fifteen millions out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-six.
c. 13. in part.	An Act to extend to the Docks, Custom Houses, Inland Revenue Offices, and Bonding Warehouses in England and Ireland certain provisions of The Bank Holidays Act, 1871, and to amend the same - - - - - in part; namely,— Section Three from "and section six" to "repealed".
c. 14.	An Act to amend and continue certain Acts for the Preservation of the Peace in Ireland, and to grant an Indemnity in certain cases.
c. 15. in part.	An Act to amend the Sea Fisheries Act, 1868 - in part; namely,— Section One from "and all powers" to "cease".
c. 17. in part.	An Act to amend the Law with respect to manufacturing, keeping, selling, carrying, and importing Gunpowder, Nitro-glycerine, and other explosive Substances - - - - in part; namely,— Section One hundred and twenty-two from "and the Act" to end of that section. The Fifth Schedule.
c. 19.	An Act for making perpetual the Bishops Resignation Act, 1869.
c. 21. in part.	An Act for amending the Law relating to Houses of Public Dancing, Music, or other Public Entertainment of the like kind, in the Cities of London and Westminster - - - in part; namely,— Section Two from "and all proceedings" to end of that section.
c. 23. in part.	An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue - - - - - in part; namely,— Sections Two to Seven. Section Eleven, the first paragraph. Section Twelve from "taken out after" to "after the said last-mentioned day" and from "and every such licence" to "duty of excise". Section Fourteen. The Schedule.

38 & 39 Vict. c. 25. in part.	An Act to consolidate, with amendments, the Acts relating to the Protection of Public Stores - Section Eighteen to "save that". The Second Schedule.	in part; namely,—
c. 26. in part.	An Act to amend the Law of Bankruptcy in Scotland - - - - - - Section Two.	in part; namely,—
c. 28. in part.	An Act to amend the Law respecting the Superannuation Allowances of certain Officers of the Staff of the Metropolitan Police - - Section Four.	in part; namely,—
c. 30.	An Act to amend the Glebe Loan (Ireland) Amendment Act, 1871.	
c. 31.	An Act to make perpetual Section Four of the Railway Companies Act, 1867, and Section Four of the Railway Companies (Scotland) Act, 1867.	
c. 34. in part.	*An Act the title of which begins with the words,*— An Act to amend the Acts relating to the Ecclesiastical Commissioners,—*and ends with the words,*—new Bishopric of Saint Albans - Section Seven from "and whenever" to end of that section.	in part; namely,—
c. 35. in part.	An Act for the further amendment of the Laws relating to Turnpike Roads in South Wales - Section Three to "effect; namely".	in part; namely,—
c. 37.	An Act to amend the Law relating to Juries in Ireland.	
c. 39. in part.	An Act to amend the provisions of the Metalliferous Mines Regulation Act, 1872, with respect to the annual Returns from Mines - - Section Four.	in part; namely,—
c. 40. in part.	An Act to amend the Law regulating Municipal Elections - - - - - Section Twelve. The Second Schedule.	in part; namely,—
c. 44.	An Act to amend the Constabulary (Ireland) Act, 1874.	
c. 45. in part.	An Act to amend the Law with respect to the Reduction of the National Debt and the Charge for the National Debt in the Consolidated Fund Section Six.	in part; namely,—
c. 50. in part.	An Act to amend the Acts relating to the County Courts - - - - - - Section Twelve. Schedule (C.)	in part; namely,—
c. 51. in part.	*An Act the title of which begins with the words,*— An Act to amend the Act of,—*and ends with the words,*—Criminal Outrages upon Natives of the Islands in the Pacific Ocean - - - Section Eleven.	in part; namely,—
c. 55. in part.	An Act for consolidating and amending the Acts relating to Public Health in England - - Section Two hundred and fifty-two, the last two paragraphs. Section Three hundred and eighteen, Three hundred and twenty-four, Three hundred and twenty-five, and Three hundred and thirty-eight. Schedule II. Rules 73 and 74. Schedule V. Part II.	in part; namely,—
c. 57. in part.	An Act to institute a Pharmaceutical Society, and to regulate the Qualifications of Pharmaceutical Chemists and of Chemists and Druggists, in Ireland - - - - - - Section Five from "and the said persons" to "Ireland" and from "and the said Sir Dominic" to end of that section.	in part; namely,—

38 & 39 Vict. c. 57. in part—*cont.*	Section Eight from "on the first Monday of October in the year" to "remainder of the members of such council shall go out of office; and". Sections Nine and Fourteen.	
c. 58. in part.	An Act to authorise Advances to the Public Works Loan Commissioners for enabling them to make Loans under divers Acts authorising such Loans - - - - - -	in part; namely,—
	Sections Two and Three.	
c. 60. in part.	An Act to consolidate and amend the Law relating to Friendly and other Societies - -	in part; namely,—
	Sections Five and Seven. Section Thirty, subsection (3.), the last paragraph. Schedule I.	
c. 61. in part.	An Act to further amend the Law of Entail in Scotland - - - - - - -	in part; namely,—
	Section Five, subsection (3.) to "repealed; but".	
c. 63. in part.	An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state - -	in part; namely,—
	Section One.	
c. 64. in part.	An Act to repeal the Guarantee by Companies Act, 1867, and to make other provision in lieu thereof - - - - - - -	in part; namely,—
	Section One.	
c. 65. in part.	An Act for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works, and for other purposes -	in part; namely,—
	Section Two. Section Three, the first two paragraphs. Section Four, the first three and last paragraphs. Section Five, the first three paragraphs. Section Six, the first three and last paragraphs. Section Seven.	
c. 67. in part.	An Act to amend the Laws relating to Private and District Lunatic Asylums in Ireland -	in part; namely,—
	Section Fifteen.	
c. 72.	An Act to continue various expiring Laws.	
c. 73.	An Act to amend the Law relating to the Appointment of certain Persons who entered the Employment of the Home Government of India before the thirty-first day of December one thousand eight hundred and seventy-four.	
c. 74. in part.	An Act to amend "The Public Health (Scotland) Act, 1867," and other Sanitary Acts, in respect of Loans for Sanitary Purposes - - -	in part; namely,—
	Section Three, the first paragraph.	
c. 76. in part.	An Act to make provision for Returns relating to Ecclesiastical Fees, and for other purposes -	in part; namely,—
	Section Six.	
c. 77. in part.	An Act to amend and extend the Supreme Court of Judicature Act, 1873 - - - -	in part; namely,—
	Section Three, the first paragraph and the words "and style" in the second paragraph. Section Four, the second paragraph from "the Lord Chief Justice of the Common Pleas" to end of that paragraph, the fourth paragraph, the fifth paragraph, the words, "the Common Pleas Division, the Exchequer Division," and the seventh paragraph to "take effect:"	

38 & 39 Vict. c. 77. in part—*cont.*	Section Eight to the end of the first paragraph of the enactment, the next paragraph from "He shall be entitled" to end of that paragraph and the next paragraph from "Provided that" to end of that paragraph. Section Fourteen, from "and the Lord Chief Justice of England" in the last paragraph to end of that section. Section Sixteen. Section Seventeen, subsection (1.) the words "and the Court of Appeal" and "respectively". Section Eighteen, the first paragraph from "except" to "before the commencement of this Act,". Section Nineteen, the words "the First Schedule hereto and". Section Twenty, the words "or in the First Schedule hereto," Section Twenty-six, the third paragraph (to end of the subsections) except subsection (3.) to "the fees." Section Twenty-seven. Section Twenty-nine, except the last paragraph. Section Thirty-one. Section Thirty-three, subsection (1.) and the word "other" in subsection (2.) Section Thirty-four. The Schedules. Provided that the repeal shall take effect with respect to Sections Sixteen, Eighteen, Nineteen, and Twenty, and the First Schedule from the 24th day of October 1883.
c. 78.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-six, and to appropriate the Supplies granted in this Session of Parliament.
c. 79. in part.	An Act to amend the Law relating to Legal Practitioners - - - - - } in part; namely,— Section Two, the first paragraph. The Schedule.
c. 83. in part.	An Act to amend the Law relating to Securities for Loans contracted by Local Authorities - } in part; namely,— Section Thirty-five.
c. 86. in part.	An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes - - - - } in part; namely,— Section Seventeen, except from "Any order for wages" to "not otherwise;".
c. 87. in part.	An Act to simplify Titles and facilitate the Transfer of Land in England - - - } in part; namely,— Sections One hundred and thirteen and One hundred and twenty-nine.
c. 89. in part.	An Act to consolidate with Amendments the Acts relating to Loans for Public Works - } in part; namely,— Sections Forty-two, Fifty-two, and Fifty-four. Section Fifty-seven, paragraph (2.).
c. 94. in part.	An Act to amend the Law relating to Offences against the Person - - - - } in part; namely,— Section Two.
c. 96. in part.	An Act to provide for additional Payments to Teachers of National Schools in Ireland - } in part; namely,— Section Seven from "shall before the first" to "March one thousand eight hundred and seventy-six, and".
39 & 40 Vict. c. 2.	An Act to apply the Sum of Four million and eighty thousand pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-six.

39 & 40 Vict. c. 4.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the Years ending the Thirty-first day of March One thousand eight hundred and seventy-five, One thousand eight hundred and seventy-six, and One thousand eight hundred and seventy-seven.	
c. 8.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.	
c. 9.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.	
c. 15.	An Act to apply the Sum of Eleven million pounds out of the Consolidated Fund to the Service of the Year ending the thirty-first day of March One thousand eight hundred and seventy-seven.	
c. 16. in part.	An Act to grant and alter certain Duties of Customs and Inland Revenue, and to amend the Laws relating to Customs and Inland Revenue - - - - - -	in part; namely,—
	Section Two.	
	Section Four, the first two paragraphs.	
	Sections Six, Seven, Nine, and Ten.	
	The Schedule to the second "Section 6."	
c. 18. in part.	An Act to incorporate the Solicitor for the Affairs of Her Majesty's Treasury, and make further provision respecting the Grant of the Administration of the Estates of deceased Persons for the use of Her Majesty - -	in part; namely,—
	Section Eight.	
	Section Nine, the proviso, sub-section (4.).	
c. 20. in part.	An Act to facilitate the Revision of the Statute Law by substituting in certain Acts, incorporating Enactments which have been otherwise repealed, a reference to recent Enactments still in force - - - - - -	in part; namely,—
	Section One, the first paragraph.	
	Section Two, the first paragraph.	
	Section Three to "enacted as follows: that".	
	Section Four, the first paragraph.	
	Section Five, the first paragraph.	
	Section Six.	
c. 22. in part.	An Act to amend the Trade Union Act, 1871 -	in part; namely,—
	Section Sixteen, the first paragraph.	
c. 28. in part.	An Act to amend the Court of Admiralty (Ireland) Act, 1867, and confer a more extended Admiralty Jurisdiction on the Recorders of Cork and Belfast - - - -	in part; namely,—
	Section Seven from "and such fees" to end of that section.	
c. 31. in part.	An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875 -	in part; namely,—
	Sections Three and Eight.	
c. 33. in part.	An Act for the Amendment of the Trade Marks Registration Act, 1875 - - - -	in part; namely,—
	Section One, the first paragraph.	
c. 34. in part.	An Act to amend the Law relating to Elver Fishing - - - - - -	in part; namely,—
	Section One.	
c. 35. in part.	An Act for consolidating the Duties of Customs -	in part; namely,—
	Section One from "and in the Act" to "so included and repealed in the said table;"	

39 & 40 Vict. c. 35. in part—*cont.*	The Schedule from "or any other vegetable" to "chicory or coffee", the words and figures "Paste or chocolate - - the lb. 0 0 2", from "Malt" to "*See* Spirits" (where those words next occur), from "Tea, until the first day of August 1877" to "0 3 6" and from "Varnish. *See* Spirits" to "0 0 1."
c. 36. in part.	An Act to consolidate the Customs Laws - in part; namely,— Section Twenty-seven, from "and the specifications" to end of that section. Section Forty-two, the fourth paragraph of the Table from "malt (except" to "made from malt)". Section Two hundred and eighty-seven.
c. 37. in part.	An Act to assimilate the Law in Ireland to the Law in England as to quieting Possessions and Titles against the Crown - - - in part; namely,— Section Four.
c. 38. in part.	An Act to extend the Limits of Age up to which, with the Assent of Boards of Guardians, Orphan and deserted pauper Children may be supported out of Workhouses in Ireland - - - in part; namely,— Section One.
c. 39. in part.	An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - - in part; namely,— Sections One to Seven. The Schedules. Provided that the repeal shall take effect with respect to 6 G. 4. c. i., 7 G. 4. c. xix., 9 G. 4. cc. lxxi. and lxxiv., 10 G. 4. c. xxv., and 3 W. 4. c. xl. (mentioned in the Fourth Schedule) from the dates mentioned for the continuation thereof.
c. 40. in part.	An Act for enabling legally qualified Medical Practitioners to hold certain public Medical Appointments, and for amending the Medical Act - - - - - - in part; namely,— The first two paragraphs of the Preamble. Section Two.
c. 42. in part.	An Act to amend the Law respecting certain Returns from Convict Prisons - - - in part; namely,— Section Three.
c. 44. in part.	An Act to amend the Law relating to Legal Practitioners in Ireland - - - in part; namely,— Section Two. The Schedule.
c. 45. in part.	An Act to consolidate and amend the Laws relating to Industrial and Provident Societies - in part; namely,— Section Four. Schedule I.
c. 50. in part.	An Act to amend the Law for the Relief of the Poor in Ireland in respect to rating and chargeability on Poor Law Unions - - in part; namely,— Section Three from "The first section of" to end of that section.
c. 52. in part.	An Act to amend the Law respecting the Powers and Duties vested in the Barrister appointed to certify the Rules of Savings Banks - - in part; namely,— Section Three, the third paragraph, from "but until" to end of that paragraph, and the last paragraph.

39 & 40 Vict. c. 53. in part.	An Act to make further provision respecting the Superannuation Allowance to be granted to Civil Servants serving in unhealthy climates - in part; namely,— Section Six.
c. 54. in part.	An Act to provide for the Foundation of a new Bishopric out of a part of the Diocese of Exeter - - - - - - in part; namely,— Section Five from "and whenever" to end of that section.
c. 55. in part.	An Act for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto - - - - - - in part; namely,— Section Three. Section Four, the first two paragraphs. Sections Five and Six. Section Seven, the first three paragraphs. Section Eight, the first three paragraphs. Section Nine, the first three and last paragraphs. Section Ten.
c. 56. in part.	An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons - - in part; namely,— Section Thirty-four to "1845, and".
c. 59. in part.	An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes - - - - in part; namely,— Section Thirteen. Section Fifteen, the first paragraph from "Be it enacted" to end of that paragraph, the fourth and seventh paragraphs, and the ninth paragraph to "mentioned; and". Section Sixteen, from "and so much of section" to end of that section. Section Seventeen, the second paragraph, the words "any three or more of" and from "of whom" to "specified therein", and the last paragraph. Sections Twenty-one and Twenty-four. Provided that the repeal shall take effect with respect to Section Sixteen from the 24th day of October 1883.
c. 60.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-seven, and to appropriate the Supplies granted in this Session of Parliament.
c. 61. in part.	An Act to provide for the better arrangement of divided Parishes and other local areas, and to make sundry Amendments in the Law relating to the Relief of the Poor in England - - - in part; namely,— Section Twelve to "repealed, and". Section Twenty-seven. Section Twenty-nine, the last paragraph.
c. 63. in part.	An Act to render necessary in Ireland a Year's Notice to Quit to determine a Tenancy from Year to Year, and otherwise to amend the Law as to Notices to Quit - - - - in part; namely,— Section Six to "before the passing of this Act". Section Seven.
c. 64.	An Act to continue for One Year the Police (Expenses) Act, 1875.

39 & 40 Vict. c. 65. in part.	An Act to amend the Tramways (Ireland) Act, 1860, and the Tramways (Ireland) Amendment Act, 1861, as regards the application of the same to the County and the County of the City of Dublin - - - - - - -	in part; namely,—
	Section Two to "subsequent year".	
	Section Five.	
c. 68.	*An Act the title of which begins with the words,*—An Act to amend the Law for the Payment of Remuneration,—*and ends with the words,*—War Department and Her Majesty's Postmaster General.	
c. 69.	An Act to continue various expiring Laws.	
c. 70. in part.	An Act to alter and amend the Law relating to the Administration of Justice in Civil Causes in the ordinary Sheriff Courts in Scotland, and for other purposes relating thereto - -	in part; namely,—
	Section Twelve, subsection (6.).	
	Section Thirty-five to "abolished, and".	
	Section Forty-one from "and sections twelve and thirteen" to end of that section.	
	Section Forty-four the words "which Schedule C. is hereby repealed".	
	Section Forty-eight.	
	Section Fifty-three from "instead of" to "that purpose,".	
c. 72.	An Act to suspend for a limited period the holding of an Election of a Member or Members to serve in Parliament for the City of Norwich, and to disfranchise certain Voters for the said City, and also certain Voters for the Borough of Boston.	
	Repealed from the 15th day of August 1883.	
c. 73. in part.	An Act to amend the Pensions Commutation Act, 1871 - - - - -	in part; namely,—
	Section Three.	
c. 74. in part.	An Act for amending so much of the Agricultural Holdings (England) Act, 1875, as relates to the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy - - - - -	in part; namely,—
	Section Two.	
	The Schedule.	
c. 75. in part.	An Act for making further Provision for the Prevention of the Pollution of Rivers - -	in part; namely,—
	Section Thirteen to "passing of this Act;".	
c. 76. in part.	An Act to extend the privileges of Muncipal Corporations in Ireland - - -	in part; namely,—
	Section Three to "the Act, and" and the word "following".	
	Section Four the words "this and" and "succeeding".	
	Section Six.	
c. 78 in part.	An Act to amend the Procedure connected with Trial by Jury in Ireland - - -	in part; namely,—
	Section Six to "enacted, that".	
	Section Sixteen to "enacted, that".	
	Section Twenty to "and thereupon".	
	Section Twenty-two.	
	The Second Schedule.	
c. 79. in part.	An Act to make further provision for Elementary Education - - - - -	in part; namely,—
	Section Ten, the last paragraph.	
	Section Nineteen, the first paragraph.	
	Section Forty-four, the words "which is repealed by this Act".	
	The Fourth Schedule.	

39 & 40 Vict. c. 80. in part.	An Act to amend the Merchant Shipping Acts - in part; namely,— Section Thirty from "by the" to "authority". Section Forty-five. The Schedule.
40 & 41 Vict. c. 1.	An Act to apply the Sum of Three hundred and fifty thousand pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-seven.
c. 2. in part.	An Act to provide for the preparation, issue, and payment of Treasury Bills, and make further provision respecting Exchequer Bills - - in part; namely,— Section Six, the last paragraph.
c. 3. in part.	An Act to amend the Publicans' Certificates (Scotland) Act, 1876 - - - - in part; namely,— Section Two to "enacted that", from "at the meeting" to "thereof, and", and from "in every subsequent" to "shall be made". Section Three.
c. 5.	An Act to raise the Sum of Seven hundred thousand pounds by Exchequer Bills or Exchequer Bonds for the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-seven.
c. 6.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the Years ending on the Thirty-first day of March One thousand eight hundred and seventy-six, One thousand eight hundred and seventy-seven, and One thousand eight hundred and seventy-eight.
c. 7.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 8.	An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.
c. 9. in part.	An Act for amending the Supreme Court of Judicature Acts, 1873 and 1875 - - - in part; namely,— Section Five, from "the Master" to "Baron". Section Six.
c. 11. in part.	An Act to make provision with respect to Judicial Proceedings in certain Cases relating to Rating - - - - - in part; namely,— Section Two.
c. 12.	An Act to apply the Sum of Five million nine hundred thousand pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-eight.
c. 13. in part.	An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs, Inland Revenue, and Savings Banks - - - - - - in part; namely,— Sections Two, Six to Nine, and Thirteen. Section Seventeen, the last paragraph. Schedule B.
c. 18. in part.	An Act to consolidate and amend the Law relating to Leases and Sales of Settled Estates - - in part; namely,— Section Fifty-eight. The Schedule.
c. 19.	*An Act the title of which begins with the words,*—An Act to grant Money for the purpose of Loans,—*and ends with the words,*—Public Works Loans Act, 1875.

40 & 41 Vict. c. 20. in part.	An Act to fix the Salaries of the Members of the Royal Irish Constabulary, and to amend the Eleventh Section of the Constabulary (Ireland) Amendment Act, 1870 - - } in part; namely,— Section One.
c. 21. in part.	An Act to amend the Law relating to Prisons in England - - - - - - } in part; namely,— Section Thirteen, the first paragraph. Section Fifteen, the first paragraph. Sections Sixteen to Twenty-one. Section Forty-five, the last paragraph. Section forty-seven, the last paragraph. Section Fifty-four. Section Sixty, from "subject to this proviso" to end of that section.
c. 24.	An Act to apply the Sum of Twenty million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-eight.
c. 25. in part.	An Act for regulating the Examination of Persons applying to be admitted Solicitors of the Supreme Court of Judicature in England, and for otherwise amending the Law relating to Solicitors - - - - - - } in part; namely,— Section Twenty-two. Section Twenty-three, from "Provided also" to end of that section.
c. 27. in part.	*An Act the title of which begins with the words,*—An Act to grant Money for the purposes of Loans,—*and ends with the words,*—Commissioners of Public Works in Ireland - - } in part; namely,— Preamble, the fourth and fifth paragraphs. Sections Nine and Ten. Part III. The Second Schedule.
c. 32. in part.	An Act to remit certain Loans formerly made out of the Consolidated Fund or other Public Revenue of the United Kingdom - - - - - - } :— Except so far as it relates to Beattock Inn.
c. 37.	An Act for extending the Time for the Registration of Trade Marks, in so far as relates to Trade Marks used in Textile Industries.
c. 38.	An Act to continue for One Year the Board of Education in Scotland.
c. 42. in part.	An Act to amend the Law relating to the Fisheries of Oysters, Crabs, and Lobsters, and other Sea Fisheries - - - - } in part; namely,— Section Sixteen.
c. 43. in part.	An Act to amend the Law with respect to the Appointment, Payment, and Fees of Clerks of Justices of the Peace and Clerks of Special and Petty Sessions - - - - - } in part; namely,— Section Eight, the second paragraph. Section Ten from "and so much" to end of that section.
c. 48. in part.	An Act to make further Provision respecting the Universities of Oxford and Cambridge and the Colleges therein - - - - } in part; namely,— Section Two, so far as it relates to the interpretation of the terms "Emolument" "School" and "Professorship" and the terms following the last-mentioned term. Sections Three to Twenty-three, Twenty-five to Forty-three, Forty-five to Fifty-one, Fifty-six, and Fifty-nine.

40 & 41 Vict. c. 49. in part.	An Act to amend the Law relating to Prisons in Ireland - - - - - -	in part; namely,—
	Section Seven.	
	Section Eight from "and in case" to end of that section.	
	Section Ten, the last paragraph.	
	Section Seventeen, the second paragraph from "all boards" to "thereupon".	
	Section Twenty, the last two paragraphs.	
	Section Twenty-six to "effect, viz.,".	
	Section Fifty-seven, paragraph (*a.*).	
c. 50. in part.	*An Act the title of which begins with the words,*— An Act to amend the Law in regard to the appointment of Sheriffs Substitute and Procurators Fiscal in Scotland,—*and ends with the words,*— purposes connected therewith - - - -	in part; namely,—
	Section Four to "enacted as follows:".	
	Section Six from "(save in" to "expressly provided)", and from "The appointment of any" to end of that section.	
	Section Twelve.	
c. 51. in part.	An Act to enable the Secretary of State in Council of India to raise Money in the United Kingdom for the Service of the Government of India - - - - - -	in part; namely,—
	Section Nineteen.	
c. 52. in part.	An Act for further amending the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto - - - - - -	in part; namely,—
	Sections Three to Seven.	
	Section Eight, the first two paragraphs.	
	Sections Nine and Ten.	
	Section Eleven, the first three paragraphs.	
	Section Twelve, the first three paragraphs.	
	Section Thirteen, the first three and last paragraphs.	
	Sections Fourteen to Twenty-two.	
	The Schedule.	
c. 53. in part.	An Act to amend the law relating to Prisons in Scotland - - - - - -	in part; namely,—
	Sections Seventeen to Twenty-three and Twenty-six.	
	Section Fifty-four, the last paragraph.	
	Section Sixty-one, the first two paragraphs.	
	Section Seventy-one, the paragraph defining "Prison" from "subject to this proviso" to end of that paragraph.	
	Section Seventy-two.	
	The Schedule.	
c. 56. in part.	An Act to amend the Laws relating to County Officers and to Courts of Quarter Sessions and Civil Bill Courts in Ireland - - - -	in part; namely,—
	Section Six.	
	Section Thirty-three, paragraph (*e.*).	
	Section Forty, paragraph (*b.*).	
	Section Fifty-nine from "The defendant may appeal" to "1851."	
	Section Seventy-five to "hereby repealed, and".	
	Section Seventy-nine from "The power of making" to end of that section.	
	Section Eighty-three, the second paragraph to end of subsection (6.) except subsection (3.) to "the fees" and the words "applied and accounted for" in the next paragraph.	

40 & 41 Vict. c. 56. in part—*cont.*	Section Eighty-six, the last paragraph, except so far as it relates to the recorder of the town of Belfast. Section Eighty-eight, the last paragraph. Schedule A.
c. 57. in part.	An Act for the constitution of a Supreme Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland - - - - - - - } in part; namely,— Section Eighteen, the sixth paragraph from "This last provision" to end of that paragraph. Section Twenty-three, sub-section three. Section Forty-three, the proviso. Section Forty-nine. Section Seventy-two, the third paragraph. Section Seventy-three, the second paragraph from "may with" to "seventy-nine, and". Section Eighty-four, the second paragraph (to end of the sub-sections) except sub-section (3.) to "the fees". Section Eighty-five, the first three paragraphs.
c. 58.	An Act to continue for One Year the Police (Expenses) Act, 1875.
c. 61.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-eight, and to appropriate the Supplies granted in this Session of Parliament.
c. 63. in part.	An Act to amend the Building Societies Act, 1874 - - - - - - } in part; namely,— Section Three.
c. 64. in part.	An Act to continue certain Turnpike Acts in Great Britain, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - - - } in part; namely,— Sections One to Eight. The Schedules.
c. 66. in part.	An Act to amend the Law with respect to the Annual Returns of Local Taxation in England, and for other purposes relating to such Taxation } in part; namely,— Section Four to "eight, and".
c. 67.	An Act to continue various expiring Laws.
41 & 42 Vict. c. 1.	An Act to apply the Sum of Six million pounds out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-eight.
c. 2.	An Act to raise the Sum of Six million pounds by Exchequer Bonds, Exchequer Bills, or Treasury Bills.
c. 6.	An Act to amend the Glebe Loan (Ireland) Amendment Act, 1875.
c. 7.	An Act to raise the Sum of One million pounds by Exchequer Bonds, for the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-eight.
c. 9.	An Act to apply certain Sums out of the Consolidated Fund to the Service of the Years ending on the Thirty-first day of March One thousand eight hundred and seventy-seven, One thousand eight hundred and seventy-eight, and One thousand eight hundred and seventy-nine.
c. 10.	An Act for punishing Mutiny and Desertion, and for the better payment of the Army and their Quarters.
c. 15. in part.	An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue - - - - - } in part; namely,— Section Two.

41 & 42 Vict. c. 15. in part—*cont.*	Section Three to "under the Customs Tariff Act, 1876," the words and figures "Segars - - the lb. 0 5 4" and the last paragraph. Section Six from "and section one" to end of that section. Sections Seven to Eleven. Section Thirteen, sub-section (3.). Section Seventeen from "Provided" to end of that section. Section Eighteen.
c. 16. in part.	An Act to consolidate and amend the Law relating to Factories and Workshops - - - } in part; namely,— Section Two from "Provided that" to end of that section. Section One hundred and three. Section One hundred and seven, the proviso.
c. 18. in part.	*An Act the title of which begins with the words,*—An Act to grant Money for purpose of Loans, —*and ends with the words,*—Public Works Loans Act, 1875 - - - - } in part; namely,— Sections Two, Five, and Seven.
c. 21.	An Act to apply the Sum of Seven million five hundred thousand pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-nine.
c. 22	An Act to raise the Sum of One million five hundred thousand pounds by Exchequer Bonds, for the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-nine.
c. 26. in part.	*An Act the title of which begins with the words,*—An Act to amend the Law relating to the Registration of Voters,—*and ends with the words,* —appeals from Revising Barristers - - } in part; namely,— Section Forty-two.
c. 30. in part.	An Act to alter the time of electing Commissioners under the General Police and Improvement (Scotland) Act, 1862 - - - } in part; namely,— Section Two. Section Three, the last proviso.
c. 35.	An Act to extend for a further limited Period Section Thirty-four of the Supreme Court of Judicature Act, 1875.
c. 36.	An Act to continue for One Year the Police (Expenses) Act, 1875.
c. 37. in part.	An Act to further amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes relating thereto } in part; namely,— Sections Three and Four. Section Five, the first two paragraphs. Sections Six to Nine. Section Ten, the first three paragraphs. Section Eleven, the first three paragraphs. Section Twelve, the first three and last paragraphs. Sections Thirteen to Twenty-one. The Schedule.
c. 39. in part.	An Act for the protection of Freshwater Fish - in part; namely,— Section Thirteen.
c. 45.	An Act to apply the Sum of Fourteen millions five hundred thousand pounds out of the Consolidated Fund to the Service of the Year ending on the Thirty-first day of March One thousand eight hundred and seventy-nine.
c. 47. in part.	An Act to enable the Trustees of the Elders Widows' Fund to apply the Capital of the said Fund in aid of Income; and for other purposes in relation thereto - - - - } in part; namely,— Section One.

41 & 42 Vict. c. 48.	An Act to amend the Law relating to Endowed Schools and Hospitals and other Endowed Institutions in Scotland; and for other purposes.
c. 49. in part.	An Act to consolidate the Law relating to Weights and Measures - - - - } in part; namely,— Section Eighty-six from "and all weights and measures which" in sub-section (4.) to end of that section.
c. 50. in part.	An Act to amend the County of Hertford and Liberty of St. Alban Act, 1874 - - } in part; namely,— Sections Two and Six.
c. 51. in part.	An Act to alter and amend the Law in regard to the Maintenance and Management of Roads and Bridges in Scotland - - - } in part; namely,— Section Four, the last two paragraphs. Section Ninety-four to "cease to exist; and". Section One hundred and twenty-two.
c. 52. in part.	An Act to consolidate and amend the Acts relating to Public Health in Ireland - - } in part; namely,— Sections Two hundred and ninety-one and Two hundred and ninety-four. Schedule A., the headnote, and the third column.
c. 53. in part.	An Act to facilitate Improvements in the Organization of the Admiralty and War Office by the retirement of Clerks from certain of the Civil Departments thereof - - - - } in part; namely,— Sections One to Six, Ten, and Eleven.
c. 62. in part.	An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - } in part; namely,— Sections One to Eight. Section Nine, the last paragraph. The Schedules. Provided that the repeal shall take effect with respect to 19 & 20 Vict. c. lxiv. (mentioned in the Third Schedule) from the date mentioned for the continuation thereof.
c. 64.	An Act to raise the Sum of Two million pounds by Exchequer Bonds, Exchequer Bills, or Treasury Bills for the Service of the Year ending on the 31st day of March 1879.
c. 65.	An Act to apply a Sum out of the Consolidated Fund to the Service of the Year ending the Thirty-first day of March One thousand eight hundred and seventy-nine, and to appropriate the Supplies granted in this Session of Parliament.
c. 66. in part.	An Act to promote Intermediate Education in Ireland - - - - - - } in part; namely,— Section Six, the last paragraph. The Schedule.
c. 67. in part.	An Act for extending and amending the Foreign Jurisdiction Acts - - - - } in part; namely,— Section Two. First Schedule, the entry relating to 6 & 7 Vict. c. 34. Second Schedule. Repealed as to all Her Majesty's Dominions.
c. 69. in part.	An Act to amend the Law regulating the Office of Clerk of Petty Sessions, and the Law relating to Fines, in Ireland; and for other purposes - } in part; namely,— Section Two to "repealed; and". Section Four to "repealed; and". Section Ten to "instead thereof".
c. 70.	An Act to continue various expiring Laws.

41 & 42 Vict. c. 72. in part.	An Act to prohibit the Sale of Intoxicating Liquors on Sunday in Ireland - - - Section Four, the proviso.	in part; namely,—
c. 74. in part.	An Act for making better provision respecting Contagious and Infectious Diseases of Cattle and other Animals; and for other purposes - Section Four, except the last paragraph. Section Thirty-five, paragraph (2.) from "and until" to end of that paragraph. The First Schedule.	in part; namely,—
c. 77. in part.	An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes - Section Nine, the fourth paragraph to "district fund, and" and the last paragraph. Section Twelve.	in part; namely,—
c. 78. in part.	An Act to further amend the Provisions of the Law of Scotland on the subject of Education, and for other purposes connected therewith - Section Fourteen.	in part; namely,—

CHAP. 40.

Expiring Laws Continuance Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to continue various expiring Laws. (25th August 1883.)

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty-three:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Expiring Laws Continuance Act, 1883.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-four, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as it is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23). 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	——
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners (now Land Commissioners).	So much as relates to the appointment of and the period for holding office by Land Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73. 45 & 46 Vict. c. 38. s. 48.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	——
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners -	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	——
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act - - -	20 & 21 Vict. c. 7.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114. s. 10.
(9) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	——
(10) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appointment of inspectors, s. 31.	——
(11) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act.	——
(12) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	——
(13) 28 & 29 Vict. c. 46. Militia Ballots Suspension.	The whole Act.	——

1. Original Acts.	2. How far continued.	3. Amending Acts.
(14) 28 & 29 Vict. c. 83. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(15) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	—
(16) 32 & 33 Vict. c. 21. Election Commissioners Expenses.	The whole Act - - -	34 & 35 Vict. c. 61.
(17) 32 & 33 Vict. c. 56. Endowed Schools (Schemes).	As to the powers of making schemes, and as to the payment of the salaries of additional Charity Commissioners and additional secretary.	36 & 37 Vict. c. 87. 37 & 38 Vict. c. 87.
(18) 34 & 35 Vict. c. 87. Sunday Observance Prosecutions.	The whole Act.	—
(19) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Ballot).	The whole Act so far as it is not repealed.	38 & 39 Vict. c. 40. (Municipal Elections.)
(20) 36 & 37 Vict. c. 48. Regulation of Railways.	The whole Act - - -	37 & 38 Vict. c. 40. (Part II.)
(21) 38 & 39 Vict. c. 48. Police Expenses.	The whole Act.	—
(22) 38 & 39 Vict. c. 84. Returning Officers Expenses.	The whole Act.	—
(23) 39 & 40 Vict. c. 21. Juries (Ireland).	The whole Act.	—
(24) 41 & 42 Vict. c. 41. Returning Officers Expenses (Scotland).	The whole Act.	—
(25) 41 & 42 Vict. c. 72. Sale of Liquors on Sunday (Ireland).	The whole Act.	—
(26) 43 Vict. c. 18. Parliamentary Elections.	The whole Act so far as it is not repealed.	—

CHAP. 41.

Merchant Shipping (Fishing Boats) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Merchant Shipping Acts, 1854 to 1880, with respect to fishing vessels and apprenticeship to the sea fishing service and otherwise. (25th August 1883.)

WHEREAS the enactments of the Merchant Shipping Acts, 1854 to 1880, with respect to fishing vessels, require amendment, and it is desirable to make further provision for the encouragement and regulation of the fishing trade:

And whereas it is expedient to amend the Acts relating to merchant shipping in certain particulars:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Merchant Shipping (Fishing Boats) Act, 1883.

This Act and the Merchant Shipping Acts

1854 to 1880, the Merchant Shipping (Colonial) Act, 1869, and the Merchant Shipping (Colonial Inquiries) Act, 1882, may be cited collectively as the Merchant Shipping Acts, 1854 to 1883, and shall be construed as though they formed one Act. This Act shall not apply to Scotland.

2. This Act shall be divided into two parts, the first part relating to fishing boats and the sea fishing service, and the second part to miscellaneous matters.

PART I.

Fishing Boats and the Sea Fishing Service.

3. Such portions of the first part of this Act as in any way relate to indentures of apprenticeship to the sea fishing service or agreements with boys under sixteen years of age with respect to such service shall apply to all fishing vessels of twenty-five tons register tonnage and upwards; and such portions of the first part of this Act as in any way relate to discipline, or the settlement of disputes between a skipper or owner and a seaman, or to deaths, injuries, punishments, ill-treatment, and casualties, and section twenty-five shall apply to all fishing boats and to the whole fishing service. The remainder of the first part of the Act shall apply to trawlers of twenty-five tons register tonnage and upwards only, and to no other fishing boats.

The Board of Trade, by order under the hand of the President of the Board of Trade, to be published in the "London Gazette," may exempt any class of such trawler or trawlers belonging to any port from the whole or any portion of the said part of this Act from the date in such order mentioned, and may in like manner extend all or any of the provisions of the said part of this Act to any fishing boats in such order referred to, and may in like manner from time to time revoke, alter, or amend any order made by the Board as aforesaid. The Board of Trade may, before making any order under this section, institute such inquiry as in their opinion may be required for the purpose of enabling them to make such order by such person or persons as the President may appoint for the purpose, and the person or persons so appointed shall have power to take evidence on oath or otherwise, and shall have all the powers of an inspector appointed under the First Part of the Merchant Shipping Act, 1854.

In this Act "fishing boat" means a vessel for the time being employed in the sea fishing service, but shall not include a boat used by its navigators for catching fish otherwise than for profit. The onus of establishing any exemption or exception under or in the said part of this Act shall be upon the person or persons claiming or asserting such exemption. The "second hand" of a fishing boat in this Act means the mate or person next to the skipper in authority or command on board of her.

The registered tonnage of a fishing boat registered under the Merchant Shipping Acts, 1854 to 1883, and in the case of an unregistered fishing boat a certificate stating her register tonnage (ascertained according to the methods sanctioned by the said Acts for the ascertainment of a ship's register tonnage) and purporting to be given under the hand of a Board of Trade surveyor, shall be conclusive of the tonnage of such boat.

Apprenticeship to the Sea Fishing Service and Agreements with Boys under Sixteen with respect to such Service.

4. All indentures of apprenticeship to the sea fishing service, and all agreements with boys under sixteen years of age with respect to such service, shall be entered into before a superintendent of a mercantile marine office, who, before allowing the same to be completed, shall satisfy himself that the indenture or agreement complies with all the requirements of this Act, and that the master to whom the boy is to be bound is a fit person for the purpose, and that the boy is not under thirteen years of age, and is of sufficient health and strength, and that the nearest relations of the boy or his guardian or guardians assent to the boy's being apprenticed (in the case where the boy is apprenticed), and to the stipulations in the indenture or agreement, and shall make and sign an endorsement that he is so satisfied on the indenture or agreement. Where the nearest relations or guardian or guardians cannot readily be found, or are not known, or if there are none, the superintendent shall act as guardian for the occasion and state in the said endorsement that he has so acted. The said endorsement shall be evidence of the facts therein stated, and the superintendent's signature or appointment as superintendent shall not require proof. All such indentures or agreements shall be in triplicate, one to be kept by the master, one by the boy, and one by the superintendent.

5. All such indentures of apprenticeship or agreement as are in section four referred to shall be in the forms in the second schedule to this Act set forth, and shall contain all the covenants, provisions, stipulations, and certificates set forth in the said forms in the second schedule, and also the endorsements on the

forms in the said schedule, and the directions therein shall be complied with.

Her Majesty may from time to time, on the recommendation of the Board of Trade, by Order in Council annul, modify, or alter any of the said covenants, provisions, stipulations, or certificates, or make new covenants, provisions, stipulations, or certificates in addition thereto, or in substitution therefor, and any alterations or modifications in or additions to or substitutions for such covenants, provisions, stipulations, or certificates made in manner aforesaid shall be of the same force as the covenants, provisions, stipulations, and certificates in the said schedule.

6. No boy under the age of thirteen years shall enter into any indenture of apprenticeship to the sea fishing service, or agreement with respect to such service. Every indenture or agreement entered into contrary to this section shall be void.

7. Every person who receives any money or valuable consideration from the person to whom a boy is bound apprentice to the sea fishing service, or to whom a boy under sixteen years of age is bound by any agreement with respect to the sea fishing service, or from anyone on his behalf, or from the boy or anyone on his behalf, in consideration of the boy being so bound, and every person who makes or causes to be made any such payment shall be guilty of a misdemeanour, whether such boy was or was not validly bound apprentice or was or was not validly bound by such agreement.

8. Every such indenture of apprenticeship or agreement as aforesaid with respect to the sea fishing service not complying with the provisions of this Act or not entered into before a superintendent of a mercantile marine office and endorsed by him as aforesaid, or otherwise not made as by this Act required, shall be void, and the person to whom such indenture or agreement purported to bind the boy shall, if he takes or causes the boy to be taken to sea, be liable to a penalty not exceeding twenty pounds. Every person who takes or causes to be taken to sea for the purpose of serving in some capacity connected with the sea fishing service a boy not bound by an indenture or agreement as aforesaid, or purporting to be bound by an indenture or agreement which is void under this Act, shall, for every such offence, incur a penalty not excceeding twenty pounds. Nothing in this Act shall prevent the daily employment in a fishing boat of any boy under sixteen years of age, who is under no obligation to remain in such employment for a longer period than one day, and with whom no written agreement has been made.

9. The superintendent of a mercantile marine office at the port from which a boy is taken to sea, may, for the benefit of the boy, if he thinks it just so to do, enforce by action or other appropriate legal proceedings brought or taken in his own name against the master, all or any of the stipulations in a void indenture or agreement which are in favour of the boy to such extent as he may deem just, and may (so far as necessary) apply any sums recovered by him in payment of the costs of recovering the same, and if there is no superintendent at such port, then the superintendent of the nearest port shall have the same powers.

10. The superintendent of the mercantile marine office before whom an indenture of apprenticeship or agreement as aforesaid with respect to the sea fishing service is completed, or his successor may, if he thinks fit, by action or other appropriate legal proceedings, brought or taken in his name, enforce on behalf of the boy against the master the stipulations in such indenture or agreement, and may (so far as necessary) apply any sums recovered by him in payment of the costs of recovering the same, and the superintendent of a mercantile marine office referred to in the apprenticeship indentures and agreements entered into under this Act shall have and when necessary execute the powers and authority therein given to them.

11. All superintendents of mercantile marine offices shall when applied to by any person desirous of entering into indentures of apprenticeship to the sea fishing service or agreements with respect to such service under this Act, or desirous of causing the same to be entered into, render such assistance as in their power in reference thereto, and supply forms of articles or agreements at such reasonable rates (if any) as the Board of Trade may fix and may take from masters such fees (if any) as the said Board may fix in respect of articles or agreements entered into before them.

All such indentures and agreements shall be exempt from stamp duty.

Superintendents of mercantile marine offices shall, in carrying out this Act be subject to the control of the Board of Trade, and shall obey any directions the Board of Trade may think fit to give to them.

12. Guardians and overseers of the poor and persons having the authority of guardians or overseers of the poor desirous of apprenticing boys to the sea-fishing service, shall not permit or cause articles of apprenticeship for that

purpose to be entered into, except in conformity with the provisions of this Act.

Agreements with Seamen.

13. The skipper of every fishing boat shall enter into an agreement with every seaman (not being a boy under such an agreement as is by this Act required) whom he carries to sea from any port in the United Kingdom as one of his crew; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated on the date of the first signature thereof, and shall be signed by the skipper before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

1. The nature, and as far as practicable, the duration of the intended voyage or engagement:
2. The number and description of the crew:
3. The time at which each seaman is to be on board or to begin work:
4. The capacity in which each seaman is to serve:
5. The remuneration which each seaman is to receive, whether in wages or by a share in the catch, or in both ways, and the time from which each seaman's remuneration is to commence:
6. A scale of the provisions which are to be furnished to each seaman:
7. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt:

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the skipper and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law.

14. The following rules shall be observed with respect to agreements (that is to say):—

1. Every agreement made in the United Kingdom shall be signed by each seaman:
2. The skipper shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature:
3. When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be sent by the skipper to the superintendent of the mercantile marine office at the port of departure and retained by him, and the other part shall contain a special place or form for the descriptions or signatures of substitutes, or persons engaged subsequently to the first departure of the fishing boat, and shall be retained by the skipper:
4. In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost after the fishing boats putting to sea, by death, desertion, the failure of any seaman duly engaged to join, or other unforeseen cause, the skipper shall, before the fishing boat puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen, and the seamen shall thereupon sign the same in the presence of the skipper who shall attest their signatures.

15. The agreement with the seamen may be made by the owner (or, in the case of there being several owners, the registered managing owner) instead of by the skipper, and the seamen may be engaged to serve in any two or more vessels belonging to the same owner, provided that the names of the vessels and the length and nature of the service and the rate, periods, and method of payment are specified in the agreement, and with the foregoing exceptions, all provisions of this Act which relate to ordinary agreements for fishing boats shall be applicable to agreements made in pursuance of this section as if the owner were therein named instead of the skipper, and every person engaged thereunder shall be discharged in the manner by this Act required for the discharge of seamen belonging to fishing boats.

16. In the case of fishing boats making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages or any number of weeks, so that no such agreement shall extend beyond the next following 30th day of June or 31st day of December, or the first arrival of the fishing boat at her port of destination in the United Kingdom after such date or the discharge of cargo consequent upon such arrival; with the foregoing exception, all provisions of this Act which relate to ordinary agreements for fishing boats shall be applicable to agreements made in pursuance of this section, and every person engaged thereunder shall be discharged in the manner by this Act required for the discharge of seamen belonging to fishing boats.

17. The skipper of every fishing boat for which such a running agreement as aforesaid is made, shall, upon every return to a port in the United Kingdom before the final termination of the agreement, discharge or engage in accordance with the provisions of this Act any seaman whom he discharges or engages at such port, and shall upon every such return indorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the fishing boat again leaves port, or that all such discharges or engagements have been duly made as herein-before required, and shall sign the same. Any skipper who knowingly makes a false statement in such indorsement shall incur a penalty not exceeding five pounds.

18. In this Act a voyage of a fishing boat shall mean a fishing trip commencing with a departure from a port for the purpose of fishing, and ending with the first return to a port thereafter upon the conclusion of the trip. A return due to distress only shall not be deemed to be a return if it is followed by a resumption of the trip.

19. The owners of every fishing boat shall within forty-eight hours of the fishing boat's departure from port on any voyage send or cause to be sent to the superintendent of the mercantile marine office at the port of departure a true report, in a form to be sanctioned by the Board of Trade, stating the names of the skipper, seamen, and apprentices who have gone to sea in her, and containing such other particulars as the said Board may require, and signed by an owner or the registered managing owner. Where the sole or the registered managing owner or all the owners of a fishing boat goes or go to sea in her on the voyage, or the voyage commences at a port where there is no owner or registered managing owner, the said report may be made and signed on his or their behalf by his or their agent for that purpose.

For every non-compliance with the requirements of this section, each owner and the registered managing owner (if any) shall incur a penalty not exceeding five pounds.

20. If in any case a skipper carries to sea any seaman with whom no agreement has been entered into in the form and manner and at the place and time by this Act in such case required, the skipper shall for each seaman so carried to sea incur a penalty not exceeding five pounds.

21. The skipper of every fishing boat shall before finally leaving any port for sea during the continuance of a running agreement after the first making of the same, sign and send to the nearest superintendent of a mercantile marine office a full and accurate statement in a form sanctioned by the Board of Trade of every change which has taken place in his crew, and in default shall for each offence incur a penalty not exceeding five pounds, and such statement shall be evidence of the matters therein stated pursuant to this section.

22. Every erasure, interlineation, or alteration in any such agreement as is required by this Act (except additions so made as herein-before directed for shipping substitutes or persons engaged subsequently to the first departure of the fishing boat) shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration.

23. Every skipper who fraudulently alters or is privy to the fraudulent altering or makes or is privy to the making of any false entry in, or delivers or is privy to the delivering of a false copy of, any such agreement as is required by this Act, shall for each such offence incur a penalty not exceeding twenty pounds.

Wages and Discharge of Seamen.

24. Every owner or skipper shall, not less than four hours before paying off or discharging any seaman, unless the seaman gives notice through the skipper that he does not require it, deliver to him a full and true account in a form sanctioned by the Board of Trade of his wages (not being a share in the catch), and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds, and no deduction from the wages of any seaman (except in regard of matters happening after such delivery) shall be allowed unless it is included in the account so delivered.

25. Where any seaman is under the agreement to be paid by a share in the catch, and any dispute arises as to his share, such seaman shall be entitled to inspect at all reasonable times the owner's accounts and books relating to such catch, and if any owner refuses or neglects to submit such accounts or books to such seaman's inspection upon demand made at a reasonable time he shall for each offence incur a penalty not exceeding twenty pounds.

26. Upon the discharge of any seaman, or upon payment of his wages, the skipper shall sign and deliver to him a certificate of his

discharge, in a form sanctioned by the Board of Trade, specifying the period of his service, and the time and place of his discharge, and if any skipper fails to sign and deliver to any such seaman such certificate of discharge, he shall for each such offence incur a penalty not exceeding five pounds.

27. Every seaman who has signed an agreement and is discharged before the commencement of the voyage, or at any time during the voyage or engagement without fault on his part justifying the discharge, and without his consent, shall be entitled to recover in addition to an amount of wages proportionate to the time he has served sufficient compensation for the damage thereby caused to him in the same manner as wages would be recoverable by him.

Discipline.

28. Whenever any seaman who has been lawfully engaged to serve on any fishing boat, or any apprentice to the sea fishing service commits any of the following offences, he shall be liable to be punished summarily as follows:—

(1.) For desertion he shall be liable to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and to satisfy any excess of wages paid by the skipper or owner of the fishing boat from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him.

(2.) For neglecting or refusing without reasonable cause to join his fishing boat, or to proceed to sea in his fishing boat, or for absence without leave at any time within twenty-four hours of the boat's sailing from any port, either at the commencement or during the progress of the engagement or for absence at any time without leave and without sufficient reason from his boat, not amounting to desertion, or not treated as such by the skipper, he shall be liable to forfeit a sum not exceeding the amount of two days pay, and in addition for every twenty-four hours of absence either a sum not exceeding four days pay, or any expenses which have been properly incurred in respect of a substitute.

(3.) For quitting the boat without leave after her arrival in port, and before she is placed in security, he shall be liable to forfeit a sum not exceeding two weeks pay.

(4.) For wilful disobedience to any lawful command during the engagement he shall be liable to imprisonment not exceeding four weeks, with or without hard labour, and also at the discretion of the court to forfeit a sum not exceeding two days pay.

(5.) For continued wilful disobedience to lawful commands during the engagement or continued wilful omission to do his duty during the engagement he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also at the discretion of the court to forfeit for every twenty-four hours continuance of such disobedience or omission, either a sum not exceeding six days pay, or any expenses which have been properly incurred in respect of a substitute.

(6.) For assaulting any skipper or second hand he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

(7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the boat, or the progress of the trip, he shall be liable to imprisonment for any period not exceeding twelve weeks with or without hard labour.

(8.) For wilfully damaging the boat or embezzling or wilfully damaging any of her stores or cargo he shall be liable to forfeit a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour.

(9.) For any act of smuggling of which he is convicted and whereby loss or damage is caused to the skipper or owner, he shall be liable to forfeit such a sum as is sufficient to reimburse the master or owner for such loss or damage.

The court (before which the offender is prosecuted) may order any sums of money which a seaman or apprentice has forfeited under this section to be deducted from any wages coming to him in respect of service as a seaman or apprentice, and (if they think fit) that the forfeiture shall be for the benefit of the person by whom the wages are payable, or the person who has been injured by the commission of the offence in respect whereof the forfeiture accrued.

In the case of apprentices and boys serving under such an agreement as is by this Act required, paragraphs (4), (5), (6), and (7) of this section shall apply to them when ashore as well as when on board. Refusing or neglecting to go to sea or desertion shall in no way relieve a seaman or apprentice from any punishment he may have incurred under para-

graphs (4), (5), or (7) of this section, but in addition to any such punishment, he may be punished for an offence or offences under paragraphs (1) and (2) thereof, or either of them.

29. Any question concerning the forfeiture of sums which may be deducted from the wages of any seaman or apprentice, or concerning deductions therefrom, may be determined in any proceeding lawfully instituted with respect to such wages, and may be so determined notwithstanding that the offence in respect of which such question arises, though made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

30. All clothes, effects, wages, and emoluments, which are forfeited for desertion, shall be applied in the first place towards the reimbursement of the expenses occasioned by such desertion to the skipper or owner of the fishing boat from which the desertion has taken place, and in any legal proceedings relating to such wages the court may order the same to be applied accordingly, and may order the things forfeited to be sold in cases where the things forfeited do not consist of money, and the proceeds of such sale shall be applied in manner aforesaid.

Subject to such reimbursement and to the provisions of this Act the things forfeited or the proceeds thereof (as the case may be) and all forfeitures under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Commissioners of the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

31. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any fishing boat in which he has engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, the court may at the request of the owner or skipper or his agent, in addition to or in lieu of imposing any punishment he may have incurred, cause him to be conveyed on board for the purpose of fulfilling his engagement or deliver him to the skipper to be so conveyed by him, and may order any costs or expenses properly incurred to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which he may thereafter earn under the engagement aforesaid.

32. The superintendent of a mercantile marine office, or the principal Board of Trade officer at a port or district, and their respective deputies may, upon the information (made, if such superintendent, principal officer, or deputy so requires, on oath or affirmation according to law,) of the owner, skipper, second hand, or agent of a fishing boat issue a warrant under his hand in such form as shall be sanctioned by the Board of Trade for the apprehension of any seaman or apprentice charged with an offence under paragraphs (1), (2), (4), (5), and (7) of section twenty-eight of this Act, or any of them. Such warrant shall be executed by any police officer or constable of the county or borough where the offender may be, and shall continue valid for ninety-six hours from the time indorsed on the same by the person granting the same.

The seaman or apprentice when apprehended shall be brought by such police officer or constable without delay before the persons above named or one of them, who shall make inquiry then and there into the reasons alleged by the seaman or apprentice for doing the acts, or omitting to do the acts, of which he is accused, and should they seem to him to be insufficient the seaman or apprentice shall be ordered to join his fishing boat and resume his duty. On his refusal to comply the person apprehended shall be ordered by the superintendent, principal officer, or deputy aforesaid to be detained and taken with convenient speed before such justices as have jurisdiction to hear and determine the charge brought against him, and upon which he was apprehended, in order that they may proceed with reference to the said charge, and hear and determine the same in due course of law. Should the reason alleged by the seaman or apprentice seem sufficient to the person aforesaid, he shall forthwith discharge him. No charge or information made or laid before such superintendent, or principal officer, or deputies need be reduced to writing, and such superintendent, principal officer, or deputies may take the evidence on oath or affirmation according to law (if they deem it desirable) of such persons other than the seaman or apprentice as may be able and willing to give information concerning the matters in question, and for that purpose shall have all the powers given by the Merchant Shipping Acts, 1854 to 1883, to an inspector appointed under the first part of the Merchant Shipping Act, 1854.

Any warrant issued as aforesaid shall be good and effectual in law if in the form aforesaid, and filled in reasonably in accordance with the directions in such form contained.

No person shall be liable to an action for anything done pursuant to such warrant aforesaid, or under the order of such superin-

tendent principal officer or their deputies aforesaid.

Such a warrant as is above mentioned shall not be avoided by reason of the person issuing the same dying or ceasing to hold office.

Whenever any seaman or apprentice engaged or liable to serve on any fishing boat neglects, or refuses to join, or deserts from, or refuses to proceed to sea in, or absents himself without leave from such fishing boat, the skipper, owner, or boat's husband may, with or without the assistance of the local police officers and constables (who are to give their assistance in such cases when required to do so by the master, owner, or boat's husband) take and convey such seaman or apprentice before such superintendent, principal officer or deputy as aforesaid, and thereupon such seaman or apprentice shall be dealt with as if he had been arrested under a warrant issued under this section.

33. If a seaman (not being a boy who has entered into such an agreement as is by this Act required) intends to absent himself from his fishing boat or his duty, he may give notice of his intention either to the owner or skipper of the boat not less than forty-eight hours before the time at which he ought to be on board his fishing boat, and if such notice is duly given he shall not be compelled to go or be brought on board for the purpose of proceeding with the voyage or engagement: Provided always that, no such notice shall be given at a time when the seaman is at sea.

34. Seamen's and apprentices wages shall be deemed to accrue from day to day.

When wages are contracted for by the voyage or trip or the season or by the share, and not by a stated period of time, the amount which shall be deemed to accrue from day to day shall be an amount equal to the wages for the whole voyage or trip or season, or the whole share divided by the number of days occupied in the voyage or trip or season: Provided always, that a seaman or apprentice shall not be entitled to more than what his share of the profits or catch made during the period he has actually served may or would have amounted to.

If the whole time spent in the voyage or trip does not exceed the period for which the pay is to be forfeited by the seaman or apprentice the forfeiture shall extend to the whole wages or share.

35. Whenever a question whether the wages or emoluments of any seaman or apprentice are forfeited for desertion arises, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged under this Act, and that he belonged to the fishing boat from which he is alleged to have deserted, and that he quitted such boat before the completion of the voyage or engagement; and thereupon such desertion shall, so far as relates to any forfeiture of wages or emoluments for desertion, be deemed to be proved unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he did not desert.

Certificates to Skippers and Second Hands.

36. Whereas persons desirous of acting as masters or skippers or as mates or second hands of fishing boats or of a particular class of fishing boats have obtained from the Board of Trade certificates to the effect that they are competent to act as master or skipper or as mate or second hand of fishing boats or of a particular class of fishing boats, be it enacted that all such certificates as aforesaid heretofore issued by the Board of Trade shall be deemed to have been granted under the Third Part of the Merchant Shipping Act, 1854.

37. The Board of Trade may issue certificates under section one hundred and thirty-four of the Merchant Shipping Act, 1854, to the effect that the holder thereof is competent to act as skipper or as second hand of fishing boats or of a particular class of fishing boats in every case according to the report made by the local examiners with reference to the applicant for a certificate, and according as the Board of Trade may from time to time prescribe in any rules made by them under the one hundred and thirty-second section of the Merchant Shipping Act, 1854: Provided that no skipper's certificate shall be granted to any one who has not previously held a certificate as second hand for at least twelve months.

38. Every such certificate as in this Act referred to shall only entitle the person to whom it is given to be an officer of the class of fishing boats referred to in the certificate and none other, and of the grade therein named, or of a lower grade and of none other.

39. All the provisions contained in the Acts relating to merchant shipping, with respect to or connected with the examination of applicants for certificates and the granting thereof, and the suspension and cancellation thereof, and inquiries and investigations into the conduct of the holders thereof, and all other provisions whatsoever in the said Acts relating to or connected with certificates of masters

or mates, shall be deemed to have applied and shall apply to the certificates referred to in this Act and the holders thereof as if such certificates had been granted under the Third Part of the Merchant Shipping Act, 1854, and the holders thereof shall be entitled and subject to such privileges and liabilities as they would be entitled or subjected to if such certificates had been granted under the Third Part of the Merchant Shipping Act, 1854.

40. Certificates of service differing in form from certificates of competency shall be granted by the Board of Trade as follows:

Every person who has before the first day of September one thousand eight hundred and eighty-three served as skipper or second hand in fishing boats to which this part of this Act applies or is applied, or such other fishing boats as the Board of Trade may think have afforded the person sufficient experience, for a period amounting in all to not less than twelve months, shall be entitled to a certificate of service as skipper or second hand (as the case may be) of a fishing boat: Provided that if he has been exclusively employed in a particular class or classes of such fishing boats the certificate shall be limited to such class or classes of fishing boats.

Every such certificate of service shall contain particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is given, and the Board of Trade shall deliver such certificate of service to a person entitled thereto upon his proving to the satisfaction of the Board of Trade that he has served as aforesaid, and has been generally well conducted on board of the boats on which he has served as aforesaid.

41. The Board of Trade may establish a register of skippers and second hands certificated as in this Act referred to, to be kept by such person as the Board of Trade shall direct, and to be in such form and to contain such particulars as the Board of Trade may from time to time direct. A copy of or extract from the said register or the register of British shipping at any port or of fishing boats at any port purporting to be certified by the person having the custody thereof, or his deputy or assistant, shall be legal evidence of the matters therein stated; a certificate purporting to be given under the hand of one of the persons aforesaid to the effect that the person or matter therein named has not been registered in the register therein mentioned shall be evidence of the non-registration thereof, and where the question to be determined is whether the person named has been certificated as in this Act referred to as a skipper or second hand of his not being so certificated.

A certified copy or extract or certificate as aforesaid shall be supplied to any person applying at a reasonable time for the same upon payment of such fee as the Board of Trade may from time to time determine.

42. After the first day of January one thousand eight hundred and eighty-four no fishing boat shall go to sea from any port in the United Kingdom unless the skipper thereof is the holder of a certificate of competency or service entitling him under this Act to act as skipper of such fishing boat.

If any fishing boat goes to sea contrary to this section the owner thereof shall incur for each such offence a penalty not exceeding twenty pounds. Every person who, having been engaged to serve as skipper of a fishing boat, and not being the holder of a certificate entitling him under this Act to act as skipper of such boat, serves as such skipper (except in case of necessity), and every person who employs any person as skipper of a fishing boat (except in case of necessity) without having ascertained that he is the holder of a certificate entitling him under this Act to act in such capacity as aforesaid, shall for each such offence incur a penalty not exceeding twenty pounds.

Enactments relating to Deaths, Injuries, Punishments, Ill-treatment, and Casualties.

43. The skipper of a fishing boat shall keep in such form as may be sanctioned by the Board of Trade a record of every case of death, injury, ill-treatment, or punishment which may occur with respect to any member of his boat's crew during the time they are at sea or to any person on board of his boat, and of every casualty to his fishing boat or any boat belonging to her. Such record shall contain such particulars in relation to the above cases as the Board of Trade shall require. The skipper shall produce the record kept by him to any superintendent of a mercantile marine office whenever he requires its production, and shall also send the same to the superintendent of the mercantile marine office at the port to which the boat belongs at such periods as the Board of Trade may require by any directions endorsed in the forms sanctioned by them.

A master who does not comply with any one of the requirements of this section shall for each case of non-compliance forfeit a sum not exceeding twenty pounds.

44. The skipper of every fishing boat shall make a report in a form sanctioned by the

Board of Trade, stating whether any and what cases of death, injury, ill-treatment, or punishment have occurred with respect to any member of his boat's crew during the time they were at sea or to any person on board of his boat, and whether any and what casualties to his fishing boat or any boat belonging to her have occurred, and such other particulars in relation to the matters aforesaid as may be prescribed in the forms to be sanctioned by the Board of Trade.

The above reports shall be made to the superintendent of the mercantile marine office of the port in the United Kingdom at which the boat's voyage ends within twenty-four hours of the boat's arrival in such port.

Every skipper who makes any default in complying with the requirements of this section shall incur a penalty not exceeding twenty pounds.

45. Whenever any such case of death, injury, ill-treatment, or punishment, or any such casualty as is in the preceding two sections referred to, has happened or is supposed to have happened, the superintendent of the mercantile marine office at or nearest to the port where the fishing boat arrives after the happening thereof, or where the boat belongs, may inquire into the particulars and cause of the death, injury, ill-treatment, punishment, or casualty, and may, in cases where a report as aforesaid is delivered to him, make an indorsement thereon to the effect either that the statement relating to the death, injury, ill-treatment, punishment, or casualty therein contained is in his opinion true or otherwise, or to such effect as in his opinion the information in his possession may warrant; and every such superintendent shall, for the purpose of such inquiry, have all the powers given by the Merchant Shipping Acts, 1854 to 1883, to inspectors appointed by the Board of Trade under the first part of the Merchant Shipping Act, 1854; and if in the course of such inquiry it appears to the superintendent that any such death, injury, ill-treatment, punishment, or casualty as aforesaid has been caused by or is accompanied by violence or the use of any improper means, he shall report the matter to the Board of Trade, and shall also, if the emergency of the case in his opinion so requires, take immediate steps for bringing the offender or offenders to justice, and may, if in his discretion he thinks it necessary, cause the offender or offenders to be arrested, and thereafter dealt with in due course of law.

Disputes between Skippers or Owners and Seamen.

46. Every superintendent of a mercantile marine office shall inquire into, hear, and decide any dispute between a skipper or owner of a fishing boat and a seaman of a fishing boat as to a seaman's wages, or share of the profits of the voyage or trip, or share of a fishing catch, or deductions therefrom, or concerning a seaman's engagement, service, or discharge, which either the seaman, owner, or skipper shall call upon him to decide, and his decision thereon shall be final and binding upon all persons, and shall, at the request of either party, be put into writing, and shall, when so put into writing, if it purports to be signed by him, be receivable as evidence of the decision and any facts therein stated in all legal proceedings whatsoever. Such decision may be enforced by any justice of the peace within whose jurisdiction the person against whom the decision is given has any goods, or may be, in the same manner as if such decision were an order made by justices in the exercise of their summary jurisdiction. A seaman may also sue for and recover any sum by such decision adjudged to be due to him in the manner in which he may sue for and recover wages due to him.

47. In every case where any dispute is referred to a superintendent of a mercantile marine office under this Act, he may call upon the owner of a fishing boat or his agent, or upon the skipper or any member of the crew of a fishing boat, or upon any other person, to produce any books, papers, or documents in their respective possession or power relating to any matter in question before him, and may summon before him and examine on oath or affirmation according to law any of such persons being then in or near the port where his office is; and every owner, agent, skipper, member of the crew, or other person who when called upon by such superintendent does not produce any such log-book, paper, or document as aforesaid which is in his possession or power, or does not appear, or refuses or neglects to give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding five pounds. For purposes connected with such dispute the superintendent shall have in addition to the powers aforesaid all the powers given by the Merchant Shipping Acts, 1854 to 1883, to an inspector appointed by the Board of Trade under the first part of the Merchant Shipping Act, 1854.

PART II.

Miscellaneous.

48. The sanitary authority within whose district any seaport town is situate may, with

the sanction of the President of the Board of Trade, from time to time make, revoke, alter, and amend byelaws and regulations relating to seamen's lodging houses in such town which shall be binding upon all persons and bodies keeping houses in which seamen are lodged and the owners thereof and persons employed therein. Such byelaws and regulations shall amongst other things provide for the licensing of seamen's lodging houses, the inspection of the same, the sanitary conditions of the same, the publication of the fact of a house being licensed, the due execution of the byelaws and regulations and the non-obstruction of persons engaged in securing such execution, the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and the exclusion from licensed houses of persons of improper character, and sufficient penalties for the breach of such byelaws and regulations not exceeding in any case the sum of fifty pounds. All offences under such byelaws and regulations shall be deemed to be offences within the Merchant Shipping Acts, 1854 to 1883, and be punishable accordingly. Such byelaws and regulations shall come into force from a date therein named, and shall be published in the "London Gazette" and one newspaper at the least circulating in such town, to be designated by the President of the Board of Trade.

If the sanitary authority do not within a time to be from time to time named by the President of the Board of Trade make, revoke, alter, or amend byelaws and regulations, the President of the Board of Trade may do so.

The "sanitary authority" means in England the local authority under the Public Health Act, 1875, and in the metropolis as defined by the Metropolis Management Act, 1855, the Metropolitan Board of Works, and in Scotland the local authority under the Public Health (Scotland) Act, 1867, and in Ireland the sanitary authority under the Public Health (Ireland) Act, 1878.

Whenever Her Majesty by Order in Council, to be published in the "London Gazette," shall think fit to order that in any seaport town or any part thereof none but persons duly licensed under byelaws and regulations to be made under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, any person acting in contravention of such order shall be guilty of an offence, and shall forfeit a sum not exceeding one hundred pounds. Such offence shall be deemed to be an offence within the Merchant Shipping Acts, 1854 to 1883, and be punishable accordingly.

Her Majesty may, by Order in Council, to be published in like manner, from time to time revoke, alter, or amend any such order as aforesaid.

A sanitary authority may defray all expenses incurred by it in the execution of this section out of any funds at its disposal as the sanitary authority of the seaport town, and penalties recovered under the byelaws and regulations or this section shall be added to such funds.

Any byelaws heretofore made for any seaport town under section nine of the Merchant Seamen (Payment of Wages and Rating) Act, 1880, shall continue in force until byelaws and regulations made for such town under this section come into force.

49. An unregistered British ship (which ought to be registered under the Merchant Shipping Act, 1854) shall for the purposes of section one hundred and nine of the Merchant Shipping Act, 1854, be deemed to have been registered in the United Kingdom.

50. The first part of the Merchant Shipping Act, 1854, is to be deemed to be incorporated with this Act, and shall be applicable to the provisions thereof.

51. For the purpose of jurisdiction, punishment, and legal proceedings and procedure, all offences under this Act shall be deemed to be offences under the Merchant Shipping Acts, 1854 to 1883, and every of them.

52. Vessels employed as tenders or carriers to fishing boats or for the purpose of collecting and conveying to the land the catch of fishing boats, shall for the purposes of this Act be deemed to be trawlers.

53. Ships engaged in the whale, seal, walrus, or Newfoundland cod fisheries shall be deemed to be foreign-going ships within the Merchant Shipping Acts, 1854 to 1883, and not fishing vessels: Provided that the ships engaged in the Newfoundland cod fisheries do not belong to ports in Canada or Newfoundland.

54. Nothing in the two hundred and forty-third section of the Merchant Shipping Act, 1854, or in section twenty-eight of this Act shall be deemed to have taken away or to limit any remedy by action or by summary procedure before justices which an owner or master would have but for the said sections for any breach of contract in respect of the matters constituting an offence under the said sections, but no owner or master shall be compensated more than once in respect of the same damage.

55. The enactments in the First Schedule to

this Act are hereby repealed to the extent therein specified.

No repeal effected by this section shall in any manner whatsoever affect any right accrued, liability, forfeiture, or penalty incurred, any offence committed, or anything done or omitted to be done before the passing of this Act, nor any legal proceedings commenced or hereafter to be commenced with respect to such right, liability, forfeiture, penalty, offence, or thing done or omitted to be done. The repeal effected by this section shall not repeal any enactment so far as the same extends to Scotland.

FIRST SCHEDULE.*

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
17 & 18 Vict. c. 104.	Merchant Shipping Act, 1854.	Sections 141, 142, 143, 144, 149, 163, 164, 166, 167, 171, 172, 173, 174, 243, 269. So far as these sections are applicable to fishing boats. In section 280 the words "(except ships employed exclusively in trading between ports on the coasts of the United Kingdom)."
25 & 26 Vict. c. 63. -	The Merchant Shipping Acts Amendment Act, 1862.	Section 13, paragraph (1).
36 & 37 Vict. c. 85. -	The Merchant Shipping Acts Amendment Act, 1873.	Section 8.
43 & 44 Vict. c. 16. -	Merchant Seamen (Payment of Wages and Rating) Act, 1880.	Section 9. Section 10 so far as this section is applicable to fishing boats.
50 Geo. 3. c. 108. -	- - - -	That part of the Act remaining unrepealed.

* This schedule must be amended if the substituted enactments are not carried.

SECOND SCHEDULE.

Section 5.

APPRENTICESHIP INDENTURE.

Sea Fishing Service.

THIS INDENTURE, made day of 18 , between aged years, a native of , in the county of (herein-after called the "Apprentice,") of the first part, and of , in the county of Owner (1) of not less than eight sixty-fourth shares in (or Skipper of) the Fishing Boat of herein-after called the "Master," of the second part, WITNESSETH, That the said "Apprentice" hereby voluntarily binds himself Apprentice unto the said Master, his Executors, Administrators, and Assigns (which said Master, his Heirs, Executors, Administrators, and Assigns, are herein-after included in the term "Master") for the term of years from the date hereof.

(1.) And the said Apprentice hereby covenants and agrees that during such time, he, the said Apprentice, will faithfully serve his said Master, and obey his lawful commands, and keep his secrets, and will, when required, give to him true accounts of his goods and

money which may be committed to the charge, or come into the hands, of the said Apprentice; and will, in case the said Apprentice enters Her Majesty's Service during the said term, duly account for and pay, or cause to be paid, to his said master, all such Wages, Prize Money, and other Moneys as may
(2) become payable to the said Apprentice for such service; and that the said Apprentice will not, during the said term, do any damage to his said Master, nor will he consent to any such damage being done by others, but will, if possible, prevent the same, and give warning thereof; and will not embezzle or waste the Goods of his Master, nor give or lend the same to others without his licence; nor absent himself from his service without leave; nor frequent Taverns or Alehouses, unless upon his Master's business.

(2.) IN CONSIDERATION WHEREOF, the said Master hereby covenants and agrees with the said Apprentice, that he, the said Master, will and shall during the said term use all proper means to teach the said Apprentice or cause him to be taught the business of a Seaman and Fisherman, and will and shall provide the said Apprentice with sufficient Meat, Drink, Lodging, Washing, Medicine, and
(3) Medical and Surgical Assistance, Sea-bedding, Wearing Apparel, and Necessaries, and will and shall at the times and in the manner herein-after mentioned, pay to or on account of the said Apprentice the Spending-Money, Remuneration, and Payments referred to in the Endorsement marked A on the back hereof.

(3.) AND IT IS HEREBY AGREED, that all wearing apparel provided by the said Master for the use of the said Apprentice shall, during the said term, remain the property of the said Master, provided, however, that the said Apprentice shall,
(4) during such term, have full and undisputed right and title to the free and unfettered use thereof at all times for his own sole personal use and wear, but shall, prior to the expiration of the said term, acquire no right or title thereto for the purpose of selling, pledging, or otherwise disposing thereof; at the expiration of the apprenticeship the apparel shall become the apprentice's property.

(4.) And it is hereby further agreed, that the said Master shall not, during the said term, pay to the said Apprentice any wages or moneys wherewith to
(5) provide board and lodging for himself, but shall and will provide him with suitable and sufficient board and lodging to the satisfaction of the Superintendent of the Mercantile Marine Office at the port where the apprentice stays when on shore, or if there is not a superintendent at that port the superintendent at the next port thereto.

(5.) And it is hereby further agreed that all moneys to which the said Apprentice shall become entitled as Spending-Money shall be paid by the said Master, as they become due into the hands of the said Apprentice: Provided, however, that if the said Apprentice shall, through misconduct, have in the opinion of the said Superintendent forfeited his right to receive the same, the said moneys shall be paid to the said Superintendent, to be by him placed to the credit of the said Apprentice in the Seamen's Savings Bank; and that the Remuneration and Payments, as well as any Share of Salvage earned by the Vessel in which
(6) the Apprentice may be employed at the time such salvage is earned, referred to in the Endorsement marked A. on the back hereof, to which the said Apprentice shall become entitled, shall be forthwith paid by the said Master to the said Superintendent, and by him placed to the credit of the said Apprentice in the Seamen's Savings Bank, there to remain until the expiration or sooner determination of the term of Apprenticeship, subject nevertheless, to the deduction of any fine or forfeiture inflicted by a competent Court upon the said Apprentice, and of any fees paid by the said Master to the Mercantile Marine Office in respect of the said Apprentice:

(6.) And it is hereby further agreed and understood that the said Apprentice shall not be required to serve in any Smack or Vessel in which such Master is not during the continuance of such service himself serving as Master, Mate,
(7) or Seaman, or in which such Master, if not so serving, does not during the continuance of the said Apprentice's Service in such Smack or Vessel, possess an interest of at least one eighth of the value of such Smack or Vessel; and the said Superintendent may, in cases where the Master is, in his opinion, unable to provide the Apprentice with such service as is by this clause permitted, within

Registered at the Port of _____
this _____ day of _____, 18 .
Signed _____

a reasonable time cancel this indenture and adjudge a sum to be paid to the Apprentice by the Master as compensation, which shall be recoverable as and deemed to be wages due to the Apprentice.

(7.) And the said Master hereby undertakes to attend with the said Apprentice once at least in every half-year during the continuance of this Indenture, before the said Superin-
(8) tendent with a view to the investigation by him of questions affecting the earnings and service of such Apprentice, and at such times to give to the said Superintendent a full, true, and faithful report of the character, conduct and efficiency of the said Apprentice:

(8.) And it is hereby further agreed that within 28 days after the expiration of the probationary period herein-after mentioned, or if the Boat (on board of which the Apprentice is) is at sea during the whole of the twenty-eight days then immediately upon her return to port, this Indenture and the said Apprentice shall be brought to the said Superintendent for his Signature to the Endorsement marked C on the back hereof, and that
(9) in the event of the Superintendent seeing sufficient grounds for withholding his Signature, the Apprenticeship shall cease from a date to be named by the said Superintendent, and upon the terms and conditions to be by him prescribed, which said date and terms and conditions shall be recorded in the Register of Apprentices kept by the said Superintendent, and shall be notified to and observed by the said Master and the said Apprentice:

(9.) And it is hereby further agreed that the said Superintendent shall have power, if the circumstances of the case appear to him to warrant such a course, at any time within the
(10) Probationary period to decide that he will be unable to sign the said Endorsement marked C, and thereupon the Apprenticeship shall cease from a date to be named by the said Superintendent and upon the terms and conditions to be by him prescribed; which said date and terms and conditions shall be recorded in the said Register of Apprentices, and shall be notified to and observed by the said Master and the said Apprentice:

(10.) And it is hereby further agreed that breaches of Agreement or discipline alleged to have been committed by the said Apprentice within the said Probationary period, shall
(11) not be taken before any Court for adjudication unless and until the said Superintendent shall have first had an opportunity of inquiring into the same, and have declined so to inquire, or shall upon inquiry determine to send the same for adjudication:

(11.) And the said Master and Apprentice hereby consent to and undertake to abide by
(12) the Covenants, Obligations, Agreements, and Provisoes herein contained:

(12.) The probationary period of shall be allowed to the Apprentice under this indenture, and if at the end of that period or the next return from sea thereafter he applies to the said Superintendent to put an end to the apprenticeship, the Superintendent may after communicating with the Master, if he sees sufficient grounds for cancelling this indenture and ending the Apprenticeship, cancel and end the same, and thereupon the indenture shall be cancelled, and the apprenticeship ended from the date to be endorsed thereon by the said Superintendent.

And for the performance of the said Covenants, Obligations, Agreements, and Provisoes, the said Master doth hereby bind himself, his Heirs, Executors, and Administrators, unto
(13) the said apprentice, his Executors and Administrators, in the penal sum of £ : Provided, that notwithstanding the penal stipulations herein contained any Justice or Justices of the Peace may exercise such jurisdiction in respect of the said Apprentice as he or they might have exercised if no such stipulations had been herein contained.

In witness whereof, the said parties have hereunto set their hands and seals the day and year above written.

Signed, sealed, and delivered in the presence of and approved by

_____

Superintendent of the Mercantile Marine Office. L.S. _____ (Master).

Port of _____ L.S. _____ (Apprentice).

NOTE.—*This Indenture must be executed in triplicate; one copy will be retained and recorded by the Superintendent above referred to, one retained by the Master, and the other retained by the Apprentice.*

ENDORSEMENTS referred to in the body of this Indenture and in the Act.

A.—PARTICULARS OF SPENDING-MONEY, REMUNERATION, AND PAYMENTS.

SPENDING MONEY.

(*Here are to be entered full particulars of the amounts to be from time to time paid to the Apprentice as spending money during the term of the Apprenticeship.*)

REMUNERATION AND PAYMENTS.

(*Here are to be entered full particulars of all allowances, perquisites, shares, or proportions of Salvage if earned by the Smack, or other payments or emoluments to which the Apprentice may become entitled in the course of his Apprenticeship.*)

B.—(Here state pursuant to section 4 whether the nearest relations or the guardian or guardians assent, and such other particulars as the Act requires. If the Superintendent acts as guardian he should state that the nearest relations, or guardian or guardians cannot readily be found, or are not known, or that there are none, and that he has acted as guardian.)

C.—I HEREBY CERTIFY THAT, AFTER FULL INQUIRY MADE BY ME, I SEE NO SUFFICIENT GROUNDS FOR INTERFERING WITH THIS APPRENTICESHIP.

Dated this _____ day of _____ 18 ____

_____ Superintendent, Mercantile Marine

Office, Port of _____

AGREEMENT WITH A BOY UNDER SIXTEEN.

SEA FISHING SERVICE.

THIS AGREEMENT made day of 18 , between , aged years. a native of , in the county of , (herein-after called the "Boy") of the first part, and of in the county of , Owner of not less than eight sixty-fourth shares in (or Skipper of) the Fishing Boat of (herein-after called the "Master") of the second part, WITNESSETH, That the Boy hereby voluntarily agrees to serve as a boy on board the Fishing Boats* of which the Master is owner (or Skipper) for† and the boy agrees to conduct himself in an orderly, faithful, honest, and sober manner, and to be at all times diligent in his duties, and to be obedient to the lawful commands of his Master and of the Skipper and officers of the fishing boat on which he is serving in everything relating to his service and the fishing boat, and the stores and cargo thereof, whether on board, in boats, or on shore. And the Master agrees to pay to the Boy the wages and remuneration stated on the back of this

* Here should be inserted the names of the boats on which the boy is to serve, or if he is intended to serve on no specific boats but any boats belonging to the Master or of which he is Skipper, then it should be left blank.
† Here must be inserted the nature of the engagement, whether for the voyage or for a stated period.

Registered at the Port ____ this ____ day of ____ 18__ . Signed

Agreement, and to supply him with suitable and sufficient provisions to the satisfaction of the Superintendent of the Mercantile Marine Office at the port of * . And shall also whenever the Boy is on shore during the duration of this Agreement, with the consent of the Master or Skipper, provide him with suitable and sufficient Board and Lodging to the satisfaction of the said Superintendent. And it is hereby agreed that any embezzlement, or wilful or negligent destruction of any part of said boat's cargo or stores shall be made good to the Owner out of the wages of the Boy, and that the regulations for maintaining discipline sanctioned by the Board of Trade which are printed hereon and numbered† are adopted as part of this Agreement. And it is hereby further agreed that the Boy shall not be required to serve on any Boat in which the Master is not during the continuance of such service himself serving as Skipper, First hand, or Seaman, or in which the Master does not during the continuance of such service possess an interest of at least one eighth share. And it is agreed that the Boy shall receive from the Master the Wages and Remuneration aforesaid at the times stated on the back hereof, and that the Boy shall be entitled to participate in any sum or sums of money arising from any Salvage or Salvage Services performed or rendered by or by means of the Boat on which he is serving or the Crew thereof in such proportion as is stated on the back hereof.

‡ The probationary period of shall be allowed to the Boy under this Agreement, and if at the end of that period or the next return from sea thereafter he applies to the said Superintendent to put an end to the Agreement, the Superintendent may, after communicating with the Master, if he sees sufficient grounds for cancelling the Agreement, cancel and put an end to the same, and the Agreement shall thereupon be cancelled and ended from the date endorsed thereon by the said Superintendent.

And it is hereby further agreed that breaches of agreement or discipline alleged to have been committed by the Boy within the said probationary period shall not be taken before any Court for adjudication unless and until the said Superintendent shall have first had an opportunity of inquiring into the same, and have declined so to inquire, or shall upon inquiry determine to send the same for adjudication.

And it is hereby further agreed that§

And it is hereby further agreed that the Boy or the Master may, after the expiration of the probationary period (if any), give to the other days notice to determine this Agreement, and the Agreement shall thereupon be determined, and the Boy shall be entitled to wages and remuneration up to and including the date of the expiration of such notice, to be paid on the day of such expiration: Provided always, that such notice of dismissal shall not be capable of expiring during the continuance of a voyage or at a place other than the port to which the boat on which the Boy is serving belongs.

And it is further agreed that either the Boy or the Master shall be entitled to appeal to the said Superintendent to decide any dispute between them arising out of this Agreement or in relation to the Boy's service, and the said Superintendent's decision, if he thinks fit to decide the same, shall be final.

In witness whereof the said parties have hereunto set their hands on the day and in the year above written.

Signed in the presence of
and approved by _____ Master.

_____ Boy.

_____

Superintendent of the Mercantile Marine Office, at the port of .

NOTE.—This agreement must be executed in triplicate; one copy will be retained and recorded by the Superintendent above referred to, one retained by the Master, and the other retained by the Boy.

* The port which the Superintendent before whom it is signed considers most convenient.

† The regulations sanctioned by the Board of Trade printed on this Agreement and the numbers of those which are to form part of this contract must be filled in.

‡ This and the next clause need only be inserted in cases where the agreement is to exceed one month, or where the agreement is for more than one voyage and likely to continue for more than one month.

§ Here insert any stipulations not contrary to law to which the parties agree and which the Superintendent approves.

[*To be printed on back of Agreement.*]

Endorsements referred to in the body of this Agreement and in the Act.

A.—Particulars of wages, remuneration, and payments. (Here are to be entered full particulars of all allowances, perquisites, wages, remunerations, emoluments, shares of catch, &c., with the times when the boy is to receive the same, and also the proportion of salvage the boy is to have.)

B.—(Here state pursuant to section 4 whether the nearest relations or the guardian or guardians assent, and such other particulars as the Act requires. If the superintendent acts as guardian he should state that the nearest relations or guardian or guardians cannot readily be found, or are not known, or that there are none, and that he has acted as guardian.

Here print the regulations with respect to boys for maintaining discipline sanctioned by the Board of Trade.

CHAP. 42.

Public Works Loans Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and to amend the Acts relating to the said Commissioners, and for other purposes.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Works Loans Act, 1883.

2. The Public Works Loans Act, 1875, the Public Works Loans (Money) Act, 1876, the Public Works Loans Act, 1879, the Public Works Loans Act, 1881, and the Public Works Loans Act, 1882, may be together cited as the Public Works Loans Acts, 1875 to 1882.

PART I.

Grant of Money for Public Works Loan Commissioners.

3. (1.) For the purpose of loans by the Public Works Loan Commissioners,—

(*a.*) Any sum or sums, not exceeding in the whole the sum of three million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and

(*b.*) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day at which a further Act granting money for the purpose of the said loans comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

Grant of Money for Public Works Commissioners, Ireland.

4. (1.) For the purpose of loans by the Commissioners of Public Works in Ireland,—

(*a.*) Any sum or sums, not exceeding in the whole one million two hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by Part Two of the Public Works Loans (Ireland) Act, 1877, as amended by the Public Works Loans Act, 1879; and

(*b.*) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day on which a further Act authorising the issue of money for those loans comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by Part Two of the Public Works Loans (Ireland) Act, 1877, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART III.

Grant of Money for Irish Land Commission.

5. (1.) For the purpose of advances or of purchases of estates by the Irish Land Commission under the Land Law (Ireland) Act, 1881, and under any Act that may be passed, called the Tramways and Public Companies (Ireland) Act, 1883, any sum or sums, not exceeding in the whole the sum of four hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the said Acts, and such sums may be issued during the period ending on the day on which a further Act providing money for the purpose of such advances or purchases comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by the said Acts, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

6. Whereas by a Bill pending in Parliament, for an Act to be called the Tramways and Public Companies (Ireland) Act, 1883, it is (among other things) provided that the twentieth section of the Arrears of Rent (Ireland)

Act, 1882, enabling grants to be made in aid of emigration, shall be amended as therein mentioned, and that the sum of two hundred thousand pounds shall be substituted in that section for the sum of one hundred thousand pounds therein mentioned, and thereby the raising of an additional sum of one hundred thousand pounds by the Irish Land Commission for the purposes of the said section as so amended is rendered necessary:

And whereas by section six of the Public Works Loans Act, 1882, the Irish Land Commission, for the purpose of paying money for grants under the said section of the Arrears of Rent (Ireland) Act, 1882, and for other purposes under that Act, were authorised to borrow on the security of the Irish Church Temporalities Fund, such sums not exceeding in the whole two million six hundred thousand pounds, at the rate and on the terms and in the manner and with the guarantee of the Consolidated Fund as therein mentioned:

And whereas it is expedient to extend the said section of the Public Works Loans Act, 1822, to the raising of the said additional sum of one hundred thousand pounds:

Be it therefore enacted as follows:

In the event of the above recited provision of the Tramways and Public Companies (Ireland) Act, 1883, being passed into law, the Irish Land Commission may borrow the said additional sum of one hundred thousand pounds in manner provided by section six of the Public Works Loans Act, 1882, and that section shall apply in like manner as if two million seven hundred thousand pounds were therein substituted for two million six hundred thousand pounds.

PART IV.

Provision as to certain Loans.

7. Whereas the Public Works Loan Commissioners, in the year one thousand eight hundred and seventy-two, and subsequent years, advanced to the Aberbrothwich otherwise called Arbroath Harbour Trustees sums amounting in the whole to twenty thousand pounds, which sums were expended on works for the harbour of Arbroath, and, with interest at the rate of three and a half per cent. per annum, are repayable out of the revenues of the harbour by annuities terminating between the years one thousand nine hundred and twenty-two and one thousand nine hundred and twenty-five; and by the payment of such annuities the capital now due has been reduced to eighteen thousand six hundred and sixty-four pounds five shillings and tenpence:

And whereas the revenues of the harbour are applicable in the first place for the management and maintenance thereof:

And whereas an accident has occurred whereby serious injury has been caused to the works of the harbour, and the estimated cost of the works necessary for the repair of such injury amounts to ten thousand pounds:

And whereas, with a view to the repair of the said injury to the works of the harbour, it is expedient to authorise such suspension of the payment of the said annuities due to the Public Works Loan Commissioners as is herein-after mentioned: Be it therefore enacted as follows:

The Public Works Loan Commissioners, subject to such conditions as may seem expedient, may, with the consent of the Treasury, suspend the payments on account of the advances made by the Public Works Loan Commissioners to the Arbroath Harbour Trustees and the interest thereon during such period not exceeding five years from the first day of January one thousand eight hundred and eighty-two, as may be considered necessary for the purpose of enabling the Arbroath Harbour Trustees to repair the said injury to the works of the harbour, and the Public Works Loan Commissioners may, if they think fit, with the consent of the Treasury, enter into arrangements with the Arbroath Harbour Trustees for payment of the said capital debt of eighteen thousand six hundred and sixty-four pounds five shillings and tenpence, with all interest due and to become due thereon, by instalments commencing after the said period of suspension, and terminating in or before the year one thousand nine hundred and thirty, and any such arrangement may include the capitalization of such interest.

8. Whereas divers sums amounting in the whole to fifteen thousand eight hundred and fifty pounds were advanced in the year one thousand eight hundred and twenty-six and subsequent years, out of the Consolidated Fund of the United Kingdom, in aid of the building of a bridge at Limerick, called the Athlunkard Bridge, and the said sums were advanced to the bridge commissioners on the security of the tolls of the bridge, and were repayable by annual instalments with interest at the rate of four per cent. per annum:

And whereas no instalment of principal has ever been paid, and there was due on the thirty-first day of December one thousand eight hundred and eighty-two in respect of arrears of interest on the said advances the sum of eighteen thousand three hundred and thirty-seven pounds nineteen shillings and elevenpence, and the total sum now due to the

Commissioners of Public Works in Ireland for principal and interest amounts to thirty-four thousand one hundred and eighty-seven pounds nineteen shillings and elevenpence:

And whereas the bridge commissioners held the bridge on trust for the public, and derived no pecuniary benefit therefrom, and they or the larger part of them are dead, and there is no power to appoint any new commissioners:

And whereas in consequence of the deaths of some of the bridge commissioners, and the absence of any power to appoint new commissioners, the Commissioners of Public Works in Ireland took possession in the year one thousand eight hundred and sixty-eight of the bridge and the tolls thereof, and have ever since been in possession of the tolls, and maintained the bridge, and applied the surplus of the tolls, after payment of the expenses of collection and the maintenance of the bridge, in payment of the interest on the said advances:

And whereas the average annual amount applicable to the payment of such interest during the six years ending on the thirty-first of March one thousand eight hundred and eighty-three amounted to four hundred and fifty-eight pounds six shillings and eightpence, and with the exception of such surplus tolls, no other moneys are applicable to the repayment of the said advances and the interest thereon:

And whereas it is expedient to provide for the composition of the said debt and the abolition of the tolls on the bridge and for the maintenance of the bridge in manner hereinafter provided: Be it therefore enacted as follows:—

(1.) If the Treasury are satisfied that payment to the Commissioners of Public Works in Ireland of the sum of six thousand pounds by fifty equal half-yearly instalments together with interest at the rate of three and a quarter per cent. per annum is secured in manner provided by this section, and that the mayor, aldermen, and burgesses of the city of Limerick (in this section referred to as the corporation of Limerick) have undertaken as herein-after mentioned to maintain the Athlunkark Bridge and the approaches thereto, they may authorise the Commissioners of Public Works in Ireland to make, and such Commissioners may accordingly make an order under this section, and by such order may remit the said advance of fifteen thousand eight hundred and fifty pounds, and all arrears of interest due thereon, and the excess of the sum so remitted over and above the said sum of six thousand pounds shall be deemed to be a free grant by Parliament; and further, the said order may declare that Athlunkard Bridge shall, as from the date specified in the order, be free from toll, and be vested in the Corporation of Limerick for the use of the public, and thereupon, as from the date specified in the order, the said bridge shall be free from toll, and it shall be the duty of the Corporation of Limerick to maintain the bridge and the roadway thereof and the approaches thereto in good repair and condition.

(2.) The grand jury of the county of Clare, if a presentment has been duly made by presentment sessions, and the grand jury think fit, may present that the county of Clare shall be charged with the payment to the Commissioners of Public Works in Ireland of a portion of the said sum of six thousand pounds with interest thereon.

(3.) The Commissioners of Public Works in Ireland shall ascertain what sum would be charged in respect of each hundred pounds of the said sum of six thousand pounds, and so in proportion for smaller parts thereof, if the same were to be discharged by fifty equal half-yearly instalments, beginning at the time mentioned in the certificate, with interest on the unpaid portion at the rate of three and a quarter per cent. per annum, and shall certify the sum so ascertained to the presentment sessions for the said county before the meeting thereof for the purposes of this section, and shall also certify the same to the grand jury before the assizes at which the presentment of the grand jury is proposed to be made.

(4.) The presentment of the grand jury, if made, shall provide for the payment of any sum which is presented by fifty equal half-yearly instalments, which shall be applotted and levied from time to time without any further presentment, and shall commence at the time mentioned in the certificate.

(5.) Any presentment under this section may be traversed and may be fiated by the judge of assize in like manner as any other presentments of a grand jury.

(6.) For the purposes of this section a special meeting of the county at large presentment sessions of Clare may be held on a day to be appointed by the Commissioners of Public Works in Ireland within twelve months after the passing of this Act.

(7.) The justices and associated cesspayers for the time being entitled to attend at the ordinary county at large presentment sessions of the said county shall be entitled

to attend at a meeting of the presentment sessions under this section.

(8.) A vote shall be taken at such special meeting of presentment sessions, or at any ordinary meeting of county at large presentment sessions for the said county, to which a presentment for the purposes of this section is submitted, by which vote the meeting shall declare whether they agree that the county cess shall be charged with the payment of any and what proportion of the said sum of six thousand pounds to be paid in accordance with the certificate of the Commissioners of Public Works in Ireland.

(9.) Notice of a special meeting of presentment sessions for the purposes of this section shall be given by the Commissioners of Public Works in Ireland once in each of two consecutive weeks before the day fixed for the meeting in two or more newspapers circulating in the county, and the sessions shall be held in accordance with a notice so published. A like notice shall be given of the intention to submit a presentment for the purposes of this section at any ordinary meeting of county at large presentment sessions. The Commissioners of Public Works in Ireland may make such arrangements as they think fit respecting the making of an application for any presentment under this section.

(10.) Some person nominated for that purpose by the Commissioners of Public Works in Ireland shall attend at any such meeting, and shall give information to the meeting as to the powers conferred upon the presentment sessions and grand jury by this section; and as to the amount for which the county may become liable if the meeting agrees that any charge should be imposed.

(11.) The Corporation of Limerick may, by a resolution of the council, undertake to hold for the use of the public the Athlunkard Bridge and the approaches thereto, and to maintain the same in good and sufficient order, repair, and condition, and to light the bridge and approaches in a sufficient manner.

(12.) The Corporation of Limerick may, by a resolution of the council passed within six months after the making of any grand jury presentment under this section, undertake to pay to the Commissioners of Public Works in Ireland such portion of the said sum of six thousand pounds (if any) as is not charged on the county of Clare in pursuance of this section, and thereupon the said portion shall be charged on and payable out of the borough fund and general purposes rate of the said corporation by fifty equal half-yearly instalments, beginning at the expiration of three months after the date of the resolution, or at any other date mentioned in the resolution, not later than four months after the date of the resolution, with interest on the unpaid portion at the rate of three and a quarter per cent. per annum, and the Commissioners of Public Works in Ireland shall have the same remedy for enforcing such payment as they would have if a mortgage of the said fund and rate had been made to the said commissioners for securing the same.

(13.) The expenses of the Corporation of Limerick incurred in pursuance of this section may be defrayed out of any moneys or rates applicable for the purpose of maintaining or lighting the roads in the city of Limerick, as the case may be, but nothing in this section relating to the maintenance and lighting of the said bridge, and the roadway thereof and approaches thereto, shall diminish any liability of the borough fund or general purposes rate to pay the sums due to the Commissioners of Public Works in Ireland.

9. In case the Commissioners of Public Works in Ireland advance a loan for the purpose of building a new court house in lieu of the existing court house in Green Street, Dublin, the period for repayment of any such loan or any instalment thereof may, notwithstanding anything in the Acts relating to loans by the said Commissioners, be such period not exceeding forty years from the date of the loan or instalment as the said Commissioners, with the consent of the Treasury, determine.

10. Whereas in pursuance of the power conferred by section four of the Public Works Loans Act, 1880, the Commissioners of Public Works in Ireland, with the approval of the Treasury, have remitted certain instalments of principal and interest charged by virtue of the award mentioned in the said section on certain lands and mills situate on each side of the river Corrib, in the county of Galway, which said instalments were set forth in the schedule to the said Act, and amounted together to the sum of one thousand five hundred and sixty-six pounds fourteen shillings and tenpence, whereof the sum of eleven hundred and seventy-one pounds ten shillings was the amount remitted in respect of the mills and

lands comprised in lots nine and ten referred to in the said schedule:

And whereas after the remission of the said last-mentioned sum there remained due to the Consolidated Fund of the United Kingdom in respect of principal and interest the further sum of eight hundred and twenty-three pounds three shillings and sevenpence charged by virtue of the said award upon the mills and lands comprised in the said lots nine and ten:

And whereas the last-mentioned mills and lands were vested in the Commissioners of Public Works in Ireland, and have since such remission as aforesaid been sold by the said Commissioners with the consent of the Treasury for the sum of five hundred pounds:

And whereas the residue of the said sum of eight hundred and twenty-three pounds three shillings and sevenpence, after payment into the Consolidated Fund of the said sum of five hundred pounds, amounts to the sum of three hundred and twenty-three pounds three shillings and sevenpence, which is irrecoverable, and it is therefore expedient that it should be extinguished:

Be it therefore enacted that the said sum of three hundred and twenty-three pounds three shillings and sevenpence, so due to the Consolidated Fund as aforesaid, shall be and the same is hereby extinguished, and shall be considered as a free grant from Parliament.

Amendment of Acts.

11. Whereas certain advances have been made by the Irish Land Commission to landlords in respect of antecedent arrears due by the tenants of certain holdings respectively, pursuant to section sixteen of the Arrears of Rent (Ireland) Act, 1882, and such holdings have been respectively declared to be charged with rentcharges in repayment of such advances, and advances may be made and holdings charged in like manner in future: And whereas it is provided by the said section that such rentcharges shall be from time to time collected by the collector authorised to collect poor rates in the electoral division in which the holding is situate, and that every such collector shall pay and account for the sum so collected by him to the guardians of the union in which such holding is situate, and that the guardians shall transmit the amounts from time to time received by them as aforesaid to the Irish Land Commission:

And whereas it is expedient to make a different provision respecting the collection of such rentcharges; be it therefore enacted as follows:

(1.) The mode of collecting and levying the said rentcharge herein before recited shall not be used after the passing of this Act:

(2.) Where any advance has been made or shall hereafter be made pursuant to section sixteen of the Arrears of Rent (Ireland) Act, 1882, and where any holding has been or shall hereafter be charged with a rentcharge in repayment of any such advance, each such rentcharge shall be collected directly by the Irish Land Commission, and the payment thereof may be enforced in the same manner in all respects as if such rentcharge were an annuity in favour of the Irish Land Commission in repayment of an advance for the purpose of supplying money for the purchase of a holding pursuant to section twenty-eight of the Land Law (Ireland) Act, 1881, save only that section ten of the Public Works Loans Act, 1882, shall not apply to any rentcharge levied and collected pursuant to this present enactment:

(3.) Provided always that nothing herein contained shall prejudice or affect the provisions of the said section sixteen of the Arrears of Rent (Ireland) Act, 1882, with respect to the power of the county court to order a sale of the tenancy on such default and such application as therein mentioned, nor the provisions as to the proceedings consequent on such sale, nor as to the contingent liability of the landlord, nor with respect to the transfer of the tenants interest by sale, all which provisions shall remain in full force and effect.

12. So much of section three of the Public Works Loans (Ireland) Act, 1877, as provides that any such advance as in the said section mentioned and the interest thereon shall be repaid within such period from the date of the advance as the Treasury shall by order from time to time fix, so that it do not in any case exceed twenty years or any less period fixed by the Acts referred to in the said section, is hereby repealed; and, in lieu of the said provision, be it enacted as follows:

Any such advance as in section three of the Public Works Loans (Ireland) Act, 1877, mentioned, and the interest thereon, shall be repaid within such period, commencing either from the date of such advance or from the date of the completion of the works for which such advance is made, as the Treasury by order from time to time fix, so that the said period do not in any case exceed twenty years, or any less term fixed by the Acts referred to in the said section.

13. (1.) Where any sum is payable to the Commissioners of Public Works in Ireland by a county or any part thereof on account of any advance made or expenses incurred by or under the authority of the said Commissioners in pursuance of this Act or of any Act passed either before or after the passing of this Act, and such sum is payable by instalments, the said Commissioners shall not be required to issue a separate certificate for the recovery of each of such instalments, but they may, at any time or times after the making of such advance or the incurring of such expenses as aforesaid, send to the secretary to the grand jury of such county a certificate or certificates specifying the whole or any part or parts of the sum so payable; and any such certificate shall also specify the amount (including principal and interest) of each instalment payable by such county or any part thereof in respect of the sum specified in such certificate, and, as nearly as may be, the time at which each such instalment will be due.

(2.) Any such certificate shall, until the contrary is proved, be conclusive evidence of all matters necessary to authorise the making of it.

(3.) Upon any such certificate being sent to the secretary to the grand jury, the grand jury at the next and every succeeding assizes or presenting term, until the sum therein specified as aforesaid has been fully paid, shall, without any previous proceeding at any presentment sessions, present the amount required for the payment of any instalment of the said sum for the time being due or falling due before the then next assizes or presenting term, as specified in the said certificate; and if such grand jury make default in presenting such amount as aforesaid, the judge of assize or the High Court of Justice shall order such amount to be raised, and such order shall have the force of a presentment, and such amount shall be applotted and raised and levied accordingly as if the same had been inserted in a presentment duly made at such assizes or presenting term.

The secretary to the grand jury shall, within one month after the date of any such presentment or order as aforesaid, send notice thereof to the said Commissioners, and every sum raised in pursuance of any such presentment or order shall be paid into the Bank of Ireland to the account of the said Commissioners, or in such other manner as the Treasury from time to time direct.

In this section—

The expression "county" includes a county of a city, a county of a town and city, and a city or town and county:

The expression "grand jury," as regards any borough of which the council is authorised by law to make presentments, includes such council, and the expression "secretary to the grand jury," as regards any such town council, includes the town clerk.

CHAP. 43.

Tramways and Public Companies (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

PART I.

POWERS OF GRAND JURY TO GUARANTEE.

TREASURY CONTRIBUTION TO GUARANTEE.

ENACTMENTS AS TO ORDERS IN COUNCIL.

PART II.

EMIGRATION, AND PURCHASE OF LANDS BY PUBLIC COMPANIES.

PART III.

SUPPLEMENTAL.

An Act for promoting the extension of Tramway communication in Ireland, and for assisting Emigration, and for extending certain provisions of the Land Law (Ireland) Act, 1881, to the case of Public Companies.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

POWERS OF GRAND JURY TO GUARANTEE.

1. (1.) It shall be lawful for the promoters of any tramway, being a public company, in making application to the grand jury of any county under the Tramways (Ireland) Acts, to propose that a barony or baronies in the county shall guarantee the payment of dividends, not exceeding five per centum, upon so much of the share capital of the undertaking as is for the time being paid-up capital as defined by this Act: And also that, in case of default on the part of the promoters, the completion, working, and maintaining of the undertaking may be provided for, under the circumstances specified in this Act, at the costs of the same barony or baronies.

(2.) The grand jury shall inquire into such proposal, and shall hear all persons interested, and may make a presentment to be submitted to the Lord Lieutenant in Council that such baronies or parts of baronies as the grand jury may specify shall be chargeable with the payment of dividends at such rate, not exceeding five per centum per annum as the grand jury may determine on so much of the share capital of the company as is for the time being paid-up capital as defined by this Act: And also that the same baronies or parts of baronies shall become chargeable, under the circumstances specified in this Act, with the payment from time to time of such sums as may be required for completing, working, or maintaining the undertaking.

The guarantee may be limited by the presentment to expire at a fixed period.

(3.) The presentment shall provide that the barony or baronies or parts of baronies which it is proposed to charge with any part of such guarantee shall be represented in the direction or supervision of the affairs and finance of the company, so far as relates to the said tramway, or the part or parts thereof, in respect of which such barony or baronies or parts of baronies are proposed to be charged. This may be done—

(*a.*) By enabling the presentment sessions for such barony from time to time to elect a director or a local consulting director or directors of the company as the grand jury think necessary:

(*b.*) By enabling such presentment sessions from time to time to appoint an auditor, with power to inspect the books and accounts of the said company relating to the said tramway at stated and reasonable times:

(*c.*) By enabling such presentment sessions from time to time to appoint a delegate or delegates to attend and vote at the general meetings of the company on business relating to the said tramway, under such conditions as may be prescribed:

(*d.*) By any combination of the foregoing arrangements deemed proper:

(*e.*) The presentment may lay down a scale of payment, so far as they are chargeable upon the earnings of the undertaking, if any, for the directors and officials of the company, and may provide for the revision of such scale.

(4.) The presentment shall contain all such other conditions as the grand jury think proper to insert.

(5.) The presentment may apply to one barony only, if the grand jury so think fit. If it applies to more baronies than one, it shall determine the proportions of their liability respectively, or the presentment may provide that the proportions of such liability may be afterwards determined from time to time by arbitration or otherwise as the grand jury think expedient.

(6.) Nothing contained in this Act shall operate to prevent a company from promoting, constructing, and working two or more different tramway undertakings: Provided always that such company shall keep separate capital and revenue accounts for each tramway.

2. In addition to the persons entitled under the Tramways (Ireland) Acts to appeal to the Lord Lieutenant in Council against the presentment of a grand jury approving of the undertaking, it shall be lawful for any persons, not less than twenty in number, who are collectively liable to pay one eighth or upwards of the county cess in any barony specified in the presentment of the grand jury, to present a petition of appeal to the Lord Lieutenant in Council against such presentment. Such petition of appeal shall operate in the same manner as a petition of appeal under the Tramways (Ireland) Acts to prevent the Order in Council from taking effect unless confirmed by Parliament.

3. When any such presentment has been submitted to the Lord Lieutenant, the Order in Council, which the Lord Lieutenant is empowered to make under the Tramways (Ireland) Acts, may include, in addition to any provisions which it might have contained if this Act had not been passed, a confirmation of the presentment of the grand jury so far as it relates to any charge or liability to be defrayed by any barony.

Orders in Council under this Act shall only be made with the sanction of the Treasury.

4. During the continuance of the guarantee the net receipts from the tramway, after deducting from the gross receipts the expenses of the management and working and proper maintenance of the tramway, shall be applied to the payment of a dividend at the guaranteed rate on so much of the share capital of the company applicable to such tramway as is for the time being paid-up capital within the meaning of this Act; and in the event of a total failure or partial insufficiency in any half year of such net receipts to pay such dividend, then the sums required to pay such dividend or to make up any deficiency therein shall be charged upon and levied off the barony or baronies chargeable under the guarantee, and the sums so levied shall be applied for that purpose, and to no other purpose whatever.

5. Whenever in any half year there remains any surplus of the receipts from the tramway (after deducting the expenses of the management and working of the tramway, and after deducting dividend at the guaranteed rate upon the capital of the company for the time being paid up), and any money shall in any previous half year have been contributed by the baronies under their guarantee, or for maintaining or working the tramway, such surplus shall be paid over by the company to the treasurer of the county until all moneys paid by the baronies, together with the costs and expenses of levying the same, shall have been repaid to such treasurer. All moneys so repaid to the treasurer shall be apportioned by him between the Treasury and the baronies in the proportions in which the Treasury and the baronies respectively have made payments on account

of the undertaking. The amount which on such apportionment is found to be payable to the Treasury shall be paid by the treasurer of the county to the Commissioners of Public Works, for the use of the Exchequer, in such manner as the Treasury may from time to time order. The amount which is payable to the baronies shall be carried by the treasurer to the credit of the baronies in proportion to the amounts paid by them respectively, and shall be applied by him in reduction of the county cess payable by the baronies respectively.

6. For the purpose of ascertaining the gross receipts and the net receipts from the tramway, and the sums (if any) which any barony shall pay in any half year as provided by the Order in Council, and for the other purposes mentioned in this Act, the Board of Trade may, during the continuance of the guarantee, from time to time appoint as arbitrators the county surveyor acting for the time being in the county in which such barony is situate, and two other persons to be selected by the Board of Trade, and may supply the place of any of such arbitrators dying or resigning or failing or becoming incapacitated to act, and such arbitrators shall from time to time ascertain and determine the amount of the gross receipts and of the net receipts, if any, as prescribed by this Act in respect of the tramway in each half year, and also any other matters which it may appear necessary to them to inquire into and determine upon in order to ascertain the amount which may be applicable out of the receipts of the undertaking to the payment of the guaranteed dividend, and the amount, if any, which the guaranteeing baronies are liable to contribute towards such dividend, or towards the expenses of maintaining or working the undertaking, and the amount (if any) payable to the treasurer of the county under this Act, and shall thereupon apportion and determine the amount of such half-yearly sums, if any, to be paid by the baronies liable to pay the same or by the company, and the arbitrators shall set forth the several matters so determined by them in certificates under their hands, or, in case they do not agree, under the hands of any two of them, and such certificates shall be in all respects binding on the grand jury and the baronies and the company; and immediately after the delivery of such certificates to the secretary of the grand jury of the county, the baronies, or the company, as the case may be, shall be liable as herein provided for the payment of such sums as shall be specified in such certificates, and a copy of every such certificate shall be delivered to the company, and the company shall immediately thereon pay to such arbitrators their costs and expenses, and such remuneration for their trouble in regard thereto as the Board of Trade shall order.

It shall not be lawful for any county surveyor liable to be appointed an arbitrator under this provision, or for any assistant to such county surveyor, to promote or have any pecuniary interest in or connected with any proposed tramway.

7. The arbitrators shall from time to time deliver the certificates by this Act directed to be prepared by them to the secretary of the grand jury of the county to which the guaranteeing barony or baronies belong, who shall lay such certificate before the grand jury at the assizes next after he shall have received the same; and the grand jury are hereby required, from time to time, and without application to presentment sessions, to present the sum mentioned in such certificates as payable by any barony, together with the costs and expenses of levying the same, to be raised and levied in like manner as any presentment made under the authority of an Act passed in the session of the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter one hundred and sixteen, and any Act amending the same; and if the grand jury fail to present the sum, or any part thereof, contained in any such certificate, together with the costs and expenses of levying the same, the treasurer of the county shall insert such sum, or such omitted part thereof, together with the costs and expenses of levying the same, in his warrant for raising the moneys presented at the same assizes, as if such sum had been duly presented by the grand jury to be raised and levied in manner herein-before mentioned, and the same shall be raised and levied accordingly as if the same had been so presented, and the treasurer shall pay over the amount, when received by him, as if such money had been presented by the grand jury.

8. In cases where for the purposes of the Tramways (Ireland) Act, 1860, the grand jury of a county of a city, or county of a town, municipal corporation, town or other commissioners, are in the place of the grand jury of the county within which the city, borough, town corporate, place, or district over which they have control, is locally situate, then such grand jury of a county of a city, or county of a town, municipal corporation, or commissioners shall, for the purposes of this Act, be in like manner in the place of the grand jury of the county; and the provisions of this Act relative to a barony shall apply to the city, borough, town corporate, or other place or district within which such grand jury, municipal cor-

poration, or commissioners have rating powers, and any rate or fund out of which the expense of making or maintaining roads might be defrayed shall for the purposes of this Act be in place of the grand jury cess leviable in a barony, and a resolution of such municipal corporation or commissioners, passed in the same manner as other resolutions for providing funds for the payment of debts, shall be in lieu of a presentment of a grand jury, and the matters and things which in the case of a grand jury of a county are prescribed to be done at the assizes, may be done at any convenient time appointed by the corporation or the commissioners.

Nothing contained in this section shall alter or affect the procedure prescribed with reference to the county of the city of Dublin, and the county of Dublin, by the Act of the session of the thirty-ninth and fortieth years of the reign of Her present Majesty, chapter sixty-five.

Nothing contained in this Act relative to the mode of enforcing payment of any sums due on account of a baronial guarantee, or as to the levying of moneys for making such payment, shall prejudice or affect any action or proceedings which may be taken by any company or person to whom any money is due on account of such guarantee.

TREASURY CONTRIBUTION TO GUARANTEE.

9. When in any half year after the opening for traffic of a tramway belonging to a company the dividend on the share capital of which is guaranteed by a barony under this Act, such barony has paid to the company any sum in respect of guaranteed dividend, exclusive of any sum paid in respect of the completing, working, or maintaining of the undertaking, it shall be lawful for the Treasury, if and so long as the tramway is maintained in working order and carries traffic, to authorise the Board of Works, out of any moneys provided by Parliament, to pay to the treasurer of the county, to be put by him to the account of the barony, a sum not exceeding one half of the sum paid by the barony in respect of guaranteed dividend, exclusive as aforesaid, during such half year; and not exceeding a sum equal to interest at the rate of two per cent. per annum on the paid-up capital as defined by this Act for the time being of the company.

The Treasury in sanctioning Orders in Council under this Act shall not undertake to pay in the aggregate a sum exceeding forty thousand pounds a year.

ENACTMENTS AS TO ORDERS IN COUNCIL.

10. (1.) Every Order in Council which confirms a presentment of a grand jury for a baronial guarantee under this Act shall contain all such provisions as may be necessary for securing that the tramway shall be completed, and shall be maintained in good order and condition, and shall be efficiently worked by the company or their assigns, and that if default is made in such completing, or if at any time the receipts from the undertaking are insufficient to defray the expenses of management, and of efficiently maintaining and working the undertaking, then such sums as may be necessary for those purposes shall be contributed from time to time by the guaranteeing baronies, in the same proportions, and shall be assessed and levied in the same manner, as their contributions on account of their guarantee, and such Order shall provide for the manner in which such sums shall be applied for those purposes under the control of the grand jury.

(2.) Such Order shall also provide that if the guaranteeing baronies have been called upon to pay and have paid any money for completing the tramway, or if they have been called upon to pay and have, during a period of not less than two years to be fixed by the Order, continued to pay any money for maintaining or working the undertaking, then the undertaking, and all the property of the company connected with it, shall become the property of the grand jury, subject to any liabilities affecting such undertaking or property, and the undertaking shall be maintained and worked by the grand jury at the cost of the guaranteeing baronies; and the Order shall also provide for the mode in which the undertaking shall be so maintained and worked.

(3.) The Order shall also contain such provisions with respect to the inspection of the works, the audit of accounts, the keeping of books, documents, and vouchers, and their submission to the arbitrators appointed under this Act, as the Lord Lieutenant thinks proper.

(4.) Before any such Order in Council is made, the Commissioners of Public Works shall furnish to the Lord Lieutenant an estimate of the amount of paid-up capital which is necessary for the purposes of the undertaking; and the Lord Lieutenant in Council shall, having regard to such estimate and to such representations as may be made by the company, fix a limit upon the amount of capital upon which dividends may be guaranteed, and, subject to that limit, the amount of capital for the time being paid up shall be deemed to be the amount of the paid-up capital of the com-

pany so far as relates to such undertaking within the meaning of this Act.

11. The Lord Lieutenant in Council may by Provisional Order empower any railway company to contribute towards the cost of the construction of any tramway to be made under the powers of this Act such sum of money by way of loan, subscription for shares, or otherwise, as may be agreed upon between the railway company and the promoters of the tramway.

Such Order in Council shall only be made where the railway company establishes, to the satisfaction of the Lord Lieutenant in Council, that a copy of the Provisional Order as applied for by the railway company has been submitted to the proprietors of the company, at a meeting held specially for that purpose, as if such Order were a Bill promoted in Parliament by the Company, and that all matters and things have been done and have happened, and all times have elapsed, which if such Order were a Bill so promoted as aforesaid should have been done and have happened and elapsed in order to constitute compliance with the Standing Orders of Parliament applicable to Bills promoted by railway companies for the like purposes to those referred to in this section.

Such Order in Council shall not take effect unless confirmed by Parliament if a petition against it is presented to the Lord Lieutenant in Council, and the petitioner appears and proceeds therewith.

PART II.

Emigration, and Purchase of Lands by Public Companies.

12. In the twentieth section of the Arrears of Rent (Ireland) Act, 1882, enabling grants to be made in aid of emigration, the sum of two hundred thousand pounds shall be substituted for the sum of one hundred thousand pounds, and the sum of eight pounds shall be substituted for the sum of five pounds in any cases in which the Lord Lieutenant shall so direct.

Provided that, to an extent not exceeding fifty thousand pounds, the moneys to be hereafter granted by the Commissioners of Public Works under the said section may be applied for the purpose of paying for or assisting in the removal of persons or families from districts or places within the unions referred to in the said section to other places in Ireland, whether within such unions or not, and their settlement there, or for other purposes incidental to such removal and settlement. Such grants shall only be made on the recommendation of the Lord Lieutenant, and on such terms as he may approve.

13. (1.) The Treasury may authorise the Irish Land Commission to advance from time to time to any public company with whose constitution the Land Commission are satisfied, herein-after referred to as a public company, out of moneys to be provided by Parliament, if the Land Commission approve of the security and the expediency of the purchase, such sums as the Treasury think fit for aiding such company to purchase estates for the purpose of reselling to the tenants of the lands comprised in such estates their respective holdings, or for the purpose of assisting in the removal thereto of persons and families, as provided by the preceding section of this Act.

Such advances, where the estate or estates are purchased solely for the purpose of re-sale to the tenants, shall only be made when the Land Commission are satisfied that a competent number of the tenants on the estates proposed to be purchased are able and willing to purchase their holdings from the company.

(2.) When a company to whom an advance has been made under this section has purchased an estate, they shall, so far as concerns the re-sale of their holdings to the tenants thereon, deal with it in the same manner in which it is provided in Part V. of the Land Law (Ireland) Act, 1881, that the Land Commission shall deal with estates purchased by them for the purpose of reselling to the tenants of the lands comprised in such estates their respective holdings.

(3.) The sale by the company of a holding to the tenant thereof may be made either in consideration of a principal sum being paid as the whole price or in consideration of a fine and of a fee farm rent, with this qualification, that the amount of the fee farm rent shall not exceed seventy-five per cent. of the rent which in the opinion of the Land Commission would be a fair rent for the holding.

(4.) For the purposes of this section a competent number of tenants means a body of tenants who are not less in number than three fourths of the whole number of tenants on the estate, and who pay in rent not less than two thirds of the whole rent of the estate, and of whom a number, comprising not less than one half of the whole number of tenants on the estate, are able and willing to pay the whole price of their holdings, either immediately or by means of such advances as in this part of this Act mentioned.

The condition as to three fourths of the number of tenants may be relaxed on special grounds with the consent of the Treasury, and

on the recommendation of the Lord Lieutenant.

(5.) The Land Commission may advance to a tenant proposing to pay the whole price of his holding any sum not exceeding seventy-five per cent. of the said price, and to a tenant purchasing subject to a fee farm rent a sum not exceeding one half of the amount of the fine payable by the tenant.

(6.) In sales by a company to tenants in pursuance of this section, a separate charge shall not be made for any expenses relating to the purchase, sale, or conveyance of the property, but such expenses shall be included in the price or fine payable by the purchaser.

14. Where a public company have purchased an estate, they may sell any parcels which they do not sell to the tenants thereof in such manner as they think fit, in consideration either of a principal sum as the whole price, or of a fine and a fee farm rent, or partly in one way and partly in the other.

The Land Commission may advance to any purchaser of a parcel under this section, on the security of such parcel, one half of the principal sum paid as the whole price or of the fine.

The provisions of this part of this Act with respect to the charges for expenses and to the mode in which sales are to be made shall apply to the sale of a parcel in pursuance of this section in like manner as if the purchaser had been the tenant of the holding at the time of his making the purchase.

15. (1.) Any advance made by the Land Commission for the purpose of supplying money for the purchase of a holding or parcel from a public company shall be repaid by an annuity in favour of the Land Commission for thirty-five years of five pounds for every hundred pounds of such advance, and so in proportion for any less sum.

(2.) Every such advance shall be secured to the Commission either in such manner as may be agreed on between the Commission and the person to whom the advance is made, and as the Commission think sufficient, or in manner provided by Part III. of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872, in like manner in all respects as if the same were such an advance as is mentioned in those Acts, and as if the Land Commission were the Board therein mentioned, and as if the person receiving the advance were a tenant or purchaser therein mentioned.

Provided always, that where any such advance is secured in the manner provided by Part III. of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872, the first half-yearly payment of the annuity shall, where the advance is not made on one of the gale days (namely, the first day of May or the first day of November), be due and paid on the second of such gale days after the date of the advance; and together with such first half-yearly payment there shall be due and paid an additional sum for interest on the advance at the rate of three and a half per cent. per annum from the date of the advance until the first gale day next after that date.

(3.) Any person liable to pay an annuity in this section mentioned may redeem the same, or any part thereof, or may prepay any instalments thereof in such manner and on such terms as is provided by section fifty-one of the Landlord and Tenant (Ireland) Act, 1870, or in such other manner, and on such other terms, as the Treasury may from time to time approve, having regard to the due repayment of the loan and the protection of the Land Commission against loss by the said loan.

16. (1.) A public company to whom an advance is made under this Act shall not purchase a leasehold estate for the purposes of this Act, unless the lease is for lives or years renewable for ever, or is for a term of years of which not less than sixty are unexpired at the time when the sale is made, or unless the company have purchased some greater right or interest in the estate in which the leasehold would be merged:

Provided that—

(*a.*) This part of this Act shall not empower the owner of a leasehold holding under a lease containing a prohibition against alienation to sell such leasehold unless such prohibition is determined or is waived; and

(*b.*) Nothing in this section shall prevent the purchase of an estate by reason only of a small part thereof being leasehold.

(2.) Any sale of a holding to a tenant by a company in pursuance of this part of this Act, may be made either in pursuance of Part II. of the Landlord and Tenant (Ireland) Act, 1870, or in such manner as the Land Commission may think expedient; and for the purpose of the application of the said Part II., "price" in section thirty-two of the Landlord and Tenant (Ireland) Act, 1870, shall be deemed to include a fine and a fee farm rent as well as a principal sum, and the enactments relating to the distribution of the price shall apply with the necessary modifications.

17. (1.) Section thirty of the Land Law (Ireland) Act, 1881, shall apply to all holdings

for the purchase of which advances have been made by the Land Commission to a tenant pursuant to this part of this Act.

(2.) Section thirty-three of the said Act, relative to the supply of money by the Treasury, shall be extended and shall apply to the supplying of money for the purpose of advances by the Land Commission under this part of this Act as fully as it applies to the advances mentioned in that section.

18. When an estate has been purchased by a public company to whom an advance has been made by the Land Commission under this Act, and any difference arises between such company and the tenant of any holding comprised in such estate relative to the sale of such holding to such tenant, either as to price or as to any other term of the contract, the difference shall, if the tenant so requires, be referred to the Land Commission, whose decision thereon shall be binding upon the company and the tenant.

19. Advances made by the Land Commission to a public company in pursuance of this Act shall be made repayable within such periods and at such rate of interest as are set forth in a minute of the Treasury made on the sixteenth day of August one thousand eight hundred and seventy-nine, with reference to loans, to which section two of the Public Works Loans Act, 1879, applies, or as the Treasury may from time to time fix in pursuance of that section.

The security for the repayment of such advances shall be in such form, and shall contain such conditions for obliging the company duly to carry out the purposes specified in this Act as to sales to tenants and otherwise, as the Land Commission may consider proper.

All contracts of sale by a public company to a tenant or other person pursuant to this Act shall be submitted to and shall be subject to the approval of the Land Commission.

If the Land Commission so direct, the purchase money payable by a tenant or other purchaser to a public company shall be paid to the Land Commission, and credited to the company as against any money for the time being owing by the company to the Land Commission.

If the Land Commission so direct, any rentcharge, annuity, or instalments on account of purchase money payable by a tenant or other purchaser to a public company, shall be reserved and made payable to the Land Commission, and all sums received by the Land Commission on account thereof shall be credited against any sums owing by the company to the Land Commission on account of rentcharge, purchase money, or otherwise.

So soon as all sums owing by a public company to the Land Commission shall have been paid and discharged, the Land Commission shall by order direct that such rentcharge, annuities, and instalments as last mentioned remaining unpaid, shall forthwith vest in and become payable to the said public company or its assigns, and the same shall then so vest and become payable accordingly.

20. The planting of trees shall be included amongst the purposes for which money may be advanced by the Board of Works under the thirty-first section of the Land Law (Ireland) Act, 1881.

21. The conditions and limitations contained in sub-section three of the thirty-first section of the Land Law (Ireland) Act, 1881, may be modified or dispensed with by the Board of Works, with the consent of the Treasury, in any special cases in which the Lord Lieutenant may for special reasons, to be stated under his hand, recommend that it is proper so to do.

PART III.

SUPPLEMENTAL.

22. Whenever any money is payable under this Act by a company to the treasurer of any county, and also whenever a tramway undertaking has become the property of the grand jury of any county under this Act, the secretary for the time being of the grand jury of that county may bring any action which may be necessary for the purposes of this Act in any court of competent jurisdiction, and may be the nominal plaintiff in such action, and as such entitled to sue on behalf of the grand jury, or of the ratepayers of any barony, and no such action shall abate or be discontinued by reason of the death, removal, or resignation of such secretary.

23. The Tramways (Ireland) Acts are hereby amended as follows:

(1.) The enactment in section one of the Tramways (Ireland) Act, 1860, that it shall not be competent to make application for a tramway or tramways under the provisions of that Act to unite places between which statutory powers for making a railway or railways for directly connecting the same shall have been granted and be in force is hereby repealed, except in cases where such railway shall have been actually constructed, or shall be in actual course of construction, or where the railway company, having such

powers, shall satisfy the Lord Lieutenant in Council that it is their intention forthwith to proceed in good faith to construct such railway.

(2.) Notwithstanding the enactments to the contrary contained in sections twenty-six and twenty-seven of the Tramways (Ireland) Act, 1860, Orders in Council made under those sections for varying, extending, enlarging, or maintaining any tramway, or for extending the time limited for the completion of a tramway, or for authorising the abandonment of a tramway or part thereof, shall take effect when made, and shall not require to be confirmed by an Act of Parliament.

(3.) The times appointed by the Tramways (Ireland) Acts for the publishing of advertisements, the depositing of maps, plans, books of reference, memorials, and other documents, and the giving of notices may, so far as relates to proceedings under this Act, be varied from time to time by the Lord Lieutenant by Order in Council.

(4.) In the first sub-section of the twenty-ninth section of the Tramways (Ireland) Act, 1860, the period of fourteen days shall be substituted for the period of forty-eight hours, as the period within which the payment or deposit of money as security for the completion of the tramway as therein mentioned may be made.

(5.) Every Order in Council which sanctions a baronial guarantee under this Act may also provide that the forty-second section of the Tramways (Ireland) Act, 1860, shall not apply to the tramway in favour of which such guarantee is sanctioned.

(6.) Notwithstanding the limits prescribed by the fifth section of the Tramways (Ireland) Amendment Act, 1881, for the speed at which locomotives worked by steam may be driven along any tramway, the Board of Trade may from time to time by Order authorise such locomotives to be driven at a speed not exceeding twelve miles an hour elsewhere than through any town or village. So long as a locomotive is being driven on a tramway at a greater distance than thirty feet from the centre of any public road, the limits of speed prescribed by the Tramways (Ireland) Acts or this Act shall not apply.

24. The Tramways (Ireland) Acts, and this Act, shall so far as is consistent with the tenor thereof be construed together.

25. In this Act,—

"The Tramways (Ireland) Acts," means the Tramways (Ireland) Act, 1860, the Tramways (Ireland) Amendment Act, 1861, the Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter one hundred and fourteen, intituled "An Act to amend the Tramways (Ireland) Acts, 1860 and 1861," the Act of the session of the thirty-ninth and fortieth years of the reign of Her present Majesty, chapter sixty-five, intituled "An Act to amend the Tramways "(Ireland) Act, 1860, and the Tramways "(Ireland) Amendment Act, 1861, as "regards the application of the same to "the county and the county of the city "of Dublin," and the Tramways (Ireland) Amendment Act, 1881.

In the construction of this Act and the Tramways (Ireland) Acts the word "tramway" shall be construed to include for the purposes of this Act a light railway.

The word "company" in this Act shall include a public company, body corporate, or other public body.

"The Treasury" means the Commissioners of Her Majesty's Treasury.

The expression "barony" shall include any specified part or parts of a barony.

26. This Act may be cited for all purposes as the Tramways and Public Companies (Ireland) Act, 1883.

CHAP. 44.

Borough Constables Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Explanation of* 45 *&* 46 *Vict. c.* 50. *s.* 195.

An Act to explain the effect of Section One hundred and ninety-five of the Municipal Corporations Act, 1882.

(25th August 1883.)

WHEREAS doubts have arisen as to the effect of section one hundred and ninety-five of the Municipal Corporations Act, 1882, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Borough Constables Act, 1883.

2. Nothing in section one hundred and ninety-five of the Municipal Corporations Act, 1882, shall be taken to have repealed section twenty of the Town Police Clauses Act, 1847, or section twelve of the Prevention of Crimes Act, 1871.

CHAP. 45.

Counterfeit Medal Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act for preventing the Sale of Medals resembling Current Coin.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Counterfeit Medal Act, 1883.

2. If any person without due authority or excuse (the proof whereof shall lie on the person accused)—

Makes or has in his possession for sale, or offers for sale, or sells,

Any medal, cast, coin, or other like thing made wholly or partially of metal or any metallic combination and resembling in size, figure, and colour any of the Queen's current gold or silver coin, or having thereon a device resembling any device on any of the Queen's current gold or silver coin, or being so formed that it can by gilding, silvering, colouring, washing, or other like process, be so dealt with as to resemble any of the Queen's current gold or silver coin,

He shall be guilty, in England and Ireland of a misdemeanor, and in Scotland of a crime and offence, and on being convicted, shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

3. "The Queen's current gold or silver coin" includes any gold or silver coin coined in or for any of Her Majesty's mints, or lawfully current by virtue of any proclamation or otherwise in any part of Her Majesty's dominions, whether within the United Kingdom or otherwise.

CHAP. 46.

Corrupt Practices (Suspension of Elections) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Suspension of elections in certain cities and boroughs.*

SCHEDULE.

An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs.

(25th August 1883.)

WHEREAS, in pursuance of addresses to Her Majesty from both Houses of Parliament in relation to election of members to serve in Parliament for the cities and boroughs mentioned in the schedule to this Act, commissioners were appointed by commissions, dated the ninth day of September one thousand eight hundred and eighty, for the purpose of making inquiry into the existence of corrupt practices at the elections of members to serve in Parliament for the said cities and boroughs:

And whereas the said commissioners have respectively reported as regards the existence of corrupt practices to the effect in the second column of the said schedule mentioned:

And whereas it is expedient, with a view to the future consideration by Parliament of the cases of the said cities and boroughs, to provide temporarily for the suspension of elections in the said cities and boroughs:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Corrupt Practices (Suspension of Elections) Act, 1883.

2. An election of a member or members to serve in Parliament for any of the cities or boroughs mentioned in the schedule to this Act shall not be held until the expiration of seven days after the meeting of Parliament in the year one thousand eight hundred and eighty-four.

SCHEDULE.

CITIES AND BOROUGHS REFERRED TO.

Name of City or Borough.	Report of Commissioners as to prevalence of corrupt practices.
Boston - - -	Corrupt practices prevailed very extensively at the election of 1880. . . . . It was stated as an undoubted fact that all elections, both parliamentary and municipal, have for a long time past been corrupt.
Canterbury - - -	Corrupt practices extensively prevailed at the elections of 1879 and 1880.
Chester - - -	Corrupt practices extensively prevailed at the general elections of February 1874 and of April 1880.
Gloucester - - -	Corrupt practices extensively prevailed at the elections in February 1874 and March 1880.
Macclesfield - -	Corrupt practices extensively prevailed at the elections of 1865, 1868, 1874, and 1880.
Oxford - - -	Corrupt practices were committed at the election in February 1874, and corrupt practices extensively prevailed at the elections in March 1874, April 1880, and May 1880, by way of payment of money to voters as therein mentioned.
Sandwich - - -	In the election of May 1880, there was practised throughout the constituency, not only indirect bribery of various kinds, but direct bribery, the most extensive and systematic. . . . . Electoral corruption has long extensively prevailed in the borough.

CHAP. 47.

Provident Nominations and Small Intestacies Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to extend the power of Nomination in Friendly and Industrial, &c. Societies, and to make further provision for cases of Intestacy in respect of Personal Property of small amount. (25th August 1883.)

WHEREAS under the enactments named in the third section of this Act a member of a friendly, industrial, or other like society to which the said enactments apply may, by writing under his hands delivered at or sent to the registered office of such society, nominate any person to whom any moneys payable by the society on the death of such member, not exceeding fifty pounds, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent, and on receiving satisfactory proof of the death of a nominator such society is bound to pay to the nominee the amount due to such deceased member, not exceeding the sum aforesaid:

And whereas it is desirable to extend the operation of the said enactments:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

1. This Act extends to Great Britain and Ireland, and except section ten of the same, and so much thereof as relates to trade unions, to the Channel Islands, and except the said section ten, and so much as relates to industrial and provident societies and to trade unions, to the Isle of Man, and may be cited as the Provident Nominations and Small Intestacies Act, 1883.

2. In this Act the expressions following have the following meanings:—

"Directors" means (1) in the case of a society or branch whose property is vested in trustees, the trustees for the time being; (2) in the case of a Post Office Savings Bank and of a Post Office Savings Bank Insurance, the Postmaster General; (3) in any other case, the directing authority by whatever name it may be called:

"Probate" and "letters of administration" for Scotland mean confirmation:

"Savings bank" means a bank to which the Trustee Savings Bank Act, 1863, applies, and a Post Office Savings Bank:

"Society" includes a registered trade union:

"Office" means in the case of a society registered under the Friendly Societies Acts, the Industrial and Provident Societies Acts, or the Trade Union Acts, the registered office of such society:

In the case of a registered branch under the Friendly Societies Acts, the registered place of such branch:

In the case of a Trustee Savings Bank or of a Trustee Savings Bank Insurance, the office or head office of such bank:

In the case of a Post Office Savings Bank and of a Post Office Savings Bank Insurance, the General Post Office.

3. The following enactments, namely, subsections three and four of section fifteen of the Friendly Societies Act, 1875, sub-sections five and six of section eleven of the Industrial and

Provident Societies Act, 1876, section ten of the Trade Union Act Amendment Act, 1876, sections forty-one, forty-two, forty-three of the Trustee Savings Bank Act, 1863, section ten of an Act passed in the seventh and eighth years of the reign of Her present Majesty, intituled "An Act to amend the law relating "to savings banks, and to the purchase of "Government annuities through the medium "of savings banks," and subhead (e) of section six of the Government Annuities Act, 1882, respectively shall be read as if in the said sections of the said Acts the words one hundred pounds were substituted for the words fifty pounds.

4. A nomination may be partly printed, and if made in a book kept at the office shall be taken to be delivered at such office.

5. A depositor in a Savings Bank, not being under sixteen years of age, may by writing under his hand delivered at or sent to the office nominate any person, not being an officer or servant of the directors (unless such officer or servant be the husband, wife, father, mother, child, grandchild, brother, sister, nephew, or niece of the nominator), to whom any sum, not exceeding one hundred pounds, which may remain due to such depositor at his decease may be paid at such decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the directors shall pay to the nominee the sum due to the deceased depositor, provided it does not exceed one hundred pounds.

6. In sub-section three of section fifteen of the Friendly Societies Act, 1875, and in any nomination under the said Act which takes effect after this Act has come into operation, the words "moneys payable by the society on the death of such member" shall include deposits made by such member under section eighteen of the said Act, and moneys accumulated for the use of such member under section nineteen of the same Act, with the interest on such deposit or moneys respectively. In sub-sections five and six of section eleven of the Industrial and Provident Societies Act, 1876, and in any nomination under the said Act which takes effect after this Act has come into operation, the words "shares" and "interest" respectively shall be taken to include loans and deposits made under sub-section (2 c) of section ten of the said Act.

7. If any member of a registered trade union, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination which remains unrevoked at his death, such sum shall be payable, without letters of administration, to the person who appears to a majority of the directors, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same.

8. If a member of any society who is entitled to make a nomination under this Act or the Acts hereby amended is illegitimate, and has died intestate, and without having made any such nomination subsisting at his death, the directors may pay the sum which such member might have nominated to or among the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate, or, if there are no such persons, then the deposits shall be dealt with as the Commissioners of the Treasury may direct.

9. All payments made by directors under the powers aforesaid shall be valid with respect to any demand of any other person as next of kin of a deceased member, or as his lawful representative or person claiming to be such representative, against the society or savings bank, or the directors, but such next of kin, representative, or claimant shall have remedy for recovery of such money, so paid as aforesaid, against the person or persons who shall have received the same.

10. For the prevention of frauds on the revenue it is enacted as follows:

(1.) If the total sum with respect to which a nomination may be made under this Act by any person, or standing to the credit of any person in any society or savings bank at his death exceeds, after deduction of any moneys payable under the registered or certified rules of such society or savings bank or otherwise for the purpose of defraying the funeral expenses of such member the sum of eighty pounds sterling, the directors shall before making any payment to a nominee or otherwise under this Act require production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter, or a certificate from the Commissioners of Inland Revenue stating that none such is payable; such receipt or certificate shall be given by the said Commissioners upon payment of duty, or satisfactory proof of no duty being payable, as the case may be.

(2.) If, elsewhere than in Scotland, the total personal property, or in Scotland the whole movable estate, of any person en-

titled to make a nomination under this Act or the Acts hereby amended, or of any depositor in a savings bank, exceeds one hundred pounds sterling, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to probate duty as part of the amount on which such duty is charged, and the directors shall be at liberty before making any such payment to require a statutory declaration by the claimant, or by one of the claimants, that the total personal estate of the deceased, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds.

11. As respects the Channel Islands and the Isle of Man respectively, the following provision shall have effect. When any sum of money becomes payable on the death of a person entitled to make a nomination under this Act or the Acts hereby amended, such sum shall, in default of any direction or nomination such as is contemplated by the Friendly Societies Act, 1875, or by this Act, be paid to the deceased member's legal representative, according to the law of the island in which such deceased member was domiciled.

CHAP. 48.

Cholera Hospitals (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to enable sanitary authorities in Ireland to take possession of land for the erection of temporary Cholera Hospitals. (25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. On receiving a certificate from a medical officer of health of the union that a case of cholera has occurred within the sanitary district, it shall be lawful for the authorities of that sanitary district, having first obtained the consent in writing of the Local Government Board, to take possession for a temporary hospital of any site except as herein-after mentioned within that sanitary district.

2. It shall be sufficient notice to the owner or the occupier, or other persons affected, if a notice has been posted on the walls of the union, and of the church or chapel nearest to the site within the sanitary district, that it is intended to take possession of such site, and if an affidavit is made that the occupier, if dwelling within the sanitary district, has been served with a copy of such notice, or that a reasonable effort has been made to serve him, or, if living without the sanitary district, that a registered letter has been forwarded to his last known address.

3. No site shall be thus taken which is within two hundred yards of a dwelling house, or which has any building or farm or other offices thereon, or which is enclosed or used as a garden, pleasure or recreation ground, or which forms part of any enclosed demesne lands, without the consent of the occupier of such house or lands, or which shall be within two hundred yards of any church, chapel, schoolhouse, factory, workshop, or other building where any trade or mercantile operation is being carried on.

4. The owner or occupier, or both, shall be entitled to such rent or compensation for damage as the Local Government Board may award, and such rent or damage shall be paid by the sanitary authority of the district within one month after such award is made.

5. Not more than two statute acres shall be taken for any site; and within two months after it shall have been certified to the sanitary authority by the medical officer of the district that cholera has ceased to exist within the sanitary district, and that there is no longer any occasion for such temporary hospital, the sanitary authority shall remove same and all foundations, débris, and other materials, and restore surface of the ground to same state in which it was found by them on taking possession, and they shall deliver up the possession to the person in whose occupation it was immediately prior to their taking possession thereof.

6. Any person interfering with the officers of or persons deputed by the sanitary authority when carrying out the provisions of this Act, shall be liable on conviction before a court of summary jurisdiction, composed of not less than two justices or one stipendiary magistrate, to a term of imprisonment not exceeding six months.

7. The powers conferred upon sanitary authorities by this Act shall not be exercised after the first day of May one thousand eight hundred and eighty-four.

8. This Act may be cited for all purposes as the Cholera Hospitals (Ireland) Act, 1883.

9. In any case in which the sanitary authorities of any maritime union have been directed by Order of the Local Government Board to exercise jurisdiction for the prevention or suppression of cholera over any port which includes portions of any other union or unions, then the words "sanitary district" in this Act shall be construed to include such portions of the lands comprised within the limits of said port as lie within one mile of high-water mark.

10. This Act shall extend to Ireland only.

CHAP. 49.

Statute Law Revision and Civil Procedure Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act for promoting the Revision of the Statute Law by repealing various Enactments relating to Civil Procedure or matters connected therewith, and for amending in some respects the Law relating to Civil Procedure. (25th August 1883.)

WHEREAS with a view to the revision of the Statute Law it is expedient that various enactments (mentioned in the Schedule to this Act) which chiefly relate to civil procedure, or matters connected therewith, and which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have by lapse of time and change of circumstances become unnecessary, or the subject matter whereof is provided for by or under the Supreme Court of Judicature Act, 1873, and the Acts amending it, or rules made pursuant thereto, or for other reasons, may properly be repealed, be now expressly and specifically repealed:

And whereas it is expedient that in some respects the law relating to civil procedure be amended:

Be it therefore enacted by the Queen's most

Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Statute Law Revision and Civil Procedure Act, 1883.

2. This Act shall not extend to Scotland or Ireland. It shall come into operation on the twenty-fourth day of October one thousand eight hundred and eighty-three.

3. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions and qualifications mentioned in this Act and in that schedule.

4. The enactments mentioned in Part II. of the schedule to the Civil Procedure Acts Repeal Act, 1879, are hereby repealed.

5. The repeal effected by this Act shall not affect—

(*a.*) Anything done or suffered before the passing of this Act under any enactment repealed by this Act; or

(*b.*) Any jurisdiction or principle or rule of law or equity established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or

(*c.*) Any right to any hereditary revenues of the Crown or any charges thereon; or

(*d.*) The repeal, confirmation, revival, or perpetuation by any enactment repealed by this Act of any enactment not repealed by this Act; or

(*e.*) The application or incorporation of any enactment repealed by this Act by or under any enactment not repealed by this Act, or by or under any Order in Council, so long as such Order remains in force.

6. (*a.*) This Act shall not be deemed to revive or restore any jurisdiction, office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not existing or in force at the passing of this Act.

(*b.*) No enactment repealed by virtue of section thirty-three of the Supreme Court of Judicature Act, 1875, shall be revived by reason of the annulment or alteration by any new Rules of Court of the rules contained in the First Schedule to that Act.

(*c.*) The enactments relating to the making of Rules of Court, contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, shall be deemed to extend and apply to the matters contained in and regulated by the enactments repealed by this Act.

7. If and in so far as any enactment repealed by this Act, or by the Civil Procedure Acts Repeal Act, 1879, applies, or may have been by Order in Council applied, to the court of the county palatine of Lancaster, or to any inferior court of civil jurisdiction, such enactment shall be construed as if it were contained in a Local and Personal Act specially relating to such court, and shall have effect accordingly.

8. It shall be lawful for the Queen from time to time, by Order in Council, to extend to any inferior court of civil jurisdiction any of the provisions of the Supreme Court of Judicature Act, 1873, and Acts amending it, or of the Rules of Court made thereunder, with any such modifications as may be necessary or desirable, in the same manner as and to the like extent that the provisions of the Common Law Procedure Acts, 1852, 1854, and 1860, and of the general rules made thereunder, might, under the powers given by those Acts, have been extended to any such court.

SCHEDULE.

ENACTMENTS REPEALED.

This schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee in all cases of statutes included in that edition.

The chapters of the statutes are described by the marginal abstracts given in that edition.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or forming the end of the portion comprised in the description or citation.

11 Hen. 7. c. 12. -	An Acte to admytt such psons as are poore to sue in formâ pauperis.
23 Hen. 8. c. 15. -	An Acte that the defendant shall recover costs againste the pleyntif if the pleyntif be nonsuited, or if the verdicte passe againste him.
9 Anne, c. 25., in part	*An Act the title whereof begins with the words* "An Act for rendering," *and ends with the words* "in corporations and boroughs." In part; namely,—section one from the words "For remedy whereof" down to the end of the section. Section two, section three, and section six.
1 Will. 4. c. 21. -	An Act to improve the proceedings in prohibition and on writs of mandamus.
1 Will. 4. c. 22., in part.	An Act to enable courts of law to order the examination of witnesses upon interrogatories and otherwise. In part; namely,—section three, section four, section five, section eight, section nine, section ten, section eleven.
1 & 2 Will. 4. c. 58. -	An Act to enable courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims.
5 & 6 Vict. c. 69. -	An Act for perpetuating testimony in certain cases.
6 & 7 Vict. c. 67. -	An Act to enable parties to sue out and prosecute writs of error in certain cases upon the proceedings on writs of mandamus.
13 & 14 Vict. c. 35. -	An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England.
15 & 16 Vict. c. 76., in part.	The Common Law Procedure Act, 1852. In part; namely,—the whole Act except sect. 23; sects. 104 to 108; sect. 110; sects. 112 to 115; sect. 126; sect. 127; sect. 132; sects. 208 to 220; sect. 226; sect. 235; and sect. 236.
15 & 16 Vict. c. 80., in part.	An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court. In part; namely,—sects. 11 to 15, 26 to 34, 36, 40, 42, 43, 53, 56.
15 & 16 Vict. c. 86., in part.	An Act to amend the Practice and Course of Proceeding in the High Court of Chancery. In part; namely,—sects. 3 to 21, sects. 25 to 42, sects. 44 to 47, sects. 49 to 62, sect. 66, and the schedule.
17 & 18 Vict. c. 125., in part.	The Common Law Procedure Act, 1854. In part; that is to say, the whole Act except sects. 3 to 17, sects. 20 to 30, sect. 59, sect. 87, sect. 89, sects. 103, 106, and 107.
18 & 19 Vict. c. 67. -	The Summary Procedure on Bills of Exchange Act, 1855.
21 & 22 Vict. c. 27. -	The Chancery Amendment Act, 1858.
23 & 24 Vict. c. 38., in part.	An Act to further amend the Law of Property. In part; namely,—sect. 14.
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860. The whole Act, except sect. 1, sect. 17, sect. 22, sects. 45 and 46.
25 & 26 Vict. c. 42. -	The Chancery Regulation Act, 1862.
30 & 31 Vict. c. 64. -	An Act to make further provision for the despatch of business in the Court of Appeal in Chancery.

CHAP. 50.

Appropriation Act, 1883.

ABSTRACT OF THE ENACTMENTS.

Grant out of Consolidated Fund.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four, and to appropriate the Supplies granted in this Session of Parliament. (25th August 1883.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Grant out of Consolidated Fund.

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-four, the sum of twenty-three million seven hundred and thirty-four thousand and eleven pounds.

2. The Commissioners of Her Majesty's Treasury may borrow from time to time, on the credit of the said sum of twenty-three million seven hundred and thirty-four thousand and eleven pounds, any sum or sums of equal or less amount in the whole, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

Appropriation of Grants.

3. All sums granted by this Act and the other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate, to the sum of fifty-seven million four hundred and eighty-five thousand nine hundred and eighty-eight pounds nine shillings and eightpence, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forth-

with make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure unprovided for as aforesaid to be temporarily defrayed out of any surpluses which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provision may be made for the deficiencies upon the several votes for the said services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act for naval services and for army services respectively.

5. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the forty-fourth and forty-fifth years of the reign of Her present Majesty, chapter fifty-six, have authorised expenditure not provided for in the sums appropriated by the said Act to certain votes for naval and military services for the year ended on the thirty-first day of March one thousand eight hundred and eighty-two, to be temporarily defrayed out of the balances (including surpluses of appropriations in aid) unexpended in respect of the sums appropriated to certain other votes for naval and military services for the said year; viz.,

1st. Expenditure of one hundred and twenty-one thousand and sixty-seven pounds and eightpence excluding twenty-seven pounds and twelve shillings disallowed by a Committee of the House of Commons, for certain navy services unprovided for, temporarily defrayed out of the unexpended balances of certain votes for navy services, aided by the sum realised in excess of the estimated appropriations in aid.

2d. Expenditure of two hundred and eighty-one thousand eight hundred and four pounds fourteen shillings and twopence for certain army services unprovided for, temporarily defrayed out of the unexpended balances of certain votes for army services, aided by the sum realised in excess of the estimated appropriations in aid:

It is enacted, that the application of the said sums is hereby sanctioned.

6. A person shall not receive any part of a grant which may be made in pursuance of this Act for half pay, or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

7. This Act may be cited for all purposes as the Appropriation Act, 1883.

ABSTRACT

OF

SCHEDULES (A.) and (B.) to which this Act refers.

SCHEDULE (A.)

	£	s.	d.
Grants out of the Consolidated Fund - - - - - -	57,485,988	9	8

SCHEDULE (B.)—Appropriation of Grants.

	£	s.	d.	£	s.	d.
1882-83.						
Part 1. Civil Services Deficiencies, 1881-82 - -	3,706	7	2			
,, 2. Army Deficiencies 1881-82 - - -	44,197	2	6			
,, 3. Civil Services and Revenue departments (Supplementary) 1882-83 - - - -	576,555	0	0			
,, 4. Navy (Supplementary) 1882-83 - - -	350,000	0	0			
,, 5. Army (Supplementary) 1882-83 - - -	728,000	0	0			
,, 6. Egypt (Civil Charges of Expedition) 1882-83 -	17,500	0	0			
,, 7. Egyptian Expedition (Grant in Aid) 1882-3 -	500,000	0	0			
,, 8. Transvaal, 1882-83 - - - - -	14,000	0	0			
				2,233,958	9	8
1883-84.						
Part 9. Navy - - - - - - - - -				10,752,300	0	0
,, 10. Army - - - - - - - - -				15,604,400	0	0
,, 11. Army (Indian Home Charges) - - - -				1,230,000	0	0
	£					
,, 12. Civil Services, Class I. - - - - -	1,926,116					
,, 13. Ditto, Class II. - - - - -	2,374,809					
,, 14. Ditto, Class III. - - - - -	6,426,969					
,, 15. Ditto, Class IV. - - - - -	4,803,656					
,, 16. Ditto, Class V. - - - - -	603,184					
,, 17. Ditto, Class VI. - - - - -	1,178,502					
,, 18. Ditto, Class VII. - - - -	35,035					
Total Civil Services - - - -				17,348,271	0	0
,, 19. Revenue Departments, &c. - - - - - -				9,662,727	0	0
,, 20. Advances for Greenwich Hospital and School - - -				154,332	0	0
,, 21. Afghan War (Grants in Aid) - - - - - -				500,000	0	0
				£57,485,988	9	8

SCHEDULE (A.)

GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the years ending 31st March 1882 and 1883; viz.:—

	£	s.	d.
Under Act 46 Vict. c. 2.	2,233,958	9	8
For the service of the year ending 31st March 1884:—			
Under Act 46 Vict. c. 2.	4,121,300	0	0
Under Act 46 Vict. c. 5.	6,240,100	0	0
Under Act 46 Vict. c. 13.	5,973,912	0	0
Under Act 46 & 47 Vict. c. 23.	15,182,707	0	0
Under this Act	23,734,011	0	0
TOTAL	57,485,988	9	8

SCHEDULE (B.)—PART 1.

CIVIL SERVICES DEFICIENCIES, 1881–82.

SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1882; viz.:—

CIVIL SERVICES.

	£	s.	d.
CLASS II.			
Board of Trade	553	5	6
Civil Service Commission	5	14	5
Fishery Board, Scotland	20	6	10
CLASS III.			
Law Charges and Criminal Prosecutions, Ireland	222	17	0
Supreme Court of Judicature, Ireland	1,080	10	4
Dublin Metropolitan Police	1,551	16	0
CLASS V.			
Suppression of the Slave Trade	142	5	11
Orange River Territory and St. Helena (Non-Effective Charges)	129	5	8
CLASS VI.			
Pauper Lunatics, Scotland	0	5	6
TOTAL	3,706	7	2

SCHEDULE (B.)—PART 2.

ARMY DEFICIENCIES, 1881–82.

	£	s.	d.
For making good excesses of army expenditure beyond the grants for the year ended on the 31st day of March 1882	44,197	2	6

SCHEDULE (B.)—PART 3.

CIVIL SERVICES AND REVENUE DEPARTMENTS SUPPLEMENTARY, 1882–83.

SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1883; viz.:—

	£
CIVIL SERVICES.	
CLASS I.	
Royal Parks and Pleasure Grounds	2,400
Houses of Parliament	5,200
County Court Buildings	1,700
Harbours under the Board of Trade	350
Rates on Government Property	6,700
Shannon Navigation	4,741
Royal University, Ireland, Buildings	1,000
Diplomatic and Consular Buildings	2,000
CLASS II.	
Foreign Office	6,300
Board of Trade	3,500
Charity Commission	2,053
Civil Service Commission	465
Friendly Societies Registry	500
Stationery and Printing	20,280
Office of Works	1,100
Fishery Board, Scotland	627
Household of Lord Lieutenant	18
Chief Secretary for Ireland Offices	2,750
Record Office, Ireland	142
CLASS III.	
Wreck Commission	1,700
Revising Barristers, England	210
Law Charges and Criminal Prosecutions, Ireland	40,000
Irish Land Commission	45,032
County Court Officers, &c., Ireland	15,410
Dublin Metropolitan Police	33,020
Prisons, Ireland	3,000
CLASS IV.	
Public Education, England and Wales	42,122
British Museum	2,050
London University	130
Deep Sea Exploring Expedition (Report)	600
Sydney and Melbourne Exhibitions	63
CLASS V.	
Diplomatic Services	31,312
Consular Services	1,750
Suppression of the Slave Trade	1,182
Suez Canal (British Directors)	128
Grants in Aid of Expenditure in certain Colonies	3,500
South Africa and St. Helena	2,059
Subsidies to Telegraph Companies	6,600

	£
CLASS VI.	
Superannuations and Retired Allowances	4,500
Commutation of Annuities	4,060
CLASS VII.	
Temporary Commissions	500
Miscellaneous Expenses	450
Repayments to Civil Contingencies Fund	7,851
TOTAL CIVIL SERVICES	309,055
REVENUE DEPARTMENTS.	
Customs	17,000
Inland Revenue	11,000
Post Office	138,500
Post Office Packet Service	14,000
Telegraphs	87,000
Grand Total	£576,555

SCHEDULE (B.)—PART 4.

NAVY (SUPPLEMENTARY, 1882–83).

For defraying additional Expenditure arising out of military operations in Egypt, incurred during the year ended on the 31st day of March 1883 beyond the Sums granted by Parliament	£ 350,000

SCHEDULE (B.)—PART 5.

ARMY, SUPPLEMENTARY, 1882–83.

For defraying additional Expenditure incurred during the year ended on the 31st day of March 1883, for Army Services consequent on the despatch of an Expeditionary Force to Egypt	£ 728,000

SCHEDULE (B.)—PART 6.

EGYPT (CIVIL CHARGES OF EXPEDITION), 1882–83.

For defraying the expenses incurred during the year ended on the 31st day of March 1883, for certain Civil Charges in connexion with the Expedition to Egypt	£ 17,500

SCHEDULE (B.)—PART 7.

EGYPTIAN EXPEDITION (GRANT IN AID), 1882-83.

For a grant in aid of the Expenditure incurred during the year ended on the 31st day of March 1883, by the Government of India upon the Expedition to Egypt -	£ 500,000

SCHEDULE (B.)—PART 8.

TRANSVAAL, 1882-83.

For defraying the expenditure incurred during the year ended on the 31st day of March 1883, connected with the Transvaal - - - - - -	£ 14,000

SCHEDULE (B.)—PART 9.

NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding
		£
1.	For wages, &c. to 57,250 seamen and marines - - - -	2,633,300
2.	For victuals and clothing for seamen and marines - - - -	937,400
3.	For the expenses of the Admiralty Office - - - - -	182,300
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers - - - - - - - - -	195,800
5.	For the expense of the several scientific departments of the navy - -	113,100
6.	For the expense of the dockyards and naval yards at home and abroad -	1,556,400
7.	For the expense of the victualling yards at home and abroad - -	71,000
8.	For the expense of the medical establishments at home and abroad -	64,900
9.	For the expense of the Marine Divisions - - - - - -	22,300
10.	Sect. 1. For naval stores for building, repairing, and outfitting the fleet and coast guard - - - - - - - - -	1,062,500
,,	Sect. 2. For steam machinery, and ships built by contract, &c. - -	1,052,600
11.	For new works, buildings, machinery, and repairs in the naval establishments - - - - - - - - -	462,400
12.	For medicines, medical stores, &c. - - - - - - -	60,600
13.	For martial law, &c. - - - - - - - - -	10,400
14.	For the expense of various miscellaneous services - - - - -	119,600
15.	For half pay, reserved half pay, and retired pay to officers of the navy and marines - - - - - - - - -	864,800
16.	Sect. 1. For military pensions and allowances - - - -	876,900
,,	Sect. 2. For civil pensions and allowances - - - - -	329,700
17.	For freight of ships, for the victualling and conveyance of troops, on account of the army department - - - - - - -	136,300
	TOTAL NAVY SERVICES - £	10,752,300

SCHEDULE (B.)—PART 10.

ARMY.

SCHEDULE of SUMS granted to defray the charges for the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of charges on India	4,121,300
2.	For divine service	56,000
3.	For administration of military law	36,900
4.	For medical establishments and services	311,000
5.	For the pay and allowances of a force of militia, not exceeding 137,674 men, including 30,000 militia reserve	520,000
6.	For the yeomanry cavalry pay and allowances	69,000
7.	For the volunteer corps pay and allowances	562,800
8.	For the pay and allowances of a number of army reserve first class, not exceeding 31,000, and of the army reserve second class	278,000
9.	For commissariat, transport and ordnance store establishments, wages, &c.	419,600
10.	For provisions, forage, fuel, transport and other services	3 117,000
11.	For clothing establishments, services, and supplies	,784,000
12.	For the supply, manufacture, and repair of warlike and other stores, including establishments of manufacturing departments	1,269,500
13.	For superintending establishment of, and expenditure for, works, buildings, and repairs at home and abroad	739,400
14.	For establishments for military education	127,300
15.	For miscellaneous effective services	34,000
16.	For the salaries and miscellaneous charges of the War Office	241,800
17.	For rewards for distinguished services, &c., exclusive of charges on India	22,800
18.	For half-pay, &c., of field marshals, and of general, regimental, and departmental officers, exclusive of charges on India	80,000
19.	For retired pay, retired full pay, and gratuities, for reduced and retired officers, including payments awarded by Army Purchase Commissioners, exclusive of charges on India	1,134,000
20.	For widows' pensions and gratuities, for allowances on the compassionate list, and for the relief fund, &c., exclusive of charges on India	118,200
21.	For pensions and gratuities to officers for wounds	16,000
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof	32,900
23.	For the out-pensioners of Chelsea Hospital, for pensions granted to discharged Negro soldiers, and for gratuities awarded in lieu of pensions, exclusive of charges on India	1,269,900
24.	For superannuation allowances	195,000
25.	For retired allowances, &c. to officers of the militia, yeomanry, and volunteer forces	48,000
	TOTAL ARMY SERVICES £	15,604,400

SCHEDULE (B.)—PART 11.

ARMY (INDIAN HOME CHARGES).

For the sum to be transferred in aid of Army Grants to meet the charge incurred in recruiting and training officers and men, and in defraying the non-effective expenditure for the regular forces serving in India, which will come in course of payment during the year ending on the 31st day of March 1884 - - - - - - - - - - £	1,230,000

SCHEDULE (B.)—PART 12.

CIVIL SERVICES.—CLASS I.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.	Sums not exceeding £
1. For the maintenance and repair of the royal palaces (including a supplementary sum of 4,000*l.*) - - - - - - - -	40,053
2. For the maintenance and repair of Marlborough House - - -	2,953
3. For the royal parks and pleasure gardens - - - - -	113,322
4. For the buildings of the Houses of Parliament (including a supplementary sum of 4,895*l.*) - - - - - - - - -	40,115
5. For the execution and erection of a statue in the Collegiate Church of St. Peter, Westminster, to the memory of the late Right Honourable Benjamin Disraeli, Earl of Beaconsfield, K.G., P.C. - - - - - -	1,050
6. For the maintenance and repair of public buildings in Great Britain and the Isle of Man, including various special works; for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon - - - - -	147,762
7. For the acquisition of a site for the Admiralty and War Office, and preliminary expenses, under the provisions of the Public Offices Site Act, 1882	100,000
8. For the supply and repair of furniture in the public departments of Great Britain - - - - - - - - - - -	16,730
9. For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services - - - - - - - -	334,312
10. For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and for charges attendant thereon - - -	35,150
11. For charges connected with Metropolitan Police Court Buildings - -	6,175
12. For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved - - - - - - - - -	9,520
13. For the purchase of a site, erection of building, and other expenses for the new courts of justice and offices belonging thereto - - - - -	51,013
14. For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey - - -	242,500
15. For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art - - - - - - -	20,879
16. For the maintenance and repair of the British Museum and Natural History Museum buildings, for rents of premises, supply of water, fuel, &c., and charges attendant thereon - - - - - - - - -	8,338

No.		Sums not exceeding
		£
17.	For the erection and fittings of a Natural History Museum - - -	13,726
18.	For maintaining certain harbours, &c., under the Board of Trade (including a supplementary sum of 5,323*l.*) - - - - - - -	15,016
19.	For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department - - - - - - - - - -	211,880
20.	For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis - - - - - - - - -	10,000
21.	In aid of the cost of maintenance of disturnpiked and main roads in England and Wales during the year ended on the 25th day of March 1883 - -	200,000
22.	In aid of the cost of maintenance of disturnpiked roads in Scotland during the year ended Whitsuntide 1883 - - - - - - -	25,000
23.	For erection, repairs, and maintenance of the several public works and buildings under the department of the Commissioners of Public Works in Ireland, and for the erection of fishery piers, and the maintenance of certain parks, harbours, and navigations - - - - - -	210,546
24.	For enclosing, adapting, and furnishing existing buildings purchased, and for additions to them for the purposes of the Royal University, Ireland -	21,000
25.	For expenses preparatory to, and of the erection of the Museum of Science and Art in Dublin, and of additions to the School of Art in Dublin -	10,000
26.	For erecting and maintaining certain lighthouses abroad - - -	11,253
27.	For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad - - - - -	27,823
	TOTAL CIVIL SERVICES, CLASS I. - £	1,926,116

SCHEDULE (B.)—PART 13.

CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding
		£
1.	For salaries and expenses in the offices of the House of Lords - - -	43,485
2.	For salaries and expenses in the offices of the House of Commons (including a supplementary sum of 500*l.*) - - - - - - - -	51,557
3.	For salaries and expenses of the Department of Her Majesty's Treasury and in the office of the Parliamentary Counsel - - - - -	59,017
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices - - - -	92,904
5.	For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs - - - - - - -	67,263
6.	For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration - - - - - - - - -	40,379
7.	For salaries and expenses of the department of Her Majesty's Most Honorable Privy Council and subordinate departments - - - - -	30,513

No.		Sums not exceeding
		£
8.	For salaries and expenses of the office of the Lord Privy Seal	1,000
9.	For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments	125,233
10.	For salaries and expenses of the Charity Commission for England and Wales	30,434
11.	For salaries and expenses of the Civil Service Commission	32,347
12.	For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch	57,220
13.	For salaries and expenses of the Registry of Friendly Societies	8,519
14.	For the salaries and expenses of the office of the Land Commissioners for England, and for defraying the repayable expenses to be incurred in matters of Inclosure and Drainage	24,509
15.	For salaries and expenses of the Local Government Board, including various grants in aid of local taxation	431,047
16.	For salaries and expenses of the office of the Commissioners in Lunacy in England	15,159
17.	For salaries and expenses of the Mint, including the expenses of the coinage	67,207
18.	For salaries and expenses of the National Debt Office	15,832
19.	For charges connected with the Patent Law Amendment Act, the Registration of Trade Marks Act, and the Registration of Designs Act	32,557
20.	For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin	26,784
21.	For salaries and expenses of the establishments under the Public Works Loan Commissioners	9,470
22.	For salaries and expenses of the Public Record Office in England	22,896
23.	For salaries and expenses of the department of the Registrar General of Births, &c. in England	62,985
24.	For stationery, printing, and paper, binding, and printed books, for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office, and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates	539,110
25.	For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments	23,232
26.	For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings	49,144
27.	In aid of the Mercantile Marine Fund	40,000
28.	For Her Majesty's foreign and other secret services	23,000
29.	For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue	6,758
30.	For salaries and expenses of the Fishery Board in Scotland, and for grants in aid of piers or quays	17,740
31.	For salaries and expenses of the Board of Lunacy in Scotland	6,044
32.	For salaries and expenses of the department of the Registrar General of Births, &c. in Scotland	8,321
33.	For salaries and expenses of the Board of Supervision for Relief of the Poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland	28,443
34.	For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses	7,527
35.	For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland, in Dublin and London, and subordinate departments	42,155
36.	For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland	2,120

No.		Sums not exceeding £
37.	For salaries and expenses of the Local Government Board in Ireland, including various grants in aid of local taxation	135,482
38.	For salaries and expenses of the Office of Public Works in Ireland	51,262
39.	For salaries and expenses of the Public Record Office and of the Keeper of the State Papers in Ireland	6,308
40.	For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland	16,061
41.	For salaries and expenses of the general valuation and boundary survey of Ireland	23,785
	TOTAL CIVIL SERVICES, CLASS II. £	2,374,809

SCHEDULE (B.)—PART 14.

CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin, and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency	84,006
2.	For the salaries and expenses of the office of the Director of Public Prosecutions	3,867
3.	For criminal prosecutions at assizes and quarter sessions in England, and for adjudications under the Summary Jurisdiction Act, 1879, for sheriffs expenses, salaries to clerks of assize and other officers, compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties	195,880
4.	For such of the salaries and expenses of the Chancery Division of the High Court of Justice, of the Court of Appeal, and of the Supreme Court of Judicature, exclusive of the Central Office, as are not charged on the Consolidated Fund	168,237
5.	For the salaries and expenses of the Central Office of the Supreme Court of Judicature, the salaries and expenses of the Judges' Clerks and other officers, of the District Registrars of the High Court, the remuneration of the Judges' Marshals, and certain circuit and other expenses	115,459
6.	For salaries and expenses of the Registries of Probate and Divorce and Matrimonial Causes, &c., in the Probate, Divorce, and Admiralty Division of the High Court of Justice	88,696
7.	For salaries and expenses of the offices of the Admiralty Registrar and Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice	10,918
8.	For salaries and expenses of the office of the Wreck Commissioner	13,375

No.		Sums not exceeding £
9.	For such of the salaries and expenses of the London Bankruptcy Court as are not charged on the Consolidated Fund	34,677
10.	For salaries and expenses connected with the County Courts	454,122
11.	For salaries and expenses of the Office of Land Registry	5,442
12.	For the expense of revising barristers in England	18,690
13.	For salaries and expenses of the police courts of London and Sheerness	15,638
14.	For contribution towards the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver (including a supplementary sum of 15,328*l.*)	515,233
15.	For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland	949,298
15A.	For rewards awarded by the Government to the police and others, through whom the persons concerned in the Dynamite Outrages were detected	1,500
16.	For the expenses of the Directors of convict establishments in England and the Colonies, and of the convict establishments under their control	411,103
17.	For the expenses of the Prisons Commissioners, England, and of the prisons under their control	481,852
18.	For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories	268,518
19.	For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital	26,720
20.	For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83.	64,370
21.	For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges	62,506
22.	For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh	37,491
23.	For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics	109,670
24.	For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83.	100,235
25.	For such of the salaries and expenses of the Supreme Court of Judicature in Ireland as are not charged on the Consolidated Fund	89,651
26.	For salaries and incidental expenses of the Court of Bankruptcy in Ireland	10,213
27.	For salaries and expenses of the Admiralty Court Registry in Ireland	1,285
28.	For salaries and expenses of the Office for the Registration of Deeds in Ireland	18,727
29.	For salaries and expenses in the Office for the Registration of Judgments in Ireland	2,344
30.	For the salaries and expenses of the Office of the Irish Land Commission	157,381
31.	For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin	99,720
32.	For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin	139,498
33.	For the expenses of the Constabulary Force in Ireland	1,421,345
34.	For the expense of the General Prisons Board in Ireland, and of the prisons under their control; and of the registration of habitual criminals	145,689
35.	For the expenses of reformatories and industrial schools in Ireland	96,968
36.	For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland	6,645
	TOTAL CIVIL SERVICES, CLASS III. - £	6,426,969

SCHEDULE (B.)—PART 15.

CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For public education in England and Wales, including the expenses of the Education Office in London	2,938,930
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith	365,690
3.	For salaries and expenses of the British Museum, including the amount required for the Natural History Museum	146,019
3A.	For the purchase of certain manuscripts from the collection of the Earl of Ashburnham	45,000
4.	For salaries and expenses of the National Gallery	14,930
5.	For salaries and expenses of the National Portrait Gallery	2,157
6.	For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland	23,650
7.	For salaries and expenses of the University of London	11,749
8.	In aid of the expenses of Aberystwith College	4,000
9.	For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition	5,800
10.	For the salaries and expenses connected with observations of the Transit of Venus 1882	1,070
11.	For public education in Scotland	465,723
12.	For grants to Scottish universities	19,052
13.	For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes	2,100
13A.	For a contribution towards the establishment of a National Portrait Gallery for Scotland	10,000
14.	For public education under the Commissioners of National Education in Ireland (including a supplementary sum of 100*l.*)	726,339
15.	For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin	1,860
16.	For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools	670
17.	For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures	2,189
18.	In aid of the expenses of the Queen's Colleges in Ireland	14,728
19.	In aid of the expenses of the Royal Irish Academy	2,000
	TOTAL CIVIL SERVICES, CLASS IV. £	4,863,656

SCHEDULE (B.)—PART 16.

CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For expenses of Her Majesty's embassies and missions abroad (including a supplementary sum of 6,000*l.*)	213,300
2.	For consular establishments abroad, and for other expenditure chargeable on the Consular Vote	252,477
3.	For expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves, and of other establishments in connection with that object, including the Muscat subsidy	10,294
4.	For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department	7,571
5.	For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company	1,670
6.	In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other charges connected with the colonies, including expenses incurred under the Pacific Islanders Protection Act, 1875	28,801
7.	For certain charges connected with the Orange River Territory, the Transvaal, Zululand, and the island of St. Helena (including a supplementary sum of 3,808*l.*)	12,525
8.	For subsidies to telegraph companies and for the salary of the Official Director	35,300
9.	In aid of the revenue of the island of Cyprus	30,000
10.	For the repayment of the balance of the amount advanced out of the Civil Contingencies Fund, for payment to the United States Government in settlement of the Fortune Bay Fishery Claims	11,246
	TOTAL CIVIL SERVICES, CLASS V. £	603,184

SCHEDULE (B.)—PART 17.

CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury	448,737
2.	For pensions to masters and seamen of the merchant service, and to their widows and children	23,400
3.	In aid of the local cost of maintenance of pauper lunatics in England and Wales	447,500

No.		Sums not exceeding £
4.	In aid of the local cost of maintenance of pauper lunatics in Scotland - -	83,500
5.	In aid of the local cost of maintenance of pauper lunatics in Ireland - -	93,000
6.	For the support of certain hospitals and infirmaries in Ireland - -	16,925
7.	For making good the deficiency arising from payments for interest to friendly societies - - - - - - - - -	48,588
8.	For miscellaneous, charitable, and other allowances in Great Britain - -	3,788
9.	For certain miscellaneous, charitable, and other allowances in Ireland -	3,642
10.	For enabling the Commissioners of Her Majesty's Treasury to commute, under the provisions of the Act 36 & 37 Vict. c. 57. or otherwise, certain annuities charged on the Exchequer - - - - - -	8,422
11.	For compassionate grants to certain kin of the late William Cochrane in respect to the forfeiture of deposits made by him in the Newry Savings Bank - - - - - - - - - - -	1,000
	TOTAL CIVIL SERVICES, CLASS VI. - £	1,178,502

SCHEDULE (B.)—PART 18.

CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding £
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries - - - - - - -	29,123
2.	For certain miscellaneous expenses - - - - - -	5,912
	TOTAL CIVIL SERVICES, CLASS VII. - £	35,035

SCHEDULE (B.)—PART 19.

REVENUE DEPARTMENTS, &c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c. herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1884; viz.:—

No.		Sums not exceeding
		£
1.	For salaries and expenses of the Customs Department	1,006,785
2.	For salaries and expenses of the Inland Revenue Department	1,768,366
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue (including a supplementary sum of 339,466*l.*)	4,463,218
4.	For the Post Office packet service	706,285
5.	For salaries and expenses of the Post Office telegraph service (including a supplementary sum of 200,000*l.*)	1,718,073
	TOTAL REVENUE DEPARTMENTS £	9,662,727

SCHEDULE (B.)—PART 20.

GREENWICH HOSPITAL AND SCHOOL.

	£
Advances during the year ending on the 31st day of March 1884 for defraying the expenses of Greenwich Hospital and School	154,332

SCHEDULE (B.)—PART 21.

AFGHAN WAR (GRANT IN AID).

	£
For paying an instalment of a grant in aid of the expenditure incurred by the Government of India upon the war in Afghanistan, in the years 1878–80, which will become due and payable during the year ending on the 31st day of March 1884	500,000

CHAP. 51.

Corrupt and Illegal Practices Prevention Act, 1883.

ABSTRACT OF THE ENACTMENTS.

Corrupt Practices.

1. *What is treating.*
2. *What is undue influence.*
3. *What is corrupt practice.*
4. *Punishment of candidate found, on election petition, guilty personally of corrupt practices.*
5. *Punishment of candidate found, on election petition, guilty by agents of corrupt practices.*
6. *Punishment of person convicted on indictment of corrupt practices.*

Illegal Practices.

7. *Certain expenditure to be illegal practice.*
8. *Expense in excess of maximum to be illegal practice.*
9. *Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.*
10. *Punishment on conviction of illegal practice.*
11. *Report of election court respecting illegal practice, and punishment of candidate found guilty by such report.*
12. *Extension of* 15 & 16 *Vict. c.* 57. *respecting election commissioners to illegal practices.*

Illegal Payment, Employment, and Hiring.

13. *Providing of money for illegal practice or payment to be illegal payment.*
14. *Employment of hackney carriages, or of carriages and horses kept for hire.*
15. *Corrupt withdrawal from a candidature.*
16. *Certain expenditure to be illegal payment.*
17. *Certain employment to be illegal.*
18. *Name and address of printer on placards.*
19. *Saving for creditors.*
20. *Use of committee room in house for sale of intoxicating liquor or refreshment, or in elementary school, to be illegal hiring.*
21. *Punishment of illegal payment, employment, or hiring.*

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

22. *Report exonerating candidate in certain cases of corrupt and illegal practice by agents.*
23. *Power of High Court and election court to except innocent act from being illegal practice, &c.*

Election Expenses.

24. *Nomination of election agent.*
25. *Nomination of deputy election agent as sub-agent.*
26. *Office of election agent and sub-agent.*
27. *Making of contracts through election agent.*
28. *Payment of expenses through election agent.*
29. *Period for sending in claims and making payments for election expenses.*
30. *Reference to taxation of claim against candidates.*
31. *Personal expenses of candidate and petty expenses.*
32. *Remuneration of election agent and returning officer's expenses.*
33. *Return and declaration respecting election expenses.*
34. *Authorised excuse for non-compliance with provisions as to return and declaration respecting election expenses.*
35. *Publication of summary of return of election expenses.*

An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Corrupt Practices.

1. Whereas under section four of the Corrupt Practices Prevention Act, 1854, persons other than candidates at Parliamentary elections are not liable to any punishment for treating, and it is expedient to make such persons liable; be it therefore enacted in substitution for the said section four as follows:—

(1.) Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat drink entertainment or provision to or for any person, for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

(2.) And every elector who corruptly accepts or takes any such meat drink entertainment or provision shall also be guilty of treating.

2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

3. The expression "corrupt practice" as used in this Act means any of the following offences; namely, treating and undue influence, as defined by this Act, and bribery, and personation, as defined by the enactments set forth in Part III. of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

4. Where upon the trial of an election petition respecting an election for a county or borough the election court, by the report made to the Speaker in pursuance of section eleven of the Parliamentary Elections Act, 1868, reports that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever being elected to or sitting in the House of Commons for the said county or borough, and if he has been elected, his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted on an indictment of a corrupt practice.

5. Upon the trial of an election petition respecting an election for a county or borough, in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the Speaker whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election; and if the report is that any candidate at such election has been guilty by his agents of any corrupt practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for such county or borough for seven years after the date of the report, and if he has been elected his election shall be void.

6. (1.) A person who commits any corrupt practice other than personation, or aiding, abetting, counselling, or procuring the commission of the offence of personation, shall be guilty of a misdemeanor, and on conviction on indictment shall be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding two hundred pounds.

(2.) A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, shall be guilty of felony, and any person convicted thereof on indictment shall be punished by imprisonment for a term not exceeding two years, together with hard labour.

(3.) A person who is convicted on indictment of any corrupt practice shall (in addition to any punishment as above provided) be not capable during a period of seven years from the date of his conviction:

(*a.*) of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office within the meaning of this Act; or

(*b.*) of holding any public or judicial office within the meaning of this Act, and if he holds any such office the office shall be vacated.

(4.) Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction.

Illegal Practices.

7. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made—

(*a*) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(*b*) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(*c*) on account of any committee room in excess of the number allowed by the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

8. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, in excess of any maximum amount in that behalf specified in the first schedule to this Act.

(2.) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

9. (1.) If any person votes or induces or procures any person to vote at any election, knowing that he or such person is prohibited, whether by this or any other Act from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed by his agent other than his election agent.

10. A person guilty of an illegal practice, whether under the foregoing sections or under the provisions hereinafter contained in this Act, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the county or borough in which the illegal practice has been committed.

11. Whereas by sub-section fourteen of section eleven of the Parliamentary Elections Act, 1868, it is provided that where a charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall report in writing to the Speaker as follows:—

(*a.*) "Whether any corrupt practice has or "has not been proved to have been com- "mitted by or with the knowledge and

" consent of any candidate at such elec-
" tion, and the nature of such corrupt
" practice;

(*b.*) "The names of all persons, if any, who
" have been proved at the trial to have
" been guilty of any corrupt practice;

(*c.*) "Whether corrupt practices have, or
" whether there is reason to believe cor-
" rupt practices have, extensively pre-
" vailed at the election to which the
" petition relates":

And whereas it is expedient to extend the said sub-section to illegal practices:

Be it therefore enacted as follows:—

Sub-section fourteen of section eleven of the Parliamentary Elections Act, 1868, shall apply as if that sub-section were herein re-enacted with the substitution of illegal practice within the meaning of this Act for corrupt practice; and upon the trial of an election petition respecting an election for a county or borough, the election court shall report in writing to the Speaker the particulars required by the said sub-section as herein re-enacted, and shall also report whether any candidate at such election has been guilty by his agents of any illegal practice within the meaning of this Act in reference to such election, and the following consequences shall ensue upon the report by the election court to the Speaker; (that is to say,)

(*a.*) If the report is that any illegal practice has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough for seven years next after the date of the report, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice; and

(*b.*) If the report is that a candidate at such election has been guilty by his agents of any illegal practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the House of Commons for the said county or borough during the Parliament for which the election was held, and if he has been elected, his election shall be void.

12. Whereas by the Election Commissioners Act, 1852, as amended by the Parliamentary Elections Act, 1868, it is enacted that where a joint address of both Houses of Parliament represents to Her Majesty that an election court has reported to the Speaker that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed at an election in any county or borough, and prays Her Majesty to cause inquiry under that Act to be made by persons named in such address (being qualified as therein mentioned), it shall be lawful for Her Majesty to appoint the said persons to be election commissioners for the purpose of making inquiry into the existence of such corrupt practices:

And whereas it is expedient to extend the said enactments to the case of illegal practices:

Be it therefore enacted as follows:—

When election commissioners have been appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same, they may make inquiries and act and report as if 'corrupt practices' in the said Act and the enactments amending the same included illegal practices; and the Election Commissioners Act, 1852, shall be construed with such modifications as are necessary for giving effect to this section, and the expression 'corrupt practice' in that Act shall have the same meaning as in this Act.

Illegal Payment, Employment, and Hiring.

13. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment or expenses, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

14. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of an illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

15. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing, in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

16. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

17. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for any purposes or capacities mentioned in the first or second parts of the First Schedule to this Act, or except so far as payment is authorised by the first or second parts of the First Schedule to this Act.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed contrary to law.

18. Every bill, placard, or poster having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

19. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense in excess of a certain maximum, shall not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

20. (*a.*) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a licence (whether the licence be for consumption on or off the premises), or

(*b.*) Any premises where any intoxicating liquor is sold, or is supplied to members of a club, society, or association other than a permanent political club, or

(*c.*) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises, or

(*d.*) The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of any such premises,

shall not be used as a committee room for the purpose of promoting or procuring the election of a candidate at an election, and if any person hires or uses any such premises or any part thereof for a committee room he shall be guilty of illegal hiring, and the person letting such premises or part, if he knew it was intended to use the same as a committee room, shall also be guilty of illegal hiring:

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

21. (1.) A person guilty of an offence of illegal payment, employment or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) A candidate or an election agent of a candidate who is personally guilty of an offence of illegal payment, employment, or hiring shall be guilty of an illegal practice.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

22. Where, upon the trial of an election petition respecting an election for a county or borough, the election court report that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

(*a.*) That no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent; and

(*b.*) That such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and

(*c.*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d.*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

23. Where, on application made, it is shown to the High Court or to an election court by such evidence as seems to the Court sufficient—

(*a.*) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(*b.*) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(*c.*) that such notice of the application has been given in the county or borough for which the election was held as to the court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Election Expenses.

24. (1.) On or before the day of nomination at an election, a person shall be named by or on behalf of each candidate as his agent for such election (in this Act referred to as the election agent).

(2.) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to the provisions of this Act both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

(3.) On or before the day of nomination the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer shall forthwith give public notice of the name and address of every election agent so declared.

(4.) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked, and in the event of such revocation or his death, whether such event is before, during, or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same.

25. (1.) In the case of the elections specified in that behalf in the First Schedule to this Act an election agent of a candidate may appoint the number of deputies therein mentioned (which deputies are in this Act referred to as sub-agents), to act within different polling districts.

(2.) As regards matters in a polling district the election agent may act by the sub-agent

for that district, and anything done for the purposes of this Act by or to the sub-agent in his district shall be deemed to be done by or to the election agent, and any act or default of a sub-agent which, if he were the election agent, would be an illegal practice or other offence against this Act, shall be an illegal practice and offence against this Act committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and the candidate shall suffer the like incapacity as if the said act or default had been the act or default of the election agent.

(3.) One clear day before the polling the election agent shall declare in writing the name and address of every sub-agent to the returning officer, and the returning officer shall forthwith give public notice of the name and address of every sub-agent so declared.

(4.) The appointment of a sub-agent shall not be vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent for the time being of the candidate, and in the event of such revocation or of the death of a sub-agent another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the returning officer, who shall forthwith give public notice of the same.

26. (1.) An election agent at an election for a county or borough shall have within the county or borough, or within any county of a city or town adjoining thereto, and a sub-agent shall have within his district, or within any county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summons, and documents may be sent, and the address of such office or place shall be declared at the same time as the appointment of the said agent to the returning officer, and shall be stated in the public notice of the name of the agent.

(2.) Any claim, notice, writ, summons, or document delivered at such office or place and addressed to the election agent or sub-agent, as the case may be, shall be deemed to have been served on him, and every such agent may in respect of any matter connected with the election in which he is acting be sued in any court having jurisdiction in the county or borough in which the said office or place is situate.

27. (1.) The election agent of a candidate by himself or by his sub-agent shall appoint every polling agent, clerk, and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

(2.) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent, either by himself or by his sub-agent; provided that the inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent.

28. (1.) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election or by any agent on behalf of the candidate or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent; and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise;

Provided that this section shall not be deemed to apply to a tender of security to or any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

(2.) A person who makes any payment, advance, or deposit in contravention of this section, or pays in contravention of this section any money so provided as aforesaid, shall be guilty of an illegal practice.

29. (1.) Every payment made by an election agent, whether by himself or a sub-agent, in respect of any expenses incurred on account of or in respect of the conduct or management of an election, shall, except where less than forty shillings, be vouched for by a bill stating the particulars and by a receipt.

(2.) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election which is not sent in to the election agent within the time limited by this Act shall be barred and shall not be paid; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this enactment shall be guilty of an illegal practice.

(3.) Except as by this Act permitted, the

time limited by this Act for sending in claims shall be fourteen days after the day on which the candidates returned are declared elected.

(4.) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act and not otherwise; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

(5.) Except as by this Act permitted, the time limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the day on which the candidates returned are declared elected.

(6.) Where the election court reports that it has been proved to such court by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(7.) If the election agent in the case of any claim sent in to him within the time limited by this Act disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.

(8.) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Act, and to be an exception from the provisions of this Act, requiring claims to be paid by the election agent.

(9.) On cause shown to the satisfaction of the High Court, such court on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.

(10.) Any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.

30. If any action is brought in any competent court to recover a disputed claim against a candidate at an election, or his election agent, in respect of any expenses incurred on account or in respect of the conduct or management of such election, and the defendant admits his liability, but disputes the amount of the claim, the said amount shall, unless the court, on the application of the plaintiff in the action, otherwise directs, be forthwith referred for taxation to the master, official referee, registrar, or other proper officer of the court, and the amount found due on such taxation shall be the amount to be recovered in such action in respect of such claim.

31. (1.) The candidate at an election may pay any personal expenses incurred by him on account of or in connexion with or incidental to such election to an amount not exceeding one hundred pounds, but any further personal expenses so incurred by him shall be paid by his election agent.

(2.) The candidate shall send to the election agent within the time limited by this Act for sending in claims a written statement of the amount of personal expenses paid as aforesaid by such candidate.

(3.) Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams, and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(4.) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Act for the sending in of claims, and shall be vouched for by a bill containing the receipt of that person.

32. (1.) So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.

(2.) The account of the charges claimed by the returning officer in the case of a candidate and transmitted in pursuance of section four of the Parliamentary Elections (Returning Officers) Act, 1875, shall be transmitted within the time specified in the said section to the election agent of the candidate, and need not be transmitted to the candidate.

33. (1.) Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of

every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses), in the form set forth in the Second Schedule to this Act or to the like effect, containing, as respects that candidate,—

(*a.*) A statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression "return respecting election expenses");

(*b.*) A statement of the amount of personal expenses, if any, paid by the candidate;

(*c.*) A statement of the sums paid to the returning officer for his charges, or, if the amount is in dispute, of the sum claimed and the amount disputed;

(*d.*) A statement of all other disputed claims of which the election agent is aware;

(*e.*) A statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court;

(*f.*) A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.

(2.) The return so transmitted to the returning officer shall be accompanied by a declaration made by the election agent before a justice of the peace in the form in the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

(3.) Where the candidate has named himself as his election agent, a statement of all money, securities, and equivalent of money paid by the candidate shall be substituted in the return required by this section to be transmitted by the election agent for the like statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting election expenses need not be made, and the declaration by the candidate respecting election expenses shall be modified as specified in the Second Schedule to this Act.

(4.) At the same time that the agent transmits the said return, or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace, in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses).

(5.) If in the case of an election for any county or borough, the said return and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate shall not, after the expiration of such time, sit or vote in the House of Commons as member for that county or borough until either such return and declarations have been transmitted, or until the date of the allowance of such an authorised excuse for the failure to transmit the same, as in this Act mentioned, and if he sits or votes in contravention of this enactment he shall forfeit one hundred pounds for every day on which he so sits or votes to any person who sues for the same.

(6.) If without such authorised excuse as in this Act mentioned, a candidate or an election agent fails to comply with the requirements of this section he shall be guilty of an illegal practice.

(7.) If any candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury; such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(8.) Where the candidate is out of the United Kingdom at the time when the return is so transmitted to the returning officer, the declaration required by this section may be made by him within fourteen days after his return to the United Kingdom, and in that case shall be forthwith transmitted to the returning officer, but the delay hereby authorised in making such declaration shall not exonerate the election agent from complying with the provisions of this Act as to the return and declaration respecting election expenses.

(9.) Where, after the date at which the return respecting election expenses is transmitted, leave is given by the High Court for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of such leave accompanied by a copy of the order of the court giving the leave, and in default he shall be deemed to have failed to comply with the requirements of this section without such authorised excuse as in this Act mentioned.

34. (1.) Where the return and declarations respecting election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then—

(*a.*) if the candidate applies to the High

Court or an election court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, or

(*b.*) if the election agent of the candidate applies to the High Court or an election Court and shows that the failure to transmit the return and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the court may, after such notice of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the court seems fit, make such order for allowing an authorised excuse for the failure to transmit such return and declaration, or for an error or false statement in such return and declaration, as to the court seems just.

(2.) Where it appears to the court that any person being or having been election agent or sub-agent has refused or failed to make such return or to supply such particulars as will enable the candidate and his election agent respectively to comply with the provisions of this Act as to the return and declaration respecting election expenses, the court before making an order allowing the excuse as in this section mentioned shall order such person to attend before the court, and on his attendance shall, unless he shows cause to the contrary, order him to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the court seem just, and to make or deliver the same within such time and to such person and in such manner as the court may direct, or may order him to be examined with respect to such particulars, and may in default of compliance with any such order order him to pay a fine not exceeding five hundred pounds.

(3.) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the court shall relieve the candidate from the consequences of such act or omission on the part of his election agent.

(4.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

35. (1.) The returning officer at an election within ten days after he receives from the election agent of a candidate a return respecting election expenses shall publish a summary of the return in not less than two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations (including the accompanying documents) can be inspected, and may charge the candidate in respect of such publication, and the amount of such charge shall be the sum allowed by the Parliamentary Elections (Returning Officers) Act, 1875.

(2.) The return and declarations (including the accompanying documents) sent to the returning officer by an election agent shall be kept at the office of the returning officer, or some convenient place appointed by him, and shall at all reasonable times during two years next after they are received by the returning officer be open to inspection by any person on payment of a fee of one shilling, and the returning officer shall on demand furnish copies thereof or any part thereof at the price of twopence for every seventy-two words. After the expiration of the said two years the returning officer may cause the said return and declarations, (including the accompanying documents,) to be destroyed, or, if the candidate or his election agent so require, shall return the same to the candidate.

Disqualification of Electors.

36. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at an election is prohibited

from voting at such election, and if any such person votes his vote shall be void.

37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

38. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court, and before any person is reported by election commissioners, to have been guilty, at an election, of any corrupt or illegal practice, the court or commissioners, as the case may be, shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

(2.) Every person reported by election commissioners to have been guilty at an election of any corrupt or illegal practice may appeal against such report to the next court of oyer and terminer or gaol delivery held in and for the county or place in which the offence is alleged to have been committed, and such court may hear and determine the appeal; and subject to rules of court such appeal may be brought, heard, and determined in like manner as if the court were a court of quarter sessions and the said commissioners were a court of summary jurisdiction, and the person so reported had been convicted by a court of summary jurisdiction for an offence under this Act, and notice of every such appeal shall be given to the Director of public prosecutions in the manner and within the time directed by rules of court, and subject to such rules then within three days after the appeal is brought.

(3.) Where it appears to the Lord Chancellor that appeals under this section are interfering or are likely to interfere with the ordinary business transacted before any courts of oyer and terminer or gaol delivery, he may direct that the said appeals, or any of them, shall be heard by the judges for the time being on the rota for election petitions, and in such case one of such judges shall proceed to the county or place in which the offences are alleged to have been committed, and shall there hear and determine the appeals in like manner as if such judge were a court of oyer and terminer.

(4.) The provisions of the Parliamentary Elections Act, 1868, with respect to the reception and powers of and attendance on an election court, and to the expenses of an election court, and of receiving and accommodating an election court, shall apply as if such judge were an election court.

(5.) Every person who after the commencement of this Act is reported by any election court or election commissioners to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty: Provided that a report of any election commissioners inquiring into an election for a county or borough shall not avoid the election of any candidate who has been declared by an election court on the trial of a petition respecting such election to have been duly elected at such election or render him incapable of sitting in the House of Commons for the said county or borough during the Parliament for which he was elected.

(6.) Where a person who is a justice of the peace is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to report the case to the Lord High Chancellor of Great Britain with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being, or having been, mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court or election commissioners to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like

manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:

(*a.*) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses.

(*b.*) If it appears to an election court or election commissioners that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court or commissioners (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and whether such person obtained a certificate of indemnity or not it shall be the duty of the Director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses.

(*c.*) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

(9.) Where the evidence showing any corrupt practice to have been committed by a justice of the peace, barrister, solicitor, or other professional person, or any licensed person, was given before election commissioners, those commissioners shall report the case to the Director of public prosecutions, with such information as is necessary or proper for enabling him to act under this section.

(10.) This section shall apply to an election court under this Act, or under Part IV. of the Municipal Corporations Act, 1882, and the expression election shall be construed accordingly.

39. (1.) The registration officer in every county and borough shall annually make out a list containing the names and description of all persons who, though otherwise qualified to vote at a parliamentary election for such county or borough respectively, are not capable of voting by reason of having after the commencement of this Act been found guilty of a corrupt or illegal practice on conviction or by the report of any election court or election commissioners whether under this Act, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office; and such officer shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in any of the following places; that is to say,

(*a.*) if he is the registration officer of a county, in that county, or in any borough in that county; and

(*b.*) if he is the registration officer of a borough, in the county in which such borough is situate, or in any borough in that county.

(3.) The registration officer shall send the list to the overseers of every parish within his county or borough, together with his precept, and the overseers shall publish the list together with the list of voters, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to vote, or, as circumstances require, add 'objected' before his name in the list of claimants or copy of the register published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any list of voters for the county or borough may object to the omission of the name of any person from such list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the registration of parliamentary electors.

(5.) The revising barrister shall determine such claims and objections and shall revise such list in like manner as nearly as circumstances admit as in the case of other claims and objections, and of any list of voters.

(6.) Where it appears to the revising barrister that a person not named in the corrupt and illegal practices list is subject to have his name inserted in such list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in such list and expunge his name from any list of voters.

(7.) A revising barrister in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or not been guilty of any corrupt or illegal practice.

(8.) The corrupt or illegal practices list shall be appended to the register of electors, and shall be printed and published therewith wherever the same is printed or published.

Proceedings on Election Petition.

40. (1.) Where an election petition questions the return or the election upon an allegation of an illegal practice, then notwithstanding anything in the Parliamentary Elections Act, 1868, such petition, so far as respects such illegal practice, may be presented within the time following; (that is to say),

(*a.*) at any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent.

(*b.*) If the election petition specifically alleges a payment of money, or some other act to have been made or done since the said day by the member or an agent of the member, or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act.

(2.) Any election petition presented within the time limited by the Parliamentary Elections Act, 1868, may for the purpose of questioning the return or the election upon an allegation of an illegal practice be amended with the leave of the High Court within the time within which a petition questioning the return upon the allegation of that illegal practice can under this section be presented.

(3.) This section shall apply in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice, and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice.

(4.) For the purposes of this section—

(*a.*) where the return and declarations are received on different days, the day on which the last of them is received, and

(*b.*) where there is an authorised excuse for failing to make and transmit the return and declarations respecting election expenses, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse,

shall be substituted for the day on which the return and declarations are received by the returning officer.

(5.) For the purposes of this section, time shall be reckoned in like manner as it is reckoned for the purposes of the Parliamentary Elections Act, 1868.

41. (1.) Before leave for the withdrawal of an election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, and by the election agents of all of the said parties who were candidates at the election, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months,

and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General) in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section thirty-five of the Parliamentary Elections Act, 1868, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition the court shall report to the Speaker whether, in the opinion of such court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(9.) Where a person not a solicitor is lawfully acting as agent in the case of an election petition, that agent shall be deemed to be a solicitor for the purpose of making an affidavit in pursuance of this section.

42. The trial of every election petition so far as is practicable, consistently with the interests of justice in respect of such trial, shall be continued de die in diem on every lawful day until its conclusion, and in case the rota of judges for the year shall expire before the conclusion of the trial, or of all the proceedings in relation or incidental to the petition, the authority of the said judges shall continue for the purpose of the said trial and proceedings.

43. (1.) On every trial of an election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as herein-after mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of a corrupt or illegal practice, to prosecute such person for the offence before the said court, or if he thinks it expedient in the interests of justice before any other competent court.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is rendered subject to under this Act upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence;

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prose-

cution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(*a.*) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(*b.*) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(*c.*) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him, before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted, shall order him to be brought before that court.

(7.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, a barrister or solicitor of not less than ten years standing to be his representative for the purpose of this section, and that representative shall receive such remuneration as the Commissioners of Her Majesty's Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Commissioners of Her Majesty's Treasury may approve.

(8.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representative) shall, in the first instance, be paid by the Commissioners of Her Majesty's Treasury, and so far as they are not in the case of any prosecution paid by the defendant shall be deemed to be expenses of the election court; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Commissioners of Her Majesty's Treasury by the parties to the petition, or such of them as the court may direct.

44. (1.) Where upon the trial of an election petition respecting an election for a county or borough it appears to the election court that a corrupt practice has not been proved to have been committed in reference to such election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows;

(*a.*) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the county or borough; and

(*b.*) if it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under the Parliamentary Elections Act, 1868, and under this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client.

Miscellaneous.

45. Where information is given to the Director of public prosecutions that any corrupt or illegal practices have prevailed in reference to any election, it shall be his duty, subject to the regulations under the Prosecution of Offences Act, 1879, to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

46. Where a person has, either before or after the commencement of this Act, become subject to any incapacity under the Corrupt Practices Prevention Acts or this Act by reason of a conviction or of a report of any election court or election commissioners, and any witness who gave evidence against such incapacitated person upon the proceeding for such conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the Court, if satisfied that the conviction or report so far as respects such person was based upon perjury, may order that such incapacity shall thenceforth cease, and the same shall cease accordingly.

47. (1.) Every county shall be divided into polling districts, and a polling place shall be assigned to each district in such manner that, so far as is reasonably practicable, every elector resident in the county shall have his polling place within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not in any case be constituted containing less than one hundred electors.

(2.) In every county the local authority who have power to divide that county into polling districts shall from time to time divide the county into polling districts, and assign polling places to those districts, and alter those districts and polling places in such manner as may be necessary for the purpose of carrying into effect this section.

(3.) The power of dividing a borough into polling districts vested in a local authority by the Representation of the People Act, 1867, and the enactments amending the same, may be exercised by such local authority from time to time, and as often as the authority think fit, and the said power shall be deemed to include the power of altering any polling district, and the said local authority shall from time to time, where necessary for the purpose of carrying this section into effect, divide the borough into polling districts in such manner that—

(*a.*) Every elector resident in the borough, if other than one herein-after mentioned, shall be enabled to poll within a distance not exceeding one mile from his residence, so nevertheless that a polling district need not be constituted containing less than three hundred electors; and

(*b.*) Every elector resident in the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, shall be enabled to poll within a distance not exceeding three miles from his residence, so nevertheless that a polling district need not be constituted containing less than one hundred electors.

(4.) So much of section five of the Ballot Act, 1872, and the enactments amending the same as in force and is not repealed by this Act, shall apply as if the same were incorporated in this section.

(5.) The expenses incurred by the local authority of a county or borough under this or any other Act in dividing their county or borough into polling districts, and, in the case of a county, assigning polling places to such districts, and in altering any such districts or polling places, shall be defrayed in like manner as if they were expenses incurred by the registration officer in the execution of the enactments respecting the registration of electors in such county or borough, and those enactments, so far as is consistent with the tenor thereof, shall apply accordingly.

48. Where the nature of a county is such that any electors residing therein are unable at an election for such county to reach their polling place without crossing the sea or a branch or arm thereof, this Act shall not prevent the provision of means for conveying such electors by sea to their polling place, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act.

49. Notwithstanding the provisions of the Act 15 and 16 Vict. cap. 57, or any amendment thereof, in any case where, after the passing of this Act, any commissioners have been appointed, on a joint address of both Houses of Parliament, for the purpose of making inquiry into the existence of corrupt practices in any election, the said commissioners shall not make inquiries concerning any election that shall have taken place prior to the passing of this Act, and no witness called before such commissioners, or at any election petition after the passing of this Act, shall be liable to be asked or bound to answer any question for the purpose of proving the commission of any corrupt practice at or in relation to any election prior to the passing of this Act: Provided that nothing herein contained shall

affect any proceedings that shall be pending at the time of such passing.

Legal Proceedings.

50. Where an indictment as defined by this Act for any offence under the Corrupt Practices Prevention Acts or this Act is instituted in the High Court or is removed into the High Court by a writ of certiorari issued at the instance of the Attorney-General, and the Attorney-General suggests on the part of the Crown that it is expedient for the purposes of justice that the indictment should be tried in the Central Criminal Court, or if a special jury is ordered, that it should be tried before a judge and jury at the Royal Courts of Justice, the High Court may, if it think fit, order that such indictment shall be so tried upon such terms as the Court may think just, and the High Court may make such orders as appear to the Court necessary or proper for carrying into effect the order for such trial.

51. (1.) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence under the Corrupt Practices Prevention Acts or this Act shall be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners shall be commenced within one year after the offence was committed, or within three months after the report of such commissioners is made, whichever period last expires, so that it be commenced within two years after the offence was committed, and the time so limited by this section shall, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, be substituted for any limitation of time contained in the last-mentioned Acts.

(2.) For the purposes of this section the issue of a summons, warrant, writ, or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

52. Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice, (which offence shall for that purpose be an indictable offence,) and any person charged with an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice, and a person charged with illegal payment, employment, or hiring, may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

53. (1.) Sections ten, twelve, and thirteen of the Corrupt Practices Prevention Act, 1854, and section six of the Corrupt Practices Prevention Act, 1863 (which relate to prosecutions for bribery and other offences under those Acts), shall extend to any prosecution on indictment for the offence of any corrupt practice within the meaning of this Act, and to any action for any pecuniary forfeiture for an offence under this Act, in like manner as if such offence were bribery within the meaning of those Acts, and such indictment or action were the indictment or action in those sections mentioned, and an order under the said section ten may be made on the defendant; but the Director of public prosecutions or any person instituting any prosecution in his behalf or by direction of an election court shall not be deemed to be a private prosecutor, nor required under the said sections to give any security.

(2.) On any prosecution under this Act, whether on indictment or summarily, and whether before an election court or otherwise, and in any action for a pecuniary forfeiture under this Act, the person prosecuted or sued, and the husband or wife of such person, may, if he or she think fit, be examined as an ordinary witness in the case.

(3.) On any such prosecution or action as aforesaid it shall be sufficient to allege that the person charged was guilty of an illegal practice, payment, employment, or hiring within the meaning of this Act, as the case may be, and the certificate of the returning officer at an election that the election mentioned in the certificate was duly held, and that the person named in the certificate was a candidate at such election, shall be sufficient evidence of the facts therein stated.

54. (1.) All offences under this Act punishable on summary conviction may be prosecuted in manner provided by the Summary Jurisdiction Acts.

(2.) A person aggrieved by a conviction by a court of summary jurisdiction for an offence under this Act may appeal to general or quarter sessions against such conviction.

55. (1.) Except that nothing in this Act shall authorise any appeal against a summary conviction by an election court, the Summary

Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an election court, in like manner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an election court orders a person to be prosecuted on indictment in like manner as if the court were a justice of the peace.

56. (1.) Subject to any rules of court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other criminal proceedings, be exercised by any judge of the Queen's Bench Division, and in other respects may either be exercised by one of the judges for the time being on the rota for the trial of election petitions, sitting either in court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges:

Provided that a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(2.) Rules of court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

57. (1.) The Director of public prosecutions in performing any duty under this Act shall act in accordance with the regulations under the Prosecution of Offences Act, 1879, and subject thereto in accordance with the directions (if any) given to him by the Attorney General; and any assistant or representative of the Director of public prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of public prosecutions.

(2.) Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of public prosecutions or his representative or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony are paid.

58. (1.) Where any costs or other sums (not being costs of a prosecution on indictment) are, under an order of an election court, or otherwise under this Act, to be paid by a county or borough, the Commissioners of Her Majesty's Treasury shall pay those costs or sums, and obtain repayment of the amount so paid, in like manner as if such costs and sums were expenses of election commissioners paid by them, and the Election Commissioners Expenses Acts, 1869 and 1871, shall apply accordingly as if they were herein re-enacted and in terms made applicable to the above-mentioned costs and sums.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Commissioners of Her Majesty's Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Supplemental Provisions, Definitions, Savings, and Repeal.

59. (1.) A person who is called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege;

Provided that—

(*a.*) a witness who answers truly all questions which he is required by the election court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered: and

(*b.*) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him:

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognisance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs at he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners, in like manner as if the expression "election court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the election commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

60. An election court or election commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.

61. (1.) Section eleven of the Ballot Act, 1872, shall apply to a returning officer or presiding officer or clerk who is guilty of any wilful misfeasance or wilful act or omission in contravention of this Act in like manner as if the same were in contravention of the Ballot Act, 1872.

(2.) Section ninety-seven of the Parliamentary Registration Act, 1843, shall apply to every registration officer who is guilty of any wilful misfeasance or wilful act of commission or omission contrary to this Act in like manner as if the same were contrary to the Parliamentary Registration Act, 1843.

62. (1.) Any public notice required to be given by the returning officer under this Act shall be given in the manner in which he is directed by the Ballot Act, 1872, to give a public notice.

(2.) Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting an election for a county or borough, whether for the purpose of causing him to appear before the High Court or any election court, or election commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any court or commissioners, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said county or borough, or if the proceeding is before any court or commissioners in such other manner as the court or commissioners may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

(3.) In the form of notice of a parliamentary election set forth in the Second Schedule to the Ballot Act, 1872, the words "or any illegal practice" shall be inserted after the words "or other corrupt practices," and the words the "Corrupt and Illegal Practices Prevention Act, 1883," shall be inserted after the word "Corrupt Practices Prevention Act, 1854."

63. (1.) In the Corrupt Practices Prevention Acts, as amended by this Act, the expression "candidate at an election" and the expression "candidate" respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued:

(2.) Provided that where a person has been nominated as a candidate or declared to be a candidate by others, then—

(*a.*) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration or has been elected; and

(b.) If he was so nominated or declared, either without his consent or in his absence and he takes no part in the election, he may, if he thinks fit, make the declaration respecting election expenses contained in the second part of the Second Schedule to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent.

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

The expression "election" means the election of a member or members to serve in Parliament:

The expression "election petition" means a petition presented in pursuance of the Parliamentary Elections Act, 1868, as amended by this Act:

The expression "election court" means the judges presiding at the trial of an election petition, or, if the matter comes before the High Court, that court:

The expression "Election Commissioners" means commissioners appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same:

The expression "High Court" means Her Majesty's High Court of Justice in England:

The expressions "court of summary jurisdiction," "petty sessional court," and "Summary Jurisdiction Acts" have the same meaning as in the Summary Jurisdiction Act, 1879:

The expression "the Attorney General" includes the Solicitor General in cases where the office of the Attorney General is vacant or the Attorney General is interested or otherwise unable to act:

The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments relating to the registration of parliamentary electors:

The expression "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression "register of electors" means the said register roll or book:

The expression "polling agent" means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same:

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere

for the purposes of and in relation to such election:

The expression "indictment" includes information:

The expression "costs" includes costs, charges, and expenses:

The expression "payment" includes any pecuniary or other reward; and the expressions "pecuniary reward" and "money" shall be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money shall be construed accordingly:

The expression "Licensing Acts" means the Licensing Acts, 1872 to 1874:

Other expressions have the same meaning as in the Corrupt Practices Prevention Acts.

65. (1.) The enactments described in the Third Schedule to this Act are in this Act referred to as the Corrupt Practices Prevention Acts.

(2.) The Acts mentioned in the Fourth Schedule to this Act are in this Act referred to and may be cited respectively by the short titles in that behalf in that schedule mentioned.

(3.) This Act may be cited as the Corrupt and Illegal Practices Prevention Act, 1883.

(4.) This Act and the Corrupt Practices Prevention Acts may be cited together as the Corrupt Practices Prevention Acts, 1854 to 1883.

66. The Acts set forth in the Fifth Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, provided that this repeal or the expiration of any enactment not continued by this Act shall not revive any enactment which at the commencement of this Act is repealed, and shall not affect anything duly done or suffered before the commencement of this Act, or any right acquired or accrued or any incapacity incurred before the commencement of this Act, and any person subject to any incapacity under any enactment hereby repealed or not continued shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

67. This Act shall come into operation on the fifteenth day of October one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

Application of Act to Scotland.

68. This Act shall apply to Scotland, with the following modifications:

(1.) The following expressions shall mean as follows:

The expression "misdemeanour" shall mean crime and offence:

The expression "indictment" shall include criminal letters:

The expression "solicitor" shall mean enrolled law agent:

The expression "revising barrister" shall mean sheriff:

The expression "barrister" shall mean advocate:

The expression "petty sessional court" shall mean sheriff court:

The expression "quarter sessions" shall mean the Court of Justiciary:

The expression "registration officer" shall mean an assessor under the enactments relating to the registration of parliamentary voters:

The expression "municipal borough" shall include royal burgh and burgh of regality and burgh of barony:

The expression "Acts relating to municipal corporations" shall include the General Police and Improvement (Scotland) Act, 1862, and any other Act relating to the constitution and government of burghs in Scotland:

The expression "mayor" shall mean provost or chief magistrate:

The expression "alderman" shall mean bailie:

The expression "Summary Jurisdiction Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881 and any Acts amending the same.

(2.) The provisions of this Act with respect to polling districts and the expenses of dividing a county or borough into polling districts shall not apply to Scotland.

(3.) The provisions respecting the attendance at the trial of an election petition of a representative of the Director of public prosecutions shall not apply to Scotland, and in place thereof the following provisions shall have effect:

(*a.*) At the trial of every election petition in Scotland Her Majesty's advocate shall be represented by one of his deputes or by the procurator-fiscal of the sheriff court of the district, who shall attend such trial as part of his official duty, and shall give all necessary assistance to the judge with respect to the citation of witnesses and recovery of documents:

(*b.*) If the judge shall grant a warrant for

the apprehension, commitment, or citation of any person suspected of being guilty of a corrupt or illegal practice, the case shall be reported to Her Majesty's advocate in order that such person may be brought to trial before the High Court of Justiciary or the sheriff, according to the nature of the case:

(c.) It shall be the duty of the advocate depute or, in his absence, the procurator fiscal, if it appears to him that a corrupt or illegal practice within the meaning of this Act has been committed by any person who has not received a certificate of indemnity, to report the case to Her Majesty's advocate in order to such person being brought to trial before the proper court, although no warrant may have been issued by the judge.

(4.) The jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said court to whom the same may be remitted by such division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of sederunt for the purposes of this Act.

(5.) Court of Oyer and Terminer shall mean a circuit court of Justiciary, and the High Court of Justiciary shall have powers to make acts of adjournal regulating the procedure in appeals to the circuit court under this Act.

(6.) All offences under this Act punishable on summary conviction may be prosecuted in the sheriff court in manner provided by the Summary Jurisdiction Acts, and all necessary jurisdictions are hereby conferred on sheriffs.

(7.) The authority given by this Act to the Director of public prosecutions in England shall in Scotland be exercised by Her Majesty's advocate, and the reference to the Prosecution of Offences Act, 1879, shall not apply.

(8.) The expression "Licensing Acts" shall mean "the Public Houses Acts Amendment (Scotland) Act, 1862," and "The Publicans' Certificates (Scotland) Act, 1876," and the Acts thereby amended and therein recited.

(9.) The expression "register of licences" shall mean the register kept in pursuance of section twelve of the Act of the ninth year of the reign of King George the Fourth, chapter fifty-eight.

(10.) The references to the Public Health Act, 1875, and to the Elementary Education Act, 1870, shall be construed to refer to the Public Health (Scotland) Act, 1867, and to the Elementary Education (Scotland) Act, 1872.

(11.) Any reference to the Parliamentary Elections Returning Officers Act, 1875, shall not apply.

(12.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby enacted that the assessor shall in counties include the names of such persons in the list of persons who have become disqualified, and in boroughs shall omit the names of such persons from the list of persons entitled to vote.

(13.) The power given by this Act to the Lord Chancellor in England shall in Scotland except so far as relates to the justices of the peace be exercised by the Lord Justice General.

(14.) Any reference to the Attorney-General shall refer to the Lord Advocate.

(15.) The provisions with respect to the removal of cases to the Central Criminal Court or to the trial of cases at the Royal Courts of Justice shall not apply.

(16.) Section thirty-eight of the County Voters Registration (Scotland) Act, 1861, shall be substituted for section ninety-seven, of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(17.) The provision of this Act with regard to costs shall not apply to Scotland, and instead thereof the following provision shall have effect:

The costs of petitions and other proceedings under "The Parliamentary Elections Act, 1868," and under this Act, shall, subject to any regulations which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as costs between agent and client are taxed in a cause in that court, and the auditor shall not allow any costs, charges, or expenses on a higher scale.

Application of Act to Ireland.

69. This Act shall apply to Ireland, with the following modifications:

(1.) No person shall be tried for any offence against this Act under any of the provisions of the Prevention of Crime (Ireland) Act, 1882."

(2.) The expression "Summary Jurisdiction Acts" means, with reference to the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace and of the police in such district; and with reference to other parts of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Acts amending the said Act.

(3.) Section one hundred and three of the Act of the session of the thirteenth and four-

teenth years of the reign of Her present Majesty, chapter sixty-nine, shall be substituted for section ninety-seven of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(4.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby enacted that the registration officer shall, after making out such list, himself publish the same in the manner in which he publishes the lists referred to in the twenty-first and the thirty-third sections of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine; and shall also in the case of every person in the corrupt and illegal practices list enter "objected to" against his name in the register and lists made out by such registration officer in like manner as he is by law required to do in other cases of disqualification.

(5.) The Supreme Court of Judicature in Ireland shall be substituted for the Supreme Court of Judicature.

(6.) The High Court of Justice in Ireland shall be substituted for the High Court of Justice in England.

(7.) The Lord High Chancellor of Ireland shall be substituted for the Lord High Chancellor of Great Britain.

(8.) The Attorney-General for Ireland shall be substituted for the Director of Public Prosecutions, and the reference to the prosecution of the Offences Act, 1879, shall not apply.

(9.) The provisions of this Act relative to polling districts shall not apply to Ireland, but in the county of the town of Galway there shall be a polling station at Barna, and at such other places within the parliamentary borough of Galway as the town commissioners may appoint.

(10.) Any reference to Part IV. of the Municipal Corporations Act, 1882, shall be construed to refer to the Corrupt Practices (Municipal Elections) Act, 1872.

(11.) Any reference to the Licensing Acts shall be construed to refer to the Licensing Acts (Ireland), 1872-1874.

(12.) The Public Health (Ireland), 1878, shall be substituted for the Public Health Act, 1875.

(13.) The provisions with respect to the removal of cases to the Central Criminal Court, or to the trial of cases at the Royal Courts of Justice, shall not apply to Ireland.

Continuance.

70. This Act shall continue in force until the thirty-first day of December one thousand eight hundred and eighty-four, and no longer, unless continued by Parliament; and such of the Corrupt Practices Prevention Acts as are referred to in Part One of the Third Schedule to this Act shall continue in force until the same day, and no longer, unless continued by Parliament.

SCHEDULES.

FIRST SCHEDULE.

PART I.

PERSONS LEGALLY EMPLOYED FOR PAYMENT.

(1.) One election agent and no more.

(2.) In counties one deputy election agent (in this Act referred to as a sub-agent) to act within each polling district and no more.

(3.) One polling agent in each polling station and no more.

(4.) In a borough one clerk and one messenger, or if the number of electors in the borough exceeds five hundred, a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred.

(5.) In a county for the central committee room one clerk and one messenger, or if the number of electors in the county exceeds five thousand, then a number of clerks and messengers not exceeding in number one clerk and one messenger for every complete five thousand electors in the county; and if there is a number of electors over and above any complete five thousand or complete five thou-

sands of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five thousand.

(6.) In a county a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every complete five hundred electors in the polling district, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred: Provided always, that the number of clerks and messengers so allowed in any county may be employed in any polling district where their services may be required.

(7.) Any such paid election agent, subagent, polling agent, clerk, and messenger may or may not be an elector but may not vote.

(8.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of this part of this schedule shall apply as if such borough were a county.

PART II.

LEGAL EXPENSES IN ADDITION TO EXPENSES UNDER PART I.

(1.) Sums paid to the returning officer for his charges not exceeding the amount authorised by the Act 38 & 39 Vict. c. 84.

(2.) The personal expenses of the candidate.

(3.) The expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices.

(4.) The expenses of stationery, messages, postage, and telegrams.

(5.) The expenses of holding public meetings.

(6.) In a borough the expenses of one committee room and if the number of electors in the borough exceeds five hundred then of a number of committee rooms not exceeding the number of one committee room for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete five hundred.

(7.) In a county the expenses of a central committee room, and in addition of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee room may be hired for every complete five hundred electors in such polling district over and above the first five hundred.

PART III.

Maximum for Miscellaneous Matters.

Expenses in respect of miscellaneous matters other than those mentioned in Part I. and Part II. of this schedule not exceeding in the whole the maximum amount of two hundred pounds, so nevertheless that such expenses are not incurred in respect of any matter or in any manner constituting an offence under this or any other Act, or in respect of any matter or thing, payment for which is expressly prohibited by this or any other Act.

PART IV.

Maximum Scale.

(1.) In a borough the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors on the register—	The maximum amount shall be—
Does not exceed 2,000	350*l.*
Exceeds 2,000	380*l.*, and an additional 30*l.* for every complete 1,000 electors above 2,000.

Provided that in Ireland if the number of electors on the register—

	The maximum amount shall be—
Does not exceed 500	200*l.*
Exceeds 500, but does not exceed 1,000	250*l.*
Exceeds 1,000, but does not exceed 1,500	275*l.*

(2.) In a county the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors on the register—	The maximum amount shall be—
Does not exceed 2,000	650*l.* in England and Scotland, and 500*l.* in Ireland.
Exceeds 2,000	710*l.* in England and Scotland, and 540*l.* in Ireland; and an additional 60*l.* in England and Scotland, and 40*l.* in Ireland, for every complete 1,000 electors above 2,000.

PART V.

General.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of Parts II., III., and IV. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election.

Provided that—

(*a.*) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

SECOND SCHEDULE.

PART I.

FORM OF DECLARATIONS AS TO EXPENSES.

Form for Candidate.

I , having been a candidate at the election for the county [*or* borough] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [*or if the candidate is his own election agent,* "by me"] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society, or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I have paid to my election agent [*if the candidate is also is own election agent, leave out* "to my election agent"] the sum of pounds and no more for the purpose of the said election, and that, except as specified in the said return, no money, security, or equivalent for money has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of my election agent [*or if the candidate is his own election agent,* "myself"] or any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of, any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of before me.

(Signed) *E.F.*
Justice of the Peace for

Form for Election Agent.

I, , being election agent to , candidate at the election for the county [*or* borough] of , on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses about to be transmitted by me to the returning officer at the said election, and now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I hereby further solemnly and sincerely declare that, except as appears from that return, I have not and to the best of my knowledge and belief no other person, nor any club, society, or association has on behalf of the said candidate made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

And I further solemnly and sincerely declare that I have received from the said candidate pounds and no more [*or* nothing] for the purpose of the said election, and that, except as specified in the said return sent by me, no money, security, or equivalent for money has been paid, advanced, given, or deposited by any one to me or in my hands, or, to the best of my knowledge and belief, to or in the hands of any other person for the purpose of defraying any expenses incurred on behalf of the said candidate on account of, or in respect of the conduct or management of the said election.

Signature of declarant *A.B.*

Signed and declared by the above-named declarant on the day of before me.

(Signed) *E.F.*
Justice of the peace for

FORM OF RETURN OF ELECTION EXPENSES.

I, *A.B.*, being election agent to *C.D.*, candidate at the election for the county [*or* borough] of on the day of , make the following return respecting election expenses of the said candidate at the said election [*or where the candidate has named himself as election agent,* "I, *C.D.*, candidate at the election for the county [*or* borough] of on the day of , acting as my own election agent, make the following return respecting my election expenses at the said election"].

Receipts.

Received of [*the above-named candidate*] [*or where the candidate is his own election agent,* "Paid by me"] -	£
Received of *J.K.* - - -	£

[*Here set out the name and description of every person, club, society, or association, whether the candidate or not, from whom any money, securities, or equivalent of money was received in respect of expenses incurred on account of or in connexion with or incidental to the above election, and the amount received from each person, club, society, or association separately.*]

Expenditure.

Paid to *E.F.*, the returning officer for the said county [*or* borough] for his charges at the said election -	£
Personal expenses of the said *C.D.*, paid by himself [*or if the candidate is his own election agent,* "Paid by me as candidate"] - -	£
Do. do. paid by me [*or if the candidate is his own election agent, add* "acting as election agent"] - - -	£

Received by me for my services as election agent at the said election [*or if the candidate is his own election agent, leave out this item*] - - £

Paid to *G.H.* as sub-agent of the polling district of - - - £

[*The name and description of each sub-agent and the sum paid to him must be set out separately.*]

Paid to as polling agent - £

Paid to as clerk for days services - - - £

Paid to as messenger for days services - - - £

[*The names and descriptions of every polling agent, clerk, and messenger, and the sum paid to each, must be set out separately either in the account or in a separate list annexed to and referred to in the account, thus,* "Paid "to polling agent (*or as the case may be*) as per annexed list £ ."]

Paid to the following persons in respect of goods supplied or work and labour done:

To *P.Q.* (printing) - - £

To *M.N.* (advertising) - - £

To *R.S.* (stationery) - - £

[*The name and description of each person, and the nature of the goods supplied, or the work and labour done by each, must be set out separately either in the account or in a separate list annexed to and referred to in the account.*]

Paid for postage - - - £

Paid for telegrams - - - £

Paid for the hire of rooms as follows:—

For holding public meetings - £

For committee rooms - - £

[*A room hired for a public meeting or for a committee room must be named or described so as to identify it; and the name and description of every person to whom any payment was made for each such room, together with the amount paid, must be set out separately either in the account or in a separate list annexed to and referred to in the account.*]

Paid for miscellaneous matters, namely— - - - £

[*The name and description of each person to whom any sum is paid, and the reason for which it was paid to him, must be set out separately either in the account or in a separate list annexed to and referred to in the account.*]

In addition to the above, I am aware, as election agent for *C.D.*, [*or if the candidate is his own election agent, leave out* "as election agent for *C.D.*"] of the following disputed and unpaid claims; namely,—

Disputed claims.

By *T.U.* for - - - £

[*Here set out the name and description of each person whose claim is disputed, the amount of the claim, and the goods, work, or other matter on the ground of which the claim is based.*]

Unpaid claims allowed by the High Court to be paid after the proper time or in respect of which application has been or is about to be made to the High Court.

By *M.O.* for - - - - £

[*Here state the name and description of each person to whom any such claim is due, and the amount of the claim, and the goods, work, and labour or other matter on account of which the claim is due.*]

(Signed) *A.B.*

PART II.

Form of Declaration as to Expenses.

Form for candidate where declared a candidate or nominated in his absence and taking no part in the election.

I, , having been nominated [*or* having been declared by others] in my absence [to be] a candidate at the election for the county or borough of held on the day of , do hereby solemnly and sincerely declare that I have taken no part whatever in the said election.

And I further solemnly and sincerely declare that [*or* with the exception of] I have not, and no person, club, society, or association at my expense has, made any payment or given, promised, or offered, any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that [*or* with the exception of] I have not paid any money or given any security or equivalent for money to the person acting as my election agent at the said election, or to any other person, club, society, or association on account of or in respect of the conduct or management of the said election, and that [*or* with the exception of] I am entirely ignorant of any money security or equivalent for money having been paid, advanced, given, or deposited by any one for the purpose of defraying any expenses incurred on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not, except so far as I may be permitted by law, at any future time make or be party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security, or equivalent of money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of before me.

(Signed) *E.F.*
Justice of the Peace for .

THIRD SCHEDULE.

CORRUPT PRACTICES PREVENTION ACTS.

Session and Chapter.	Title of Act.	Enactments referred to as being the Corrupt Practices Prevention Acts.
	PART ONE. *Temporary.*	
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	The whole Act so far as unrepealed.
26 & 27 Vict. c. 29.	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act so far as unrepealed.
31 & 32 Vict. c. 125.	The Parliamentary Elections Act, 1868	The whole Act so far as unrepealed.
35 & 36 Vict. c. 33.	The Ballot Act, 1872	Part III. so far as unrepealed.
42 & 43 Vict. c. 75.	The Parliamentary Elections and Corrupt Practices Act, 1879.	The whole Act so far as unrepealed.
	PART TWO. *Permanent.*	
30 & 31 Vict. c. 102.	The Representation of the People Act, 1867	Sections eleven, forty-nine, and fifty.
31 & 32 Vict. c. 48.	The Representation of the People (Scotland) Act, 1868.	Sections eight and forty-nine.
31 & 32 Vict. c. 49.	The Representation of the People (Ireland) Act, 1868.	Sections eight and thirteen.
44 & 45 Vict. c. 40.	The Universities Elections Amendment (Scotland) Act, 1881.	Sub-section seventeen of section two.

PART THREE.

ENACTMENTS DEFINING THE OFFENCES OF BRIBERY AND PERSONATION.

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102. ss. 2, 3.

Bribery defined.

s. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:

(1.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election:

(2.) Every person who shall directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person

on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election:

(3.) Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election:

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election:

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election. Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses bonâ fide incurred at or concerning any election.

s. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election:

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102. s. 49

Corrupt payment of rates to be punishable as bribery.

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

The Representation of the People (Scotland) Act, 1868, 31 & 32 Vict. c. 48. s. 49.

Corrupt payment of rates to be punishable as bribery.

Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made shall also be guilty of bribery, and punishable accordingly.

The Universities Elections Amendment (Scotland) Act, 1881, 44 & 45 Vict. c. 40. s. 2.

Corrupt payment of registration fee to be punishable as bribery.

17. Any person, either directly or indirectly, corruptly paying any fee for the purpose of enabling any person to be registered as a member of the general council, and thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying such fee on behalf of any person for the purpose of inducing him to vote or to refrain from voting, shall be guilty of bribery, and shall be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section mentioned is made, shall also be guilty of bribery, and punishable accordingly.

The Ballot Act, 1872, 35 & 36 Vict. c. 33. s. 24.

Personation defined.

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of

personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

FOURTH SCHEDULE.

SHORT TITLES.

Session and Chapter.	Long Title.	Short Title.
15 & 16 Vict. c. 57. -	An Act to provide for more effectual inquiry into the existence of corrupt practices at the election of members to serve in Parliament.	Election Commissioners Act, 1852.
26 & 27 Vict. c. 29. -	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The Corrupt Practices Prevention Act, 1863.

FIFTH SCHEDULE.

ENACTMENTS REPEALED.

NOTE.—Portions of Acts which have already been specifically repealed are in some instances included in the repeal in this Schedule in order to preclude henceforth the necessity of looking back to previous Acts.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
60 Geo. 3. & 1 Geo. 4. c. 11.	An Act for the better regulation of polls, and for making further provision touching the election of members to serve in Parliament for Ireland.	Section thirty-six.
1 & 2 Geo. 4. c. 58. -	An Act to regulate the expenses of election of members to serve in Parliament for Ireland.	The whole Act except section three.
4 Geo. 4. c. 55. - -	An Act to consolidate and amend the several Acts now in force so far as the same relate to the election and return of members to serve in Parliament for the counties of cities and counties of towns in Ireland.	Section eighty-two.
17 & 18 Vict. c. 102. -	The Corrupt Practices Prevention Act, 1854.	Section one. Section two, from "and any person so offending" to "with full costs of suit."

Session and Chapter.	Title or Short Title.	Extent of Repeal.
		Section three, from "and any person so offending" to the end of the section. Section four. Section five. Section six. Section seven, from "and all payments" to the end of the section. Section nine, section fourteen, section twenty-three, section thirty-six, section thirty-eight, from "and the words personal expenses" to the end of the section, and section thirty-nine and Schedule A.
21 & 22 Vict. c. 87. -	An Act to continue and amend the Corrupt Practices Prevention Act, 1854.	The whole Act.
26 & 27 Vict. c. 29. -	An Act to amend and continue the law relating to corrupt practices at elections of members of Parliament.	The whole Act, except section six.
30 & 31 Vict. c. 102. -	The Representation of the People Act, 1867.	Section thirty-four, from "and in other boroughs the justices" to "greater part thereof is situate" and section thirty-six.
31 & 32 Vict. c. 48. -	The Representation of the People (Scotland) Act, 1868.	Section twenty-five.
31 & 32 Vict. c. 49. -	The Representation of the People (Ireland) Act, 1868.	Section twelve.
31 & 32 Vict. c. 58. -	The Parliamentary Electors Registration Act, 1868.	Section eighteen, from "the power of dividing their county" to the end of the section.
31 & 32 Vict. c. 125. -	The Parliamentary Elections Act, 1868 -	So much of section three as relates to the definitions of "candidate." Section sixteen. Section thirty-three. Section thirty-six. Section forty-one, from "but according to the same principles" to "the High Court of Chancery." Section forty-three. Section forty-five. Section forty-six. Section forty-seven. Section fifty-eight, from "The principles" down to "in the court of session," being sub-section sixteen.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
35 & 36 Vict. c. 33. -	The Ballot Act, 1872 - - -	Section five, from the beginning down to "one "hundred registered "electors." Section twenty-four, from "The offence of per- "sonation, or of aid- "ing," to "hard la- "bour," and from "The "offence of personation "shall be deemed to "be" to the end of the section.
42 & 43 Vict. c. 75. -	The Parliamentary Elections and Corrupt Practices Act, 1879.	Section three and schedule.
43 Vict. c. 18. - -	The Parliamentary Elections and Corrupt Practices Act, 1880.	The whole Act, except sections one and three.

CHAP. 52.

Bankruptcy Act, 1883.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Receiving Order.

Proceedings consequent on Order.

PART VI.

CONSTITUTION, PROCEDURE, AND POWERS OF COURT.

PART VII.

SMALL BANKRUPTCIES.

PART VIII.

SUPPLEMENTAL PROVISIONS.

Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to the prosecution of an offence summarily before an election court, in like manner as if it were an offence punishable only on summary conviction, and accordingly the attendance of any person may be enforced, the case heard and determined and any summary conviction by such court be carried into effect and enforced, and the costs thereof paid, and the record thereof dealt with under those Acts in like manner as if the court were a petty sessional court for the county or place in which such conviction took place.

(2.) The enactments relating to charges before justices against persons for indictable offences shall, so far as is consistent with the tenor thereof, apply to every case where an election court orders a person to be prosecuted on indictment in like manner as if the court were a justice of the peace.

56. (1.) Subject to any rules of court, any jurisdiction vested by this Act in the High Court may, so far as it relates to indictments or other criminal proceedings, be exercised by any judge of the Queen's Bench Division, and in other respects may either be exercised by one of the judges for the time being on the rota for the trial of election petitions, sitting either in court or at chambers, or may be exercised by a master of the Supreme Court of Judicature in manner directed by and subject to an appeal to the said judges:

Provided that a master shall not exercise jurisdiction in the case either of an order declaring any act or omission to be an exception from the provisions of this Act with respect to illegal practices, payments, employments, or hirings, or of an order allowing an excuse in relation to a return or declaration respecting election expenses.

(2.) Rules of court may from time to time be made, revoked, and altered for the purposes of this Act, and of the Parliamentary Elections Act, 1868, and the Acts amending the same, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can for the time being be made.

57. (1.) The Director of public prosecutions in performing any duty under this Act shall act in accordance with the regulations under the Prosecution of Offences Act, 1879, and subject thereto in accordance with the directions (if any) given to him by the Attorney General; and any assistant or representative of the Director of public prosecutions in performing any duty under this Act shall act in accordance with the said regulations and directions, if any, and with the directions given to him by the Director of public prosecutions.

(2.) Subject to the provisions of this Act, the costs of any prosecution on indictment for an offence punishable under this Act, whether by the Director of public prosecutions or his representative or by any other person, shall, so far as they are not paid by the defendant, be paid in like manner as costs in the case of a prosecution for felony are paid.

58. (1.) Where any costs or other sums (not being costs of a prosecution on indictment) are, under an order of an election court, or otherwise under this Act, to be paid by a county or borough, the Commissioners of Her Majesty's Treasury shall pay those costs or sums, and obtain repayment of the amount so paid, in like manner as if such costs and sums were expenses of election commissioners paid by them, and the Election Commissioners Expenses Acts, 1869 and 1871, shall apply accordingly as if they were herein re-enacted and in terms made applicable to the above-mentioned costs and sums.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Commissioners of Her Majesty's Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Supplemental Provisions, Definitions, Savings, and Repeal.

59. (1.) A person who is called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with such election, on the ground that the answer thereto may criminate or tend to criminate himself or on the ground of privilege;

Provided that—

(*a.*) a witness who answers truly all questions which he is required by the election court to answer shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that such witness has so answered: and

(*b.*) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him:

(2.) Where a person has received such a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence under the Corrupt Practices Prevention Acts or this Act committed by him previously to the date of the certificate at or in relation to the said election, the court having cognisance of the case shall on proof of the certificate stay the proceeding, and may in their discretion award to the said person such costs at he may have been put to in the proceeding.

(3.) Nothing in this section shall be taken to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceeding to enforce such incapacity (other than a criminal prosecution).

(4.) This section shall apply in the case of a witness before any election commissioners, in like manner as if the expression "election court" in this section included election commissioners.

(5.) Where a solicitor or person lawfully acting as agent for any party to an election petition respecting any election for a county or borough has not taken any part or been concerned in such election, the election commissioners inquiring into such election shall not be entitled to examine such solicitor or agent respecting matters which came to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition.

60. An election court or election commissioners, when reporting that certain persons have been guilty of any corrupt or illegal practice, shall report whether those persons have or not been furnished with certificates of indemnity; and such report shall be laid before the Attorney-General (accompanied in the case of the commissioners with the evidence on which such report was based) with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in his opinion, be sufficient to support a prosecution.

61. (1.) Section eleven of the Ballot Act, 1872, shall apply to a returning officer or presiding officer or clerk who is guilty of any wilful misfeasance or wilful act or omission in contravention of this Act in like manner as if the same were in contravention of the Ballot Act, 1872.

(2.) Section ninety-seven of the Parliamentary Registration Act, 1843, shall apply to every registration officer who is guilty of any wilful misfeasance or wilful act of commission or omission contrary to this Act in like manner as if the same were contrary to the Parliamentary Registration Act, 1843.

62. (1.) Any public notice required to be given by the returning officer under this Act shall be given in the manner in which he is directed by the Ballot Act, 1872, to give a public notice.

(2.) Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting an election for a county or borough, whether for the purpose of causing him to appear before the High Court or any election court, or election commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any court or commissioners, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said county or borough, or if the proceeding is before any court or commissioners in such other manner as the court or commissioners may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

(3.) In the form of notice of a parliamentary election set forth in the Second Schedule to the Ballot Act, 1872, the words "or any illegal practice" shall be inserted after the words "or other corrupt practices," and the words the "Corrupt and Illegal Practices Prevention Act, 1883," shall be inserted after the word "Corrupt Practices Prevention Act, 1854."

63. (1.) In the Corrupt Practices Prevention Acts, as amended by this Act, the expression "candidate at an election" and the expression "candidate" respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued:

(2.) Provided that where a person has been nominated as a candidate or declared to be a candidate by others, then—

(*a.*) If he was so nominated or declared without his consent, nothing in this Act shall be construed to impose any liability on such person, unless he has afterwards given his assent to such nomination or declaration or has been elected; and

(*b.*) If he was so nominated or declared, either without his consent or in his absence and he takes no part in the election, he may, if he thinks fit, make the declaration respecting election expenses contained in the second part of the Second Schedule to this Act, and the election agent shall, so far as circumstances admit, comply with the provisions of this Act with respect to expenses incurred on account of or in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent.

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

The expression "election" means the election of a member or members to serve in Parliament:

The expression "election petition" means a petition presented in pursuance of the Parliamentary Elections Act, 1868, as amended by this Act:

The expression "election court" means the judges presiding at the trial of an election petition, or, if the matter comes before the High Court, that court:

The expression "Election Commissioners" means commissioners appointed in pursuance of the Election Commissioners Act, 1852, and the enactments amending the same:

The expression "High Court" means Her Majesty's High Court of Justice in England:

The expressions "court of summary jurisdiction," "petty sessional court," and "Summary Jurisdiction Acts" have the same meaning as in the Summary Jurisdiction Act, 1879:

The expression "the Attorney General" includes the Solicitor General in cases where the office of the Attorney General is vacant or the Attorney General is interested or otherwise unable to act:

The expression "registration officer" means the clerk of the peace in a county, and the town clerk in a borough, as respectively defined by the enactments relating to the registration of parliamentary electors:

The expression "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used:

The expression "register of electors" means the said register roll or book:

The expression "polling agent" means an agent of the candidate appointed to attend at a polling station in pursuance of the Ballot Act, 1872, or of the Acts therein referred to or amending the same:

The expression "person" includes an association or body of persons, corporate or unincorporate, and where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act shall be liable to any fine or punishment imposed for the same by this Act:

The expression "committee room" shall not include any house or room occupied by a candidate at an election as a dwelling, by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee room for the purposes of this Act by reason only of the candidate or any agent of the candidate addressing therein electors, committeemen, or others:

The expression "public office" means any office under the Crown or under the charter of a city or municipal borough or under the Acts relating to Municipal Corporations or to the Poor Law, or under the Elementary Education Act, 1870, or under the Public Health Act, 1875, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office, to which a person is elected or appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly:

The expression "judicial office" includes the office of justice of the peace and revising barrister:

The expression "personal expenses" as used with respect to the expenditure of any candidate in relation to any election includes the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere

If the number of electors on the register—	The maximum amount shall be—
Does not exceed 2,000	650*l.* in England and Scotland, and 500*l.* in Ireland.
Exceeds 2,000	710*l.* in England and Scotland, and 540*l.* in Ireland; and an additional 60*l.* in England and Scotland, and 40*l.* in Ireland, for every complete 1,000 electors above 2,000.

PART V.

General.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of Parts II., III., and IV. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election.

Provided that—

(*a.*) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

SECOND SCHEDULE.

PART I.

FORM OF DECLARATIONS AS TO EXPENSES.

Form for Candidate.

I , having been a candidate at the election for the county [*or* borough] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [*or if the candidate is his own election agent,* "by me"] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society, or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

the apprehension, commitment, or citation of any person suspected of being guilty of a corrupt or illegal practice, the case shall be reported to Her Majesty's advocate in order that such person may be brought to trial before the High Court of Justiciary or the sheriff, according to the nature of the case:

(c.) It shall be the duty of the advocate depute or, in his absence, the procurator fiscal, if it appears to him that a corrupt or illegal practice within the meaning of this Act has been committed by any person who has not received a certificate of indemnity, to report the case to Her Majesty's advocate in order to such person being brought to trial before the proper court, although no warrant may have been issued by the judge.

(4.) The jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said court to whom the same may be remitted by such division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of sederunt for the purposes of this Act.

(5.) Court of Oyer and Terminer shall mean a circuit court of Justiciary, and the High Court of Justiciary shall have powers to make acts of adjournal regulating the procedure in appeals to the circuit court under this Act.

(6.) All offences under this Act punishable on summary conviction may be prosecuted in the sheriff court in manner provided by the Summary Jurisdiction Acts, and all necessary jurisdictions are hereby conferred on sheriffs.

(7.) The authority given by this Act to the Director of public prosecutions in England shall in Scotland be exercised by Her Majesty's advocate, and the reference to the Prosecution of Offences Act, 1879, shall not apply.

(8.) The expression "Licensing Acts" shall mean "the Public Houses Acts Amendment (Scotland) Act, 1862," and "The Publicans' Certificates (Scotland) Act, 1876," and the Acts thereby amended and therein recited.

(9.) The expression "register of licences" shall mean the register kept in pursuance of section twelve of the Act of the ninth year of the reign of King George the Fourth, chapter fifty-eight.

(10.) The references to the Public Health Act, 1875, and to the Elementary Education Act, 1870, shall be construed to refer to the Public Health (Scotland) Act, 1867, and to the Elementary Education (Scotland) Act, 1872.

(11.) Any reference to the Parliamentary Elections Returning Officers Act, 1875, shall not apply.

(12.) The provision with respect to the registration officer sending the corrupt and illegal practices list to overseers and the dealing with such list by overseers shall not apply, and in lieu thereof it is hereby enacted that the assessor shall in counties include the names of such persons in the list of persons who have become disqualified, and in boroughs shall omit the names of such persons from the list of persons entitled to vote.

(13.) The power given by this Act to the Lord Chancellor in England shall in Scotland except so far as relates to the justices of the peace be exercised by the Lord Justice General.

(14.) Any reference to the Attorney-General shall refer to the Lord Advocate.

(15.) The provisions with respect to the removal of cases to the Central Criminal Court or to the trial of cases at the Royal Courts of Justice shall not apply.

(16.) Section thirty-eight of the County Voters Registration (Scotland) Act, 1861, shall be substituted for section ninety-seven, of the Parliamentary Registration Act, 1843, where reference is made to that section in this Act.

(17.) The provision of this Act with regard to costs shall not apply to Scotland, and instead thereof the following provision shall have effect:

The costs of petitions and other proceedings under "The Parliamentary Elections Act, 1868," and under this Act, shall, subject to any regulations which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as costs between agent and client are taxed in a cause in that court, and the auditor shall not allow any costs, charges, or expenses on a higher scale.

Application of Act to Ireland.

69. This Act shall apply to Ireland, with the following modifications:

(1.) No person shall be tried for any offence against this Act under any of the provisions of the Prevention of Crime (Ireland) Act, 1882."

(2.) The expression "Summary Jurisdiction Acts" means, with reference to the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace and of the police in such district; and with reference to other parts of Ireland means the Petty Sessions (Ireland) Act, 1851, and any Acts amending the said Act.

(3.) Section one hundred and three of the Act of the session of the thirteenth and four-

resolution, appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.

(2.) The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(6.) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days notice has been given, stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the trustee.

23. (1.) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2.) If the Court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3.) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

24. (1.) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2.) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested.

(3.) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4.) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his pro-

sands of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five thousand.

(6.) In a county a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every complete five hundred electors in the polling district, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then one clerk and one messenger may be employed for such number, although not amounting to a complete five hundred: Provided always, that the number of clerks and messengers so allowed in any county may be employed in any polling district where their services may be required.

(7.) Any such paid election agent, sub-agent, polling agent, clerk, and messenger may or may not be an elector but may not vote.

(8.) In the case of the boroughs of East Retford, Shorcham, Cricklade, Much Wenlock, and Aylesbury, the provisions of this part of this schedule shall apply as if such borough were a county.

PART II.

Legal Expenses in Addition to Expenses under Part I.

(1.) Sums paid to the returning officer for his charges not exceeding the amount authorised by the Act 38 & 39 Vict. c. 84.

(2.) The personal expenses of the candidate.

(3.) The expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices.

(4.) The expenses of stationery, messages, postage, and telegrams.

(5.) The expenses of holding public meetings.

(6.) In a borough the expenses of one committee room and if the number of electors in the borough exceeds five hundred then of a number of committee rooms not exceeding the number of one committee room for every complete five hundred electors in the borough, and if there is a number of electors over and above any complete five hundred or complete five hundreds of electors, then of one committee room for such number, although not amounting to a complete five hundred.

(7.) In a county the expenses of a central committee room, and in addition of a number of committee rooms not exceeding in number one committee room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee room may be hired for every complete five hundred electors in such polling district over and above the first five hundred.

PART III.

Maximum for Miscellaneous Matters.

Expenses in respect of miscellaneous matters other than those mentioned in Part I. and Part II. of this schedule not exceeding in the whole the maximum amount of two hundred pounds, so nevertheless that such expenses are not incurred in respect of any matter or in any manner constituting an offence under this or any other Act, or in respect of any matter or thing, payment for which is expressly prohibited by this or any other Act.

PART IV.

Maximum Scale.

(1.) In a borough the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors on the register—	The maximum amount shall be—
Does not exceed 2,000	350*l.*
Exceeds 2,000	380*l.*, and an additional 30*l.* for every complete 1,000 electors above 2,000.

Provided that in Ireland if the number of electors on the register—	The maximum amount shall be—
Does not exceed 500	200*l.*
Exceeds 500, but does not exceed 1,000	250*l.*
Exceeds 1,000, but does not exceed 1,500	275*l.*

(2.) In a county the expenses mentioned above in Parts I., II., and III. of this schedule, other than personal expenses and sums paid to the returning officer for his charges, shall not exceed in the whole the maximum amount in the scale following:

If the number of electors on the register—	The maximum amount shall be—
Does not exceed 2,000	650*l.* in England and Scotland, and 500*l.* in Ireland.
Exceeds 2,000	710*l.* in England and Scotland, and 540*l.* in Ireland; and an additional 60*l.* in England and Scotland, and 40*l.* in Ireland, for every complete 1,000 electors above 2,000.

PART V.

General.

(1.) In the case of the boroughs of East Retford, Shoreham, Cricklade, Much Wenlock, and Aylesbury, the provisions of Parts II., III., and IV. of this schedule shall apply as if such borough were a county.

(2.) For the purposes of this schedule the number of electors shall be taken according to the enumeration of the electors in the register of electors.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses mentioned in Parts III. and IV. of this schedule shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where the same election agent is appointed by or on behalf of two or more candidates at an election, or where two or more candidates, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same sub-agents, clerks, messengers, or polling agents at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election.

Provided that—

(*a.*) The employment and use of the same committee room, sub-agent, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates.

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

SECOND SCHEDULE.

PART I.

FORM OF DECLARATIONS AS TO EXPENSES.

Form for Candidate.

I , having been a candidate at the election for the county [*or* borough] of on the day of , do hereby solemnly and sincerely declare that I have examined the return of election expenses [about to be] transmitted by my election agent [*or if the candidate is his own election agent,* "by me"] to the returning officer at the said election, a copy of which is now shown to me and marked , and to the best of my knowledge and belief that return is correct;

And I further solemnly and sincerely declare that, except as appears from that return, I have not, and to the best of my knowledge and belief no person, nor any club, society, or association, has, on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election;

money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

30. (1.) An order of discharge shall not release the bankrupt from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(2.) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3.) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

(4.) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

31. Where an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanor, and may be dealt with and punished as if he had been guilty of a misdemeanor under the Debtor's Act, 1869, and the provisions of that Act shall apply to proceedings under this section.

PART II.

Disqualifications of Bankrupt.

32. (1.) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

(*a.*) Sitting or voting in the House of Lords, or on any committee thereof, or being elected as a peer of Scotland or Ireland to sit and vote in the House of Lords;

(*b.*) Being elected to, or sitting or voting in, the House of Commons, or on any committee thereof;

(*c.*) Being appointed or acting as a justice of the peace;

(*d.*) Being elected to or holding or exercising the office of mayor, alderman, or councillor;

(*e.*) Being elected to or holding or exercising the office of guardian of the poor, overseer of the poor, member of a sanitary authority, or member of a school board, highway board, burial board, or select vestry.

(2.) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(*a.*) the adjudication of bankruptcy against him is annulled; or

(*b.*) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

(3.) The disqualifications imposed by this section shall extend to all parts of the United Kingdom.

33. (1.) If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall be vacant.

(2.) Where the seat of a member so becomes vacant, the Speaker, during a recess of the House, whether by prorogation or by adjournment, shall forthwith, after receiving the

certificate, cause notice thereof to be published in the London Gazette; and after the expiration of six days after the publication shall (unless the House has met before that day, or will meet on the day of the issue), issue his warrant to the clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.

(3.) The powers of the Act of the twenty-fourth year of the reign of King George the Third, chapter twenty-six, "to repeal so "much of two Acts made in the tenth and "fifteenth years of the reign of His present "Majesty as authorises the Speaker of the "House of Commons to issue his warrant to "the clerk of the Crown for making out "writs for the election of members to serve "in Parliament in the manner therein men-"tioned; and for substituting other provisions "for the like purposes," so far as those powers enable the Speaker to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker or during his absence out of the realm, shall extend to enable him to make the like nomination and appointment for issuing warrants, under the like circumstances and conditions, for the election of a member in the room of any member whose seat becomes vacant under this Act.

34. If a person is adjudged bankrupt whilst holding the office of mayor, alderman, councillor, guardian, overseer, or member of a sanitary authority, school board, highway board, burial board, or select vestry, his office shall thereupon become vacant.

35. (1.) Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication.

(2.) Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3.) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

36. For the purposes of this Part of this Act, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

37. (1.) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust, shall not be provable in bankruptcy.

(2.) A person having notice of any Act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3.) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4.) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5.) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6.) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7.) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed, before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed

shall be deemed to be a debt provable in bankruptcy.

(8.) "Liability" shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects amount fixed or unliquidated: as respects time, present or future, certain or dependent or any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

38. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

39. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

40. (1.) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts,—

(*a.*) All parochial or other local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before such time, and all assessed taxes, land tax, property or income tax, assessed on him up to the fifth day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment;

(*b.*) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds; and

(*c.*) All wages of any labourer or workman, not exceeding fifty pounds, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2.) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3.) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4.) Subject to the provisions of this Act all debts proved in the bankruptcy shall be paid pari passu.

(5.) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

(6.) Nothing in this section shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, "to amend the Law of Partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875.

41. (1.) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's

property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

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

42. (1.) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt, for the rent due to him from the bankrupt with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

(2.) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed fifty pounds, or of a deceased person who dies insolvent.

Property available for Payment of Debts.

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

44. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

(1.) Property held by the bankrupt on trust for any other person:

(2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(i.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and,

(ii.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and,

(iii.) All goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

Effect of Bankruptcy on antecedent Transactions.

45. (1.) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2.) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

46. (1.) Where the goods of a debtor are taken in execution, and before the sale thereof notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods to the official receiver or trustee under the order,

but the costs of the execution shall be a charge on the goods so delivered, and the official receiver or trustee may sell the goods or an adequate part thereof for the purpose of satisfying the charge.

(2.) Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

(3.) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy.

47. (1.) Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2.) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

(3.) "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

48. (1.) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2.) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

49. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

(*a.*) Any payment by the bankrupt to any of his creditors,

(*b.*) Any payment or delivery to the bankrupt,

(*c.*) Any conveyance or assignment by the bankrupt for valuable consideration,

(*d.*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration,

Provided that both the following conditions are complied with, namely—

(1.) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(2.) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Realisation of Property.

50. (1.) The trustee shall, as soon as may be, take possession of the deeds, books, and docu-

ments of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

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

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

(6.) Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

51. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

52. (1.) Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of levari facias founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy in respect of a debt provable in the bankruptcy, except a sequestration issued before the date of the receiving order by or on behalf of a person who at the time of the issue thereof had not notice of an act of bankruptcy committed by the bankrupt, and available for grounding a receiving order against him.

(2.) The bishop of the diocese in which the benefice is situate may, if he thinks fit, appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident, and the sequestrator shall pay the sum so appointed out of the profits of the benefice to the bankrupt, by quarterly instalments while he performs the duties of the benefice.

(3.) The sequestrator shall also pay out of the profits of the benefice the salary payable to any duly licensed curate of the church of the benefice in respect of duties performed by him as such during four months before the date of the receiving order not exceeding fifty pounds.

(4.) Nothing in this section shall prejudice the operation of the Ecclesiastical Dilapidations Act, 1871, or the Sequestration Act, 1871, or any mortgage or charge duly created under any Act of Parliament before the commencement of the bankruptcy on the profits of the benefice.

53. (1.) Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection the Court shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

(2.) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half pay, or pension, or to any

compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half pay, pension, or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct.

(3.) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half pay, or compensation of any bankrupt to be forfeited.

54. (1.) Until a trustee is appointed the official receiver shall be the trustee for the purposes of this Act, and immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2.) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

(3.) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(4.) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

55. (1.) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within three months after the first appointment of a trustee, disclaim the property.

Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within two months after he first became aware thereof.

(2.) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3.) A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just.

(4.) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5.) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6.) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in

the person therein named in that behalf without any conveyance or assignment for the purpose.

Provided always, that where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7.) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

56. Subject to the provisions of this Act, the trustee may do all or any of the following things:

(1.) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.

(2.) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:

(3.) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:

(4.) Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act:

(5.) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and sections fifty-six to seventy-three (both inclusive) of the Act of the session of the third and fourth years of the reign of King William the Fourth (chapter seventy-four) "for the abolition of fines and recoveries, "and for the substitution of more simple "modes of assurance," shall extend and apply to proceedings under this Act, as if those sections were here re-enacted and made applicable in terms to those proceedings.

57. The trustee may, with the permission of the committee of inspection, do all or any of the following things:

(1.) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same:

(2.) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt:

(3.) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection:

(4.) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit:

(5.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts:

(6.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on:

(7.) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy:

(8.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person:

(9.) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar

nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Distribution of Property.

58. (1.) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2.) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3.) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4.) Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5.) When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

59. (1.) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2.) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

60. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

61. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

62. When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

63. No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

64. (1.) The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

(2.) The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

65. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.

Official Receivers and Staff of Board of Trade.

66. (1.) The Board of Trade may, at any time after the passing of this Act, and from time to time, appoint such persons as they think fit to be official receivers of debtor's estates, and may remove any person so appointed from such office. The official receivers of debtor's estates shall act under the general authority and directions of the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

(2.) The number of official receivers so to be appointed, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, shall otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

(3.) Where more than one official receiver is attached to the Court, such one of them as is for the time being appointed by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

67. (1.) The Board of Trade may from time to time, by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

(2.) The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

68. (1.) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2.) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3.) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4.) The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

69. As regards the debtor, it shall be the duty of the official receiver—

(1.) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under the Debtors Act, 1869, or any amendment thereof, or under this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge.

(2.) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct.

(3.) To take such part as may be directed by the Board of Trade in the public examination of the debtor.

(4.) To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

70. (1.) As regards the estate of a debtor it shall be the duty of the official receiver—

(*a.*) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof:

(*b.*) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do:

(*c.*) To summon and preside at the first meeting of creditors:

(*d.*) To issue forms of proxy for use at the meetings of creditors:

(*e.*) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs:

(*f.*) To advertise the receiving order, the date of the creditors first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise:

(*g.*) To act as trustee during any vacancy in the office of trustee.

(2.) For the purpose of his duties as interim receiver or manager the official receiver shall have the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods.

Provided that when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3.) Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the Board from time to time direct.

71. The Board of Trade may, at any time after the passing of this Act, and from time to time, with the approval of the Treasury, appoint such additional officers, including official receivers, clerks, and servants (if any) as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

PART V.

Trustees in Bankruptcy.

Remuneration of Trustee.

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

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

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

(4.) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the taxing officer may allow.

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

Costs.

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

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

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

and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

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

Receipts, Payments, Accounts, Audit.

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

(2.) The account of the Accountant in Bankruptcy at the Bank of England shall be transferred to the Bankruptcy Estates Account.

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

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

Such account shall be opened and kept by the trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

The trustee shall make his payments into and out of such local bank in the prescribed manner.

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

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

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

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

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

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

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

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

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

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

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

(4.) When any such account has been audited one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

79. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

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

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

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

Release of Trustee.

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

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

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

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

Official Name.

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

Appointment and Removal.

84. (1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint-tenants of the property of the bankrupt.

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

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

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

(2.) If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Board may remove him from his office, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court.

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

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

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

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

Voting powers of Trustee.

88. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Control over Trustee.

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

(2.) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.

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

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

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

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

(2.) The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the

nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Distribution of Property.

58. (1.) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2.) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3.) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4.) Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5.) When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

59. (1.) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2.) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

60. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

61. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

62. When the trustee has realised all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

63. No action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

64. (1.) The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

(2.) The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

65. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.

Official Receivers and Staff of Board of Trade.

66. (1.) The Board of Trade may, at any time after the passing of this Act, and from time to time, appoint such persons as they think fit to be official receivers of debtor's estates, and may remove any person so appointed from such office. The official receivers of debtor's estates shall act under the general authority and directions of the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

(2.) The number of official receivers so to be appointed, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, shall otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

(3.) Where more than one official receiver is attached to the Court, such one of them as is for the time being appointed by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

67. (1.) The Board of Trade may from time to time, by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

(2.) The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

68. (1.) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2.) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3.) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4.) The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

69. As regards the debtor, it shall be the duty of the official receiver—

(1.) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under the Debtors Act, 1869, or any amendment thereof, or under this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge.

(2.) To make such other reports concerning the conduct of the debtor as the Board of Trade may direct.

(3.) To take such part as may be directed by the Board of Trade in the public examination of the debtor.

(4.) To take such part, and give such assistance, in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

70. (1.) As regards the estate of a debtor it shall be the duty of the official receiver—

(*a.*) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof:

which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the judge exceed in value two hundred pounds.

(2.) A court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

(3.) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had, with a jury and the trial may be had accordingly, in the High Court in the same manner as if it were the trial of an issue of fact in an action, and in the county court in the manner in which jury trials in ordinary cases are by law held in that court.

(4.) Where a receiving order has been made in the High Court under this Act, the judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against the bankrupt.

(5.) Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Board of Trade or by an official receiver or any other officer of the Board of Trade under any power conferred by this Act, the court may, on the application of the Board of Trade or an official receiver or other duly authorised person order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor, or other person; provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Judgment Debtors.

103. (1.) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtor's Act, 1869, now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

(2.) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the bankruptcy registrars of the High Court.

(3.) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4.) Every county court within the jurisdiction of which a judgment debtor is or resides shall have jurisdiction under section five of the Debtors Act, 1869, although the amount of the judgment debt may exceed fifty pounds.

(5.) Where, under section five of the Debtor's Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

(6.) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtor's Act, 1869.

Appeals.

104. (1.) Every court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.

(2.) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:

(*a.*) An appeal shall lie from the order of a county court to Her Majesty's Court of Appeal:

(*b.*) An appeal shall lie from the order of the High Court to Her Majesty's Court of Appeal:

(*c.*) An appeal shall, with the leave of Her Majesty's Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords:

(*d.*) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

105. (1.) Subject to the provisions of this Act and to general rules, the costs of and

incidental to any proceeding in Court under this Act shall be in the discretion of the Court: Provided that where any issue is tried by a jury the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried shall otherwise order.

(2.) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3.) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4.) Where by this Act or by general rules, the time for doing any Act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5.) Subject to general rules, the Court may in any matter take the whole or any part of the evidence either vivâ voce, or by interrogatories, or upon affidavit, or by commission abroad.

(6.) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

106. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

107. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

108. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

109. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

110. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

111. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

112. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution, and, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

113. Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

114. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

115. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Officers.

116. (1.) No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.

(2.) No registrar or official receiver or other officer attached to any such court shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the Court, and if he does so act he shall be liable to be dismissed from office.

Provided that nothing in this section shall affect the right of any registrar or officer appointed before the passing of this Act to act as solicitor by himself, his clerk, or partner to the extent permitted by section sixty-nine of the Bankruptcy Act, 1869.

Orders and Warrants of Court.

117. Any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the Court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the Court required to enforce it in a case of bankruptcy within its own jurisdiction.

118. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

119. (1.) Any warrant of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the Acts of Parliament in that behalf.

(2.) A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

120. Where the court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding one hundred pounds.

PART VII.

Small Bankruptcies.

121. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

(1.) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy:

(2.) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection:

(3.) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall

permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

122. (1.) Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.

(2.) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.

(3.) Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4.) Where it appears to the registrar of the county court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5.) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose; and any county court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6.) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

(7.) The order shall be carried into effect in such manner as may be prescribed by general rules.

(8.) Money paid into court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

(9.) Notice of the order shall be sent to the registrar of county court judgments, and be posted in the office of the county court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

(10.) Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11.) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12.) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13.) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14.) In computing the salary of a registrar under the County Courts Acts every creditor scheduled, not being a judgment creditor, shall count as a plaint.

PART VIII.

SUPPLEMENTAL PROVISIONS.

Application of Act.

123. A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under the Companies Act, 1862.

124. If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

125. (1.) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy.

(2.) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.

(3.) An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal personal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the court that the debtor committed an act of bankruptcy within three months prior to his decease.

(4.) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may in such case, on the application of any creditor, and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5.) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.

(6.) With the modifications herein-after mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7.) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(8.) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9.) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(10.) Unless the context otherwise requires, "court," in this section, means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; "creditor" means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(11.) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

126. No person, not being a trader within

the meaning of the Bankruptcy Act, 1861, shall be adjudged bankrupt in respect of a debt contracted before the passing of that Act.

General Rules.

127. (1.) The Lord Chancellor may from time to time, with the concurrence of the President of the Board of Trade, make, revoke, and alter general rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3.) Such general rules as may be required for purposes of this Act may be made at any time after the passing of this Act.

(4.) Provided always, that the said general rules, so made, revoked, or altered, shall not extend the jurisdiction of the court.

(5.) After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees, Salaries, Expenditure, and Returns.

128. (1.) The Lord Chancellor may, with the sanction of the Treasury, from time to time prescribe a scale of fees and per-centages to be charged for or in respect of proceedings under this Act; and the Treasury shall direct by whom and in what manner the same are to be collected, accounted for, and to what account they shall be paid. The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as they may see fit.

(2.) This section shall come into operation on the passing of this Act.

129. (1.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as he may think fit.

(2.) This section shall come into operation on the passing of this Act.

130. (1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of bankruptcy proceedings, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2.) The accounts of the Board of Trade, under this Act, shall be audited in such manner as the Treasury from time to time direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns, and give such information as the Treasury may from time to time direct.

131. The registrars and other officers of the courts acting in bankruptcy shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act, to be prepared and laid before both Houses of Parliament.

Evidence.

132. (1.) A copy of the London Gazette containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

(2.) The production of a copy of the London Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

133. (1.) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2.) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or pro-

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

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

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

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

(4.) When any such account has been audited one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

79. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

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

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

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

Release of Trustee.

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

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

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

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

Official Name.

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

Appointment and Removal.

84. (1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint-tenants of the property of the bankrupt.

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

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

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

(2.) If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Board may remove him from his office, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the High Court.

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

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

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

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

Voting powers of Trustee.

88. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Control over Trustee.

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

(2.) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.

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

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

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

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

(2.) The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the

trustee is engaged, and may, if the Board think fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy.

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

PART VI.

CONSTITUTION, PROCEDURE, AND POWERS OF COURT.

Jurisdiction.

92. (1.) The courts having jurisdiction in bankruptcy shall be the High Court and the county courts.

(2.) But the Lord Chancellor may from time to time, by order under his hand, exclude any county court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to the High Court, or to any other county court or courts, and may from time to time revoke or vary any order so made. The Lord Chancellor may, in like manner and subject to the like conditions, detach the district of any county court or any part thereof from the district and jurisdiction of the High Court.

(3.) The term "district," when used in this Act with reference to a county court, means the district of the court for the purposes of bankruptcy jurisdiction.

(4.) A county court which, at the commencement of this Act, is excluded from having bankruptcy jurisdiction, shall continue to be so excluded until the Lord Chancellor otherwise orders.

(5.) Periodical sittings for the transaction of bankruptcy business by county courts having jurisdiction in bankruptcy shall be holden at such times and at such intervals as the Lord Chancellor shall prescribe for each such court.

93. (1.) From and after the commencement of this Act the London Bankruptcy Court shall be united and consolidated with and form part of the Supreme Court of Judicature, and the jurisdiction of the London Bankruptcy Court shall be transferred to the High Court.

(2.) For the purposes of this union, consolidation, and transfer, and of all matters incidental thereto and consequential thereon, the Supreme Court of Judicature Act, 1873, as amended by subsequent Acts, shall, subject to the provisions of this Act, have effect as if the union, consolidation, and transfer had been effected by that Act, except that all expressions referring to the time appointed for the commencement of that Act shall be construed as referring to the commencement of this Act, and, subject as aforesaid, this Act and the said above-mentioned Acts shall be read and construed together.

94. (1.) Subject to general rules, and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and Acts amending it,—

(*a.*) All matters pending in the London Bankruptcy Court at the commencement of this Act; and

(*b.*) All matters which would have been within the exclusive jurisdiction of the London Bankruptcy Court, if this Act had not passed; and

(*c.*) All matters in respect of which jurisdiction is given to the High Court by this Act,

shall be assigned to such Division of the High Court as the Lord Chancellor may from time to time direct.

(2.) All such matters shall, subject as aforesaid, be ordinarily transacted and disposed of by or under the direction of one of the judges of the High Court, and the Lord Chancellor shall from time to time assign a judge for that purpose.

(3.) Provided that during vacation, or during the illness of the judge so assigned, or during his absence or for any other reasonable cause such matters, or any part thereof, may be transacted and disposed of by or under the directions of any judge of the High Court named for that purpose by the Lord Chancellor.

(4.) Subject to the provisions of this Act, the officers, clerks, and subordinate persons who are, at the commencement of this Act, attached to the London Bankruptcy Court, and their successors, shall be officers of the Supreme Court of Judicature, and shall be attached to the High Court.

(5.) Subject to general rules, all bankruptcy matters shall be entitled, "In bankruptcy."

95. (1.) If the debtor against or by whom a bankruptcy petition is presented has resided or carried on business within the London bankruptcy district as defined by this Act for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any county court, or is not resident in England, or if the petitioning creditor is unable to ascertain the residence of the debtor, the petition shall be presented to the High Court.

(2.) In any other case the petition shall be

presented to the county court for the district in which the debtor has resided or carried on business for the longest period during the six months immediately preceding the presentation of the petition.

(3.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong court.

96. The London Bankruptcy District shall, for the purposes of this Act, comprise the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any county court described as a metropolitan county court in the list contained in the Third Schedule.

97. (1.) Subject to the provisions of this Act, every court having original jurisdiction in bankruptcy shall have jurisdiction throughout England.

(2.) Any proceedings in bankruptcy may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one court to another court, or may by the like authority be retained in the court in which the proceedings were commenced, although it may not be the court in which the proceedings ought to have been commenced.

(3.) If any question of law arises in any bankruptcy proceeding in a county court which all the parties to the proceeding desire, or which one of them and the judge of the county court may desire, to have determined in the first instance in the High Court, the judge shall state the facts, in the form of a special case, for the opinion of the High Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

98. Subject to the provisions of this Act and to general rules the judge of the High Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

99. (1.) The registrars in bankruptcy of the High Court, and the registrars of a county court having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Court.

(2.) Subject to general rules limiting the powers conferred by this section, a registrar shall have power—

(*a.*) To hear bankruptcy petitions, and to make receiving orders and adjudications thereon:

(*b.*) To hold the public examination of debtors:

(*c.*) To grant orders of discharge where the application is not opposed:

(*d.*) To approve compositions or schemes of arrangement when they are not opposed:

(*e.*) To make interim orders in any case of urgency:

(*f.*) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers:

(*g.*) To hear and determine any unopposed or ex parte application:

(*h.*) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

(3.) The Registrars in bankruptcy of the High Court shall also have power to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.

(4.) A registrar shall not have power to commit for contempt of court.

(5.) The Lord Chancellor may from time to time by order direct that any specified registrar of a county court shall have and exercise all the powers of a bankruptcy registrar of the High Court.

100. A county court shall, for the purposes of its bankruptcy jurisdiction, in addition to the ordinary powers of the Court, have all the powers and jurisdiction of the High Court, and the orders of the Court may be enforced accordingly in manner prescribed.

101. Where any moneys or funds have been received by an official receiver or by the Board of Trade, and the Court makes an order declaring that any person is entitled to such moneys or funds the Board of Trade shall make an order for the payment thereof to the person so entitled as aforesaid.

102. (1.) Subject to the provisions of this Act, every court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or

which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Provided that the jurisdiction hereby given shall not be exercised by the county court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the judge exceed in value two hundred pounds.

(2.) A court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

(3.) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had, with a jury and the trial may be had accordingly, in the High Court in the same manner as if it were the trial of an issue of fact in an action, and in the county court in the manner in which jury trials in ordinary cases are by law held in that court.

(4.) Where a receiving order has been made in the High Court under this Act, the judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such judge of any action pending in any other division, brought or continued by or against the bankrupt.

(5.) Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Board of Trade or by an official receiver or any other officer of the Board of Trade under any power conferred by this Act, the court may, on the application of the Board of Trade or an official receiver or other duly authorised person order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor, or other person; provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Judgment Debtors.

103. (1.) It shall be lawful for the Lord Chancellor by order to direct that the jurisdiction and powers under section five of the Debtor's Act, 1869, now vested in the High Court, shall be assigned to and exercised by the judge to whom bankruptcy business is assigned.

(2.) It shall be lawful also for the Lord Chancellor in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the bankruptcy registrars of the High Court.

(3.) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4.) Every county court within the jurisdiction of which a judgment debtor is or resides shall have jurisdiction under section five of the Debtors Act, 1869, although the amount of the judgment debt may exceed fifty pounds.

(5.) Where, under section five of the Debtor's Act, 1869, application is made by a judgment creditor to a court, having bankruptcy jurisdiction, for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

(6.) General rules under this Act may be made for the purpose of carrying into effect the provisions of the Debtor's Act, 1869.

Appeals.

104. (1.) Every court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.

(2.) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:

(*a.*) An appeal shall lie from the order of a county court to Her Majesty's Court of Appeal:

(*b.*) An appeal shall lie from the order of the High Court to Her Majesty's Court of Appeal:

(*c.*) An appeal shall, with the leave of Her Majesty's Court of Appeal, but not otherwise, lie from the order of that Court to the House of Lords:

(*d.*) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

105. (1.) Subject to the provisions of this Act and to general rules, the costs of and

incidental to any proceeding in Court under this Act shall be in the discretion of the Court: Provided that where any issue is tried by a jury the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the judge before whom such issue is tried shall otherwise order.

(2.) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3.) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4.) Where by this Act or by general rules, the time for doing any Act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5.) Subject to general rules, the Court may in any matter take the whole or any part of the evidence either vivâ voce, or by interrogatories, or upon affidavit, or by commission abroad.

(6.) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

106. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

107. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

108. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

109. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

110. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

111. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

112. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution, and, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

113. Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

114. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

115. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Officers.

116. (1.) No registrar or other officer attached to any court having jurisdiction in bankruptcy shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.

(2.) No registrar or official receiver or other officer attached to any such court shall, during his continuance in office, either directly or indirectly, by himself, his clerk, or partner, act as solicitor in any proceeding in bankruptcy or in any prosecution of a debtor by order of the Court, and if he does so act he shall be liable to be dismissed from office.

Provided that nothing in this section shall affect the right of any registrar or officer appointed before the passing of this Act to act as solicitor by himself, his clerk, or partner to the extent permitted by section sixty-nine of the Bankruptcy Act, 1869.

Orders and Warrants of Court.

117. Any order made by a court having jurisdiction in bankruptcy in England under this Act shall be enforced in Scotland and Ireland in the courts having jurisdiction in bankruptcy in those parts of the United Kingdom respectively, in the same manner in all respects as if the order had been made by the Court hereby required to enforce it; and in like manner any order made by a court having jurisdiction in bankruptcy in Scotland shall be enforced in England and Ireland, and any order made by a court having jurisdiction in bankruptcy in Ireland shall be enforced in England and Scotland by the courts respectively having jurisdiction in bankruptcy in the part of the United Kingdom where the orders may require to be enforced, and in the same manner in all respects as if the order had been made by the Court required to enforce it in a case of bankruptcy within its own jurisdiction.

118. The High Court, the county courts, the courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the court seeking aid, with a request to another of the said courts, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the court to which the request is made, could exercise in regard to similar matters within their respective jurisdictions.

119. (1.) Any warrant of a court having jurisdiction in bankruptcy in England may be enforced in Scotland, Ireland, the Isle of Man, the Channel Islands, and elsewhere in Her Majesty's dominions, in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence against the laws of England may be executed in those parts of Her Majesty's dominions respectively in pursuance of the Acts of Parliament in that behalf.

(2.) A search warrant issued by a court having jurisdiction in bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

120. Where the court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding one hundred pounds.

PART VII.

SMALL BANKRUPTCIES.

121. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

(1.) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy:

(2.) There shall be no committee of inspection, but the official receiver may do with the permission of the Board of Trade all things which may be done by the trustee with the permission of the committee of inspection:

(3.) Such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall

permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

122. (1.) Where a judgment has been obtained in a county court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the county court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the county court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the court may think just.

(2.) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the county court may, if it thinks fit, set aside the order.

(3.) Where, in the opinion of the county court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the county court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter county court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4.) Where it appears to the registrar of the county court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5.) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a county court, except with the leave of that county court, and on such terms as that court may impose; and any county court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6.) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

(7.) The order shall be carried into effect in such manner as may be prescribed by general rules.

(8.) Money paid into court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

(9.) Notice of the order shall be sent to the registrar of county court judgments, and be posted in the office of the county court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

(10.) Any creditor of the debtor, on proof of his debt before the registrar, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11.) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12.) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the registrar, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13.) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

(14.) In computing the salary of a registrar under the County Courts Acts every creditor scheduled, not being a judgment creditor, shall count as a plaint.

PART VIII.

SUPPLEMENTAL PROVISIONS.

Application of Act.

123. A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under the Companies Act, 1862.

124. If a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

125. (1.) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy.

(2.) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.

(3.) An order of administration under this section shall not be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal personal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the court that the debtor committed an act of bankruptcy within three months prior to his decease.

(4.) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate, but that court may in such case, on the application of any creditor, and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5.) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act.

(6.) With the modifications herein-after mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7.) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(8.) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9.) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(10.) Unless the context otherwise requires, "court," in this section, means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; "creditor" means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(11.) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

126. No person, not being a trader within

the meaning of the Bankruptcy Act, 1861, shall be adjudged bankrupt in respect of a debt contracted before the passing of that Act.

General Rules.

127. (1.) The Lord Chancellor may from time to time, with the concurrence of the President of the Board of Trade, make, revoke, and alter general rules for carrying into effect the objects of this Act.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3.) Such general rules as may be required for purposes of this Act may be made at any time after the passing of this Act.

(4.) Provided always, that the said general rules, so made, revoked, or altered, shall not extend the jurisdiction of the court.

(5.) After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees, Salaries, Expenditure, and Returns.

128. (1.) The Lord Chancellor may, with the sanction of the Treasury, from time to time prescribe a scale of fees and per-centages to be charged for or in respect of proceedings under this Act; and the Treasury shall direct by whom and in what manner the same are to be collected, accounted for, and to what account they shall be paid. The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as they may see fit.

(2.) This section shall come into operation on the passing of this Act.

129. (1.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as he may think fit.

(2.) This section shall come into operation on the passing of this Act.

130. (1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of bankruptcy proceedings, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2.) The accounts of the Board of Trade, under this Act, shall be audited in such manner as the Treasury from time to time direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns, and give such information as the Treasury may from time to time direct.

131. The registrars and other officers of the courts acting in bankruptcy shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act, to be prepared and laid before both Houses of Parliament.

Evidence.

132. (1.) A copy of the London Gazette containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

(2.) The production of a copy of the London Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

133. (1.) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2.) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or pro-

ceedings had thereat to have been duly passed or had.

134. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

135. Subject to general rules, any affidavit to be used in a bankruptcy court may be sworn before any person authorised to administer oaths in the High Court, or in the Court of Chancery of the county palatine of Lancaster, or before any registrar of a bankruptcy court, or before any officer of a bankruptcy court authorised in writing on that behalf by the judge of the Court, or, in the case of a person residing in Scotland or in Ireland, before a judge ordinary, magistrate, or justice of the peace, or, in the case of a person who is out of the Kingdom of Great Britain and Ireland, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as aforesaid by a British minister or British consul, or by a notary public).

136. In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

137. Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing the Court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of the seal, and of the signature of the judge or registrar of any such court, in all legal proceedings.

138. A certificate of the Board of Trade that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

139. Where by this Act an appeal to the High Court is given against any decision of the Board of Trade, or of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

140. (1.) All documents purporting to be orders or certificates made or issued by the Board of Trade, and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade shall be conclusive evidence of the fact so certified.

Time.

141. (1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter Week, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

Notices.

142. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Formal Defects.

143. (1.) No proceeding in bankruptcy shall be invalidated by any formal defect or by any

irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court.

(2.) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

Stamp Duty.

144. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

Executions.

145. Where the sheriff sells the goods of a debtor under an execution for a sum exceeding twenty pounds (including legal incidental expenses), the sale shall, unless the court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

146. (1.) The sheriff shall not under a writ of elegit deliver the goods of a debtor nor shall a writ of elegit extend to goods.

(2.) No writ of levari facias shall hereafter be issued in any civil proceeding.

Bankrupt Trustee.

147. Where a bankrupt is a trustee within the Trustee Act, 1850, section thirty-two of that Act shall have effect so as to authorise the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

Corporations, &c.

148. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or curator bonis.

Construction of former Acts, &c.

149. (1.) Where in any Act of Parliament, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.

(2.) Where by any Act or instrument, reference is made to the Bankruptcy Act, 1869, the Act or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act.

150. Save as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

151. Nothing in this Act, or in any transfer of jurisdiction effected thereby shall take away or affect any right of audience that any person may have had at the commencement of this Act, and all solicitors or other persons who had the right of audience before the Chief Judge in Bankruptcy shall have the like right of audience in bankruptcy matters in the High Court.

152. Nothing in this Act shall affect the provisions of the Married Women's Property Act, 1882.

Transitory Provisions.

153. (1.) The existing comptroller in bankruptcy and his officers, clerks, and servants shall not be attached to the Supreme Court, but shall in all respects act under the directions of the Board of Trade.

(2.) The existing official assignee, provisional and official assignee of the estates and effects of insolvent debtors, and receiver of the Insolvent Debtors' Court, together with his staff, the official solicitors and the messenger in bankruptcy, together with his staff, and the accountant in bankruptcy and his staff, and also such other officers and clerks of the

London Bankruptcy Court as the Lord Chancellor, with the concurrence of the Board of Trade, may at any time select, shall be transferred to and become officers of the Board of Trade; provided that the Board of Trade, with the concurrence of the Lord Chancellor, may at any time transfer any such officer or clerk from the Board of Trade to the Supreme Court.

(3.) Subject to the provisions of this Act they shall hold their offices by the same tenure and on the same terms and conditions, and be entitled to the same rights in respect of salary and pension as heretofore, and their duties shall, except so far as altered with their own consent, be such as in the opinion of the Board of Trade are analogous to those performed by them at the commencement of this Act.

(4.) On the occurrence, at any time after the passing of this Act, of any vacancy in the office of any of the said persons the Board of Trade may, with the approval of the Treasury, make such arrangement as they think fit, either for the abolition of the office, or for its continuance under modified conditions, and may appoint a fit person to perform the remaining duties thereof, and the person so appointed shall have all the powers and authorities of the person who is at the passing of this Act the holder of such office; and all estates, rights, and effects vested at the time of the vacancy in any such officer shall by virtue of such appointment become vested in the person so appointed, and the like appointment on a vacancy shall be made, and the like vesting shall have effect from time to time as occasion requires: Provided that any person so appointed shall be an officer of the Board of Trade, and shall in all respects act under the directions of the Board of Trade.

(5.) The Board of Trade may, with the approval of the Lord Chancellor, from time to time direct that any duties or functions, not of a judicial character, relating to any bankruptcies, insolvencies, or other proceedings under any Act prior to the Bankruptcy Act, 1869, which were, at the time of the passing of this Act, performed or exercised by registrars of county courts, shall devolve on and be performed by the official receiver, and thereupon all powers and authorities of the registrar, and all estates, rights, and effects vested in the registrar shall become vested in the official receiver.

154. (1.) If the Lord Chancellor is of opinion that any office attached to the London Bankruptcy Court at the passing of this Act is unnecessary, he may, with the concurrence of the Treasury, at any time after the passing of this Act, abolish the office.

(2.) The Treasury may, on the petition of any person whose office or employment is abolished by or under this Act, on the commencement of this Act or on any other event, inquire whether any, and if any, what compensation ought to be made to the petitioner, regard being had to the conditions on which his appointment was made, the nature of his office or employment, and the duration of his service; and if they think that his claim to compensation is established, may award to him, out of moneys to be provided by Parliament, such compensation, by annuity or otherwise, as under the circumstances of the case they think just and reasonable.

(3.) The Board of Trade may, under the like conditions and on the like terms, abolish any of the offices in the last preceding section mentioned.

155. (1.) The Lord Chancellor or Board of Trade may, at any time after the passing of this Act appoint any person whose office is abolished under this Act to some other office under this Act, the duties of which he is in the opinion of the Lord Chancellor or Board competent to perform. Provided that the person so appointed shall during his tenure of the new office receive an amount of annual remuneration which, together with the compensation for the loss of the abolished office, is not less than the emoluments of the abolished office.

(2.) When, after the commencement of this Act, any officer is continued in the performance of any duties relating to bankruptcy or insolvency, under any previous Act, the Lord Chancellor, or, as the case may be, the Board of Trade may order that such officer may, in addition to such duties, perform any analogous duties under this Act, without being entitled to receive any additional remuneration.

156. Every person appointed to any office or employment under this Act shall in the first instance be selected from the persons (if any) whose office or employment is abolished under this Act, unless in the opinion of the Lord Chancellor, or in the case of persons to be appointed by the Board of Trade, of that Board, none of such persons are fit for such office or employment: Provided that the person so appointed or employed shall during his tenure of the new office be entitled to receive an amount of remuneration which, together with the compensation (if any) for loss of the abolished office, shall be not less than the emolument of the abolished office.

157. If any person to whom a compensation annuity is granted under this Act accepts any public employment, he shall, during the con-

tinuance of that employment, receive only so much (if any) of that annuity as, with the remuneration of that employment, will amount to a sum not exceeding the salary or emoluments in respect of the loss whereof the annuity was awarded, and if the remuneration of that employment is equal to or greater than such salary or emoluments the annuity shall be suspended so long as he receives that remuneration.

158. The registrars, clerks, and other persons holding their offices at the passing of this Act who may be continued in their offices, shall, on their retirement therefrom, be allowed such superannuation as they would have been entitled to receive if this Act had not been passed, and they had continued in their offices under the existing Acts.

159. In every liquidation by arrangement under the Bankruptcy Act, 1869, pending at the commencement of this Act, if at any time after the commencement of this Act there is no trustee acting in the liquidation by reason of death, or for any other cause, such of the official receivers of bankrupts estates as is appointed by the Board of Trade for that purpose shall become and be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly; but this provision shall not prejudice the right of the creditors in the liquidation to appoint a new trustee, in manner directed by the Bankruptcy Act, 1869, or the rules thereunder; and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee.

The provisions of this Act with respect to the duties and responsibilities of and accounting by a trustee in a bankruptcy under this Act shall apply, as nearly as may be, to a trustee acting under the provisions of this section.

160. Where a bankruptcy or liquidation by arrangement under the Bankruptcy Act, 1869, has been or is hereafter closed, any property of the bankrupt or liquidating debtor which vested in the trustee and has not been realised or distributed shall vest in such person as may be appointed by the Board of Trade for that purpose, and he shall thereupon proceed to get in, realise, and distribute the property in like manner and with and subject to the like powers and obligations as far as applicable, as if the bankruptcy or liquidation were continuing, and he were acting as trustee thereunder.

161. In every bankruptcy under the Bankruptcy Act, 1869, pending at the commencement of this Act, where a registrar of the London Bankruptcy Court or of any county court is or would hereafter but for this enactment become the trustee under the bankruptcy, such of the official receivers of bankrupts estates as may be appointed by the Board of Trade for that purpose shall from and after the commencement of this Act be the trustee in the place of the registrar, and the property of the bankrupt shall pass to and vest in the official receiver accordingly.

Unclaimed Funds or Dividends.

162. (1.) Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2.) (*a.*) Where, after the passing of this Act, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the Fourth Schedule, or any petition, resolution, deed, or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(*b.*) The Board of Trade may at any time order any such trustee or other person to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

(*c.*) The Board of Trade, with the concurrence of the Treasury, may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section any

court having jurisdiction in bankruptcy shall have and at the instance of the person so appointed, or of the Board of Trade, may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3.) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4.) Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account pursuant to this section may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the Board of Trade in respect of his claim may appeal to the High Court.

(5.) The Board of Trade may at any time after the passing of this Act open the account at the Bank of England referred to in this Act as the Bankruptcy Estates Account.

Punishment of Fraudulent Debtors.

163. (1.) Sections eleven and twelve of the Debtors Act, 1869, relating to the punishment of fraudulent debtors and imposing a penalty for absconding with property, shall have effect as if there were substituted therein for the words "if after the presentation of a bankruptcy petition against him," the words, "if after the presentation of a bankruptcy petition by or against him."

(2.) The provisions of the Debtors Act, 1869, as to offences by bankrupts shall apply to any person whether a trader or not in respect of whose estate a receiving order has been made as if the term "bankrupt" in that Act included a person in respect of whose estate a receiving order had been made.

164. Section sixteen of the Debtors Act, 1869, shall be construed and have effect as if the term "a trustee in any bankruptcy" included the official receiver of a bankrupt's estate, and shall apply to offences under this Act as well as to offences under the Debtors Act, 1869.

165. (1.) Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanor in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

(2.) For the purpose of committing the bankrupt or such other person for trial the Court shall have all the powers of a stipendiary magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

Nothing in this sub-section shall be construed as derogating from the powers of jurisdiction of the High Court.

166. Where the Court orders the prosecution of any person for any offence under the Debtors Act, 1869, or Acts amending it, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Director of Public Prosecutions to institute and carry on the prosecution.

167. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Interpretation.

168. (1.) In this Act, unless the context otherwise requires—

"The Court" means the Court having jurisdiction in bankruptcy under this Act:

"Affidavit" includes statutory declarations, affirmations, and attestations on honour:

"Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made:

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy:

"Gazetted" means published in the London Gazette:

"General rules" include forms:

"Goods" includes all chattels personal:

"High Court" means Her Majesty's High Court of Justice:

"Local bank" means any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken:

"Oath" includes affirmation, statutory declaration, and attestation on honour:

"Ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution:

"Person" includes a body of persons corporate or unincorporate:
"Prescribed" means prescribed by general rules within the meaning of this Act:
"Property" includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in England or elsewhere; also, obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined:
"Resolution" means ordinary resolution:
"Secured creditor" means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor:
"Schedule" means schedule to this Act:
"Sheriff" includes any officer charged with the execution of a writ or other process:
"Special resolution" means a resolution decided by a majority in number and three fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution:
"Treasury" means the Commissioners of Her Majesty's Treasury:
"Trustee" means the trustee in bankruptcy of a debtor's estate.

(2.) The schedules to this Act shall be construed and have effect as part of this Act.

Repeal.

169. (1.) The enactments described in the Fifth Schedule are hereby repealed as from the commencement of this Act to the extent mentioned in that Schedule.

(2.) The repeal effected by this Act shall not affect—

(*a.*) anything done or suffered before the commencement of this Act under any enactment repealed by this Act; nor

(*b.*) any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under any enactment so repealed; nor

(*c.*) any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed or to be committed against any enactment so repealed; nor

(*d.*) the institution or continuance of any proceeding or other remedy, whether under any enactment so repealed, or otherwise, for ascertaining any such liability or disqualification, or enforcing or recovering any such fine, forfeiture, or punishment, as aforesaid.

(3.) Notwithstanding the repeal effected by this Act, the proceedings under any bankruptcy petition, liquidation by arrangement, or composition with creditors under the Bankruptcy Act, 1869, pending at the commencement of this Act shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the Bankruptcy Act, 1869, shall, except as aforesaid, apply thereto, as if this Act had not passed.

170. After the passing of this Act no composition or liquidation by arrangement under sections 125 and 126 of the Bankruptcy Act, 1869, shall be entered into or allowed without the sanction of the court or registrar having jurisdiction in the matter; such sanction shall not be granted unless the composition or liquidation appears to the court or registrar to be reasonable and calculated to benefit the general body of creditors.

SCHEDULES.

THE FIRST SCHEDULE.

MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

2. The official receiver shall summon the meeting by giving not less than seven days notice of the time and place thereof in the London Gazette and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think

fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested in writing by one fourth in value of the creditors.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

7. The official receiver, or some person nominated by him shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection.

19. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remune-

ration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

21. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

24. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

THE SECOND SCHEDULE.

Proof of Debts.

Proof in ordinary Cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the costs of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by secured Creditors.

9. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realise or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (*a.*) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(*b.*) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by

public auction the creditor, or the trustee on behalf of the estate, may bid or purchase.

(c.) Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made bonâ fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of Rule 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

Proof in respect of Distinct Contracts.

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

THE THIRD SCHEDULE.

LIST OF METROPOLITAN COUNTY COURTS.

The Bloomsbury County Court of Middlesex.
The Bow County Court of Middlesex.
The Brompton County Court of Middlesex.
The Clerkenwell County Court of Middlesex.
The Lambeth County Court of Surrey.
The Marylebone County Court of Middlesex.
The Shoreditch County Court of Middlesex.
The Southwark County Court of Surrey.
The Westminster County Court of Middlesex.
The Whitechapel County Court of Middlesex.

THE FOURTH SCHEDULE.

STATUTES RELATING TO UNCLAIMED DIVIDENDS.

Session and Chapter.	Title of Act.
7 & 8 Vict. c. 70	An Act for facilitating arrangements between debtors and creditors.
12 & 13 Vict. c. 106	The Bankruptcy Law Consolidation Act, 1849.
24 & 25 Vict. c. 134	The Bankruptcy Act, 1861.
32 & 33 Vict. c. 71	The Bankruptcy Act, 1869.

THE FIFTH SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND.

13 Edw. 1 c. 18. in part.	The statutes of Westminster the Second, chapter eighteen. Execution either by levying of the lands and goods, or by delivery of goods and half the land; at the choice of the creditor; in part; namely, the words "all the chattels of the debtor saving only his oxen and beasts of the plough, and".
32 & 33 Vict. c. 62. in part.	The Debtor's Act, 1869. in part; namely, Sub-section (*b*) of section five, and Sections twenty-one and twenty-two.
32 & 33 Vict. c. 71.	The Bankruptcy Act, 1869.

32 & 33 Vict. c. 83. in part.	-	The Bankruptcy Repeal and Insolvent Court Act, 1869. in part; namely, Section nineteen.
33 & 34 Vict. c. 76.	-	The Absconding Debtors Act, 1870.
34 & 35 Vict. c. 50.	-	The Bankruptcy Disqualification Act, 1871. Except sections six, seven, and eight.
38 & 39 Vict. c. 77. in part.	-	The Supreme Court of Judicature Act, 1875. in part; namely, Sections nine and thirty-two.

CHAP. 53.

Factory and Workshop Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Law relating to certain Factories and Workshops.
(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Factory and Workshop Act, 1883.

White Lead Factories.

2. After the thirty-first day of December one thousand eight hundred and eighty-three it shall not be lawful to carry on a white lead factory unless such factory is certified by an inspector to be in conformity with this Act.

3. (1.) A white lead factory shall not be certified to be in conformity with this Act unless the scheduled conditions, that is to say, the conditions specified in the schedule to this Act, as amended by any order of a Secretary of State under this section, and including any conditions added by any such order, have been complied with.

(2.) A Secretary of State may at any time, by writing under his hand, revoke, alter, add to, or modify all or any of the conditions specified in the schedule to this Act.

4. Within a reasonable time after written application in that behalf, addressed to the chief inspector of factories by the occupier of any white lead factory, such factory shall be inspected by an inspector, and if he finds that the scheduled conditions have been complied with he shall certify to a Secretary of State that the factory is in conformity with this Act; and a copy of the certificate, signed by the inspector, shall be forthwith given to the occupier.

5. If at any time after a white lead factory has been certified to be in conformity with this Act it appears to an inspector that the factory is not kept in conformity with this Act, he shall forthwith give notice to the occupier specifying in what respects default is made; and unless the default is within a reasonable time after the notice remedied to the satisfaction of an inspector, a Secretary of State may, if he sees fit, withdraw the certificate until the default is remedied.

6. The occupier of a white lead factory which after the thirty-first day of December one thousand eight hundred and eighty-three is carried on without a certificate under this Act shall, for every day during which it is so carried on, be liable on summary conviction to a fine not exceeding two pounds.

7. (1.) There shall be established not later than the first day of January one thousand eight hundred and eighty-four, in every white lead factory, such special rules for the guidance of the persons employed therein as may appear best calculated to enforce the use by them of the requirements provided under this Act, and generally to prevent injury to health in the course of their employment.

(2.) Such special rules when established shall be observed in and about the factory as if they were enacted in this Act.

(3.) If any person who is bound to observe the special rules established for any white lead factory acts in contravention of or fails to comply with any of such special rules he shall be liable on summary conviction to a fine not exceeding two pounds; and the occupier of such factory shall also be liable on summary conviction to a fine not exceeding five pounds, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules, to prevent such contravention or non-compliance.

8. (1.) The occupier of every white lead factory shall frame and transmit to the chief inspector, for approval by a Secretary of State, special rules for such factory within three months after the passing of this Act, or within three months after the opening for work of any white lead factory not opened for work before the passing of this Act.

(2.) The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the factory to the chief inspector, shall, during not less than two weeks before such rules are transmitted to the chief inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the factory; and a certificate that such rules and notice have been so posted up shall be sent to the chief inspector, with the rules signed by the person sending the same.

(3.) The Secretary of State may approve such rules either with or without any omission alteration or addition, and on his approval being signified in such manner as he may think fit the special rules as approved shall be established. But no such omission alteration or addition shall be made without sufficient notice to the occupier to enable him to state his objections, if any, thereto.

9. (1.) After special rules are established under this Act in any white lead factory the occupier of such factory may from time to time propose in writing to the chief inspector, for the approval of a Secretary of State, any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

(2.) A Secretary of State may at any time propose to the occupier of any white lead factory any new special rules or any amendments to the special rules; and such new rules or amendments shall, as settled after time given for consideration of the objections, if any, of the occupier, be established as from a date to

be fixed by a Secretary of State and specified therein.

10. If the occupier of any white lead factory to which this Act applies makes any false statement with respect to the posting up of the special rules and notices, he shall be liable on summary conviction to a fine not exceeding twenty pounds; and if special rules for any white lead factory are not transmitted within the time limited by this Act to the chief inspector, for the approval of a Secretary of State, such Secretary may by writing under his hand establish for that factory such special rules as he may see fit, to come into operation as from a date to be fixed by him and specified therein.

11. (1.) Printed copies of all special rules for the time being in force in any white lead factory under this Act shall be kept posted up in legible characters in conspicuous places in the factory where they may be conveniently read by the persons employed.

(2.) A printed copy of such rules shall be given by the occupier to any person affected thereby on his or her application.

(3.) If the occupier of any white lead factory fails to comply with any provision of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

12. Every person who pulls down, injures, or defaces any proposed special rules, notice, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be liable on summary conviction to a fine not exceeding five pounds.

Explanation of certain Provisions of Factory, &c. Act, 1878.

13. It is hereby declared that—

(*a.*) Section fifty-three of the Factory and Workshop Act, 1878, only authorises overtime employment of young persons or women to take place in any factory or workshop on forty-eight days in the whole, in any twelve months; and that in reckoning such period of forty-eight days, every day on which any young person or woman has been employed overtime is to be taken into account; and that

(*b.*) Section fifty-six of the said Act only authorises overtime employment of women to take place in any factory or workshop on ninety-six days in the whole in any twelve months, and that in reckoning such period of ninety-six days, every day on which any woman has been employed overtime is to be taken into account.

14. Notwithstanding anything in section twelve or section fourteen of the Factory and Workshop Act, 1878, the period of employment for a child in an afternoon set in a factory or workshop, where the dinner-time does not begin before two o'clock in the afternoon, may begin at noon; provided that in such case the period of employment in the morning set shall end at noon.

Bakehouses.

15. It shall not be lawful to let or suffer to be occupied as a bakehouse, or to occupy as a bakehouse, any room or place which was not so let or occupied before the first day of June one thousand eight hundred and eighty-three, unless the following regulations are complied with:

(i.) No watercloset, earthcloset, privy, or ashpit shall be within or communicate directly with the bakehouse;

(ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a watercloset;

(iii.) No drain or pipe for carrying off fœcal or sewage matter shall have an opening within the bakehouse.

Any person who lets or suffers to be occupied or who occupies any room or place as a bakehouse in contravention of this section shall be liable, on summary conviction, to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

16. Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a local authority that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction, not exceeding five pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court, may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the

occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

17. (1.) As respects every retail bakehouse, the provisions of this part of this Act and of sections three, thirty-three, thirty-four, and thirty-five of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, overcrowding, and other sanitary conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection, taking legal proceedings and otherwise, as an inspector under the Factory and Workshop Act, 1878.

(2.) If any child, young person, or woman is employed in any retail bakehouse, and the medical officer of the local authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

(3.) An inspector under the Factory and Workshop Act, 1878, shall not, as respects any retail bakehouse, exercise the powers of entry and inspection conferred by that Act, unless he has notice or reasonable cause to believe that a child, young person, or woman is employed therein.

18. This Act shall be construed as one with the Factory and Workshop Act, 1878; and in this Act, unless the context otherwise requires,—

The expression "white lead factory" includes every factory and workshop in which the manufacture of white lead is carried on:

The expression "retail bakehouse" means any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale but by retail in some shop or place occupied together with such bakehouse:

The expression "local authority" means, as respects the City of London and the liberties thereof, the Commissioners of Sewers; as respects the parishes and districts mentioned in the Schedules A. and B. annexed to the Metropolis Management Act, 1855, and any parish to which the said Act may be extended by Order in Council in manner in the said Act provided, the vestries and district Boards elected under the said Act; and as respects any urban sanitary district, the urban sanitary authority, and as respects any rural sanitary district, the rural sanitary authority, within the meaning of the Public Health Act, 1875.

Application of Act to Scotland and Ireland.

19. In the application of this Act to Scotland the expression "local authority" means the local authority within the meaning of the Public Health (Scotland) Act, 1867.

20. In the application of this Act to Ireland the expression "local authority" means, as regards any urban sanitary district, the urban sanitary authority, and as regards any rural sanitary district the rural sanitary authority, within the meaning of the Public Health (Ireland) Act, 1878.

THE SCHEDULE.

CONDITIONS OF OBTAINING CERTIFICATE.

(1.) The stacks and stoves in the factory must be efficiently ventilated.

(2.) There must be provided for the use of the persons employed in the factory sufficient means of frequently washing hands and feet, with a sufficient supply of hot and cold water, soap, towels, and brushes.

(3.) There must be provided in addition, for the use of women employed in the factory, sufficient baths, with a sufficient supply of hot and cold water, soap, towels, and brushes.

(4.) There must be provided for the use of the persons employed in the factory (but not in any part of the factory where any work is carried on) a proper room for meals.

(5.) There must be provided for every person working at any tank an overall suit with head covering, and for every person working at any white-bed a respirator or covering for the mouth and nostrils and head covering, and for every person working at any dry stove or rollers an overall suit with head covering, and a respirator or covering for the mouth and nostrils.

(6.) There must be accessible to all persons employed in the factory a sufficient supply of acidulated drink.

CHAP. 54.

National Debt Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make further provision respecting the National Debt, and the Investment of Moneys in the hands of the National Debt Commissioners on account of Savings Banks, and otherwise. (25th August 1883.)

WHEREAS by the Sinking Fund Act, 1875, a fixed annual sum of twenty-eight million pounds was charged on the Consolidated Fund as the permanent annual charge for the national debt:

And whereas various annuities payable out of such permanent annual charge will expire in the year one thousand eight hundred and eighty-five:

And whereas the National Debt Commissioners hold large sums of perpetual annuities on account of trustee savings banks, and Post Office savings banks, and in pursuance of divers Acts, and lastly of the Savings Bank Investment Act, 1866, certain portions of those perpetual annuities have been converted into terminable annuities ending in the year one thousand eight hundred and eighty-five:

And whereas it is proposed to convert certain other portions of the said perpetual annuities into such terminable annuities as herein-after mentioned payable out of the permanent annual charge for the National Debt:

And whereas under the Savings Banks Investment Act, 1866, the Treasury have power from time to time to convert into terminable annuities such amount of perpetual annuities held by the National Debt Commissioners on account of post office savings banks as the Treasury think expedient, and it is expedient for the purpose of carrying into effect the said proposal to confer such power as herein-after mentioned to convert into terminable annuities perpetual annuities held by the said Commissioners on account of both trustee and post office savings banks:

And whereas in pursuance of the Chancery Funds Act, 1872, perpetual annuities to an amount exceeding sixty-one million pounds capital stock were on the thirty-first day of December one thousand eight hundred and eighty-two standing to the account of "the "Paymaster General, for the time being on "behalf of the Court of Chancery," in trust for the suitors of the High Court of Justice, in accordance with the said Act.

And whereas it is expedient to convert a portion of the said perpetual annuities held by the Paymaster General, not exceeding in the whole forty million pounds capital stock, into terminable annuities ending within a period not exceeding twenty years, subject to such provision as herein-after mentioned for the security of the suitors:

And whereas it is expedient to provide for the adjustment from time to time of the terminable annuities into which under this Act, or under the Savings Bank Investment Act, 1866, any perpetual annuities shall be converted, so as to prevent any loss or gain arising to the said Commissioners or the Paymaster General from such conversion:

And whereas it is expedient to make further provision respecting the securities held by the National Debt Commissioners:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the National Debt Act, 1883.

2. (1.) The Treasury shall from time to time in manner provided by this Act, convert into terminable annuities of such amounts as herein-after mentioned such amount of perpetual annuities held by the National Debt Commissioners on account of trustee savings banks, and of post office savings banks, or on either of those accounts, as may be of equivalent capital value.

(2.) The first terminable annuities created in pursuance of this section shall amount in the whole to three million six hundred thousand pounds, and shall be divided into three sets, each of which sets shall be for annual sums amounting in the whole to one million two hundred thousand pounds.

(3.) The annuities in one of such sets shall be for periods of five years, and shall terminate within five years from the thirty-first day of March one thousand eight hundred and eighty-four; the annuities in another of such sets shall be for periods of ten years, and shall terminate within ten years from the same day; and the annuities in the third of such sets shall be for periods of fifteen years, and shall terminate within fifteen years from the same day.

(4.) On the expiration of any terminable annuity created in pursuance of this section, whether originally or on the expiration of another annuity, a new annuity shall be created (by conversion of a sufficient portion of the said perpetual annuities) for a period of fifteen years from the date of such expiration, and of such annual amount as is equivalent to the expiring terminable annuity with the addition of a sum equal to the annual interest on the perpetual annuities converted into the new annuity. Provided that the power under this section of creating any annuity shall not unless continued by Parliament be exercised after the thirty-first day of March, one thousand nine hundred and four.

(5.) The annuities created under this section may be increased above or reduced below the amounts above named for the purpose of such adjustment as is provided by this Act.

3. The Treasury may, in manner provided by this Act, from time to time convert such amount of perpetual annuities standing to the account of the Paymaster General as the Treasury think expedient, not exceeding in the whole forty million pounds capital stock, into such terminable annuities for periods not exceeding twenty years as will terminate within twenty years from the thirty-first day of March one thousand eight hundred and eighty-four, and may be of equivalent capital value.

4. In case of the conversion under this Act, of any perpetual annuities into a terminable annuity, the Treasury shall, at the cost of the Consolidated Fund, secure the National Debt Commissioners and the Paymaster General, as the case requires, against any loss arising by means of such conversion, and for the purpose of preventing any loss or gain arising to the National Debt Commissioners or the Paymaster General from such conversion, the following provisions shall have effect:

(*a.*) On any such conversion of perpetual annuities into a terminable annuity, the National Debt Commissioners shall cause a table to be framed and certified under the hands of the Controller General or Assistant Controller and of the Actuary of the National Debt Office, which table shall show, according to the basis on which the terminable annuity is calculated, the particulars herein-after mentioned respecting the application of the terminable annuity; and at least once in every five years, and oftener if so required by the Lord Chancellor or the Treasury, the National Debt Commissioners shall cause to be submitted to the Treasury an account with the particulars herein-after mentioned showing the result of such application of the terminable annuity; and the Treasury shall in manner provided by this Act adjust, as nearly as practicable, the terminable annuity so as to bring the result into conformity with the table, and a return of any such adjustment shall be laid before both Houses of Parliament.

(*b.*) Where the perpetual annuities converted were held by the Paymaster General on behalf of the High Court of Justice, the table shall show the amount of perpetual annuities to be periodically replaced by means of the terminable annuity, and the account of the result shall show the amount of perpetual annuities actually so replaced, and the table and account shall be submitted to the Lord Chancellor before any adjustment is made.

(*c.*) Where the perpetual annuities converted were held by the National Debt Commissioners, the table shall show the capital

to be periodically replaced by means of the annuity, and the account shall show, so nearly as the transactions of the National Debt Commissioners allow, the result of the application of the terminable annuity as compared with the said table.

(*d.*) If at any time the Lord Chancellor certifies to the Treasury, that by reason of the conversion under this section of perpetual annuities of any description into a terminable annuity, the Paymaster General is unable to meet the claims of the suitors of any Division of the Supreme Court to that description of perpetual annuities, the Treasury shall forthwith create such perpetual annuities as appear to them to be required to meet those claims, so that the amount so created do not exceed the amount of the said perpetual annuities converted after deducting the amount replaced; and thereupon the terminable annuity shall be adjusted as is above in this section mentioned.

5. For the purpose of facilitating the aforesaid conversion of perpetual annuities into terminable annuities, the Treasury may, in manner provided by this Act, exchange such of the existing terminable annuities specified in the schedule to this Act, (which are held by the National Debt Commissioners on account of trustee savings banks or Post Office savings banks, and terminate in the year one thousand eight hundred and eighty-five,) as the Treasury think expedient, not exceeding in the whole the annual sum of five million one hundred and thirty-five thousand two hundred and sixty-three pounds, for such new terminable annuities for periods not exceeding twenty years, as may be of equivalent capital value; and the capital value of the existing annuities shall be deemed to be their present value ascertained on the basis of the rate of interest yielded by three per cent. perpetual annuities at the average price of the day as certified by the Bank of England on the day of the exchange, and in calculating the capital value of the new annuities the interest shall be taken at the same rate.

6. Whereas by the Savings Banks Act, 1863, the Treasury were empowered to convert portions of the three per cent. perpetual annuities held by the National Debt Commissioners on account of Post Office savings banks into an equal amount of two and a half per cent. perpetual annuities, and to pay the difference in value by a terminable annuity ending on the fifth day of April one thousand eight hundred and eighty-five, and it is expedient to extend the period for the said terminable annuity; be it therefore enacted as follows:

Any terminable annuity created in pursuance of the above-recited enactment of the Savings Banks Act, 1863, may be for a term not exceeding twenty years from the date of the creation thereof.

7. Whereas in pursuance of the Indian Loan Act, 1881, the Treasury have converted into a terminable annuity of one hundred and fifteen thousand, eight hundred and sixty-four pounds, ten shillings, for a period ending on the fifth day of July, one thousand nine hundred and six, the sum of two million, forty-nine thousand, two hundred and fifty-nine pounds, five shillings and ninepence, Three per cent. Consolidated Bank Annuities, held by the National Debt Commissioners on account of Post Office Savings Banks;

And whereas it is expedient to authorise the Treasury to redeem a portion of the said terminable annuity, and upon such redemption to reduce the annual sum of one hundred and twenty thousand pounds, by which the permanent annual charge for the National Debt was increased by section three of the above-mentioned Act: Be it therefore enacted as follows:—

(1.) The Treasury shall at such times as they think fit before the first day of April next after the passing of this Act pay out of the Consolidated Fund or the growing produce thereof the sum of one million pounds to the National Debt Commissioners, and upon that payment shall cancel such portion of the said terminable annuity held by the National Debt Commissioners, as is of equivalent capital value to the sum so paid, ascertained on the basis of the rate of interest yielded by the Three per cent. Consolidated Bank annuities at the average price of the day as certified by the Bank of England on the day of payment.

(2.) The Treasury may cancel the said portion of the terminable annuity by a warrant to the Governor and Company of the Bank of England directing them to cancel in their books that portion of the said annuity.

(3.) The sum paid to the National Debt Commissioners in pursuance of this section shall be applied by them in like manner as other moneys in their hands on account of Post Office Savings Banks.

(4.) The permanent annual charge of the National Debt shall, during the currency of the terminable annuity created under the Indian Loan Act, 1881, be reduced by

the amount of the portion cancelled in pursuance of this section, and the Sinking Fund Act, 1875, as amended by section three of the Indian Loan Act, 1881, shall be construed accordingly.

8. For the purposes of this Act the following provisions shall have effect:—

(1.) The conversion or exchange of one class of annuities into or for another class of annuities, and the adjustment of a terminable annuity, shall be effected by a warrant of the Treasury to the Bank of England directing them to cancel in their books, as from the date of conversion or exchange specified in the warrant, annuities of such class, and standing in such names and of such an amount as is mentioned in the warrant, and by the creation (by the same or another warrant) in the same names of such annuities as the case requires.

(2.) Terminable and perpetual annuities shall be created by a warrant from the Treasury to the Bank of England directing them to inscribe in their books, as from the date of creation specified in the warrant, terminable annuities of the amount and for the periods mentioned in the warrant, or as the case requires, perpetual annuities of the amount and description mentioned in the warrant.

(3.) The amount of any annuities so to be cancelled or created shall be certified to the Treasury by the National Debt Commissioners under the hands of the Controller General or Assistant Controller and of the Actuary of the National Debt Office.

(4.) The equivalent capital value shall, save as otherwise provided by this Act, be calculated as follows:

(*a.*) in the case of any terminable annuities, into which any perpetual annuities are to be converted, the interest shall be taken at the rate of interest yielded by the said perpetual annuities at the average price of the day as certified by the Bank of England on the date of conversion.

(*b.*) the capital value of perpetual annuities shall be calculated at the average price of the day as certified by the Bank of England on the date of creation or conversion as the case may be.

(5.) The date of conversion, the date of creation, and the date of exchange shall respectively be, save as otherwise specified in this Act, such day as may be in each case agreed on between the Treasury and the National Debt Commissioners.

(6.) The annuities terminable or perpetual, or any part thereof, directed by any warrant under this Act to be cancelled shall, after the date specified in the warrant, be cancelled, and all payments in respect thereof shall cease.

(7.) All annuities terminable or perpetual created under this Act shall, after the date of creation, be charged on the Consolidated Fund and the growing produce thereof, and shall be payable out of the permanent annual charge for the national debt yearly, half yearly, or quarterly at such times in each year as may be fixed by the warrant creating them.

(8.) All perpetual annuities created in pursuance of this Act shall be consolidated with other perpetual annuities of the same description and payable at the same date, and shall be transferable in the books of the Bank of England in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

9. (1.) Any terminable annuity payable to the National Debt Commissioners in respect of the conversion under this Act of any perpetual annuities held by them shall, so far as it represents interest, be dealt with as the dividends on the said perpetual annuities would have been applied, and so far as it represents principal shall be dealt with by them as moneys received on account of trustee or Post Office savings banks.

(2.) When any perpetual annuities have in pursuance of this Act been converted into a terminable annuity payable to the Paymaster-General, that terminable annuity shall be paid to the National Debt Commissioners, who shall thereout pay to the Paymaster General such amount as would, but for the conversion, be for the time being payable as dividends on the said perpetual annuities converted, (to be applied by him in like manner as the dividends for the time being payable on those annuities), and shall from time to time invest the residue in the purchase of perpetual annuities in the names of the National Debt Commissioners on account of the Supreme Court of Judicature, and shall invest from time to time in like manner the dividends received on such investments and on any accumulations thereof.

(3.) At any time the National Debt Commissioners shall, if so required by the Lord Chancellor, transfer to the account of the Paymaster General all or any of the annuities so

purchased, and the amount of the dividends on the annuities so transferred and on any perpetual annuities created in compliance with a certificate of the Lord Chancellor under this Act, shall be deducted from the amount periodically payable by the National Debt Commissioners to the Paymaster General for dividends under this section.

(4.) On the termination of the terminable annuity, the National Debt Commissioners, out of the annuities purchased on account of the Supreme Court of Judicature under this section, shall transfer to the account of the Paymaster General such amount of perpetual annuities as would but for the conversion into the said terminable annuity have been then held by the Paymaster General after deducting the amount of annuities transferred in pursuance of this section or created in compliance with a certificate of the Lord Chancellor; and if the amount of perpetual annuities so purchased is less than the amount so required to be transferred, the Treasury shall in manner provided by this Act create such amount of perpetual annuities as is required to meet the deficiency, and if the amount so purchased exceeds the amount required to be transferred, the surplus shall be cancelled in such manner as the Treasury may by warrant direct.

10. The warrants of the Treasury issued in pursuance of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed, and copies of such warrants shall be laid before both Houses of Parliament within one month after they are issued if Parliament is then sitting, and if not, within one month after the then next meeting of Parliament.

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

The expression "Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "Lord Chancellor" means the Lord High Chancellor of Great Britain or the Lord Keeper or Commissioners of the Great Seal of Great Britain:

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "perpetual annuities" means three and a half per cent. bank annuities, three per cent. consolidated bank annuities, three per cent. reduced bank annuities, new three per cent. bank annuities, and two and a half per cent. bank annuities, or any of such annuities.

The expression "trustee savings bank" means a savings bank to which the Trustee Savings Bank Act, 1863, extends.

The expression "Paymaster General" means the Paymaster General for the time being on behalf of the Court of Chancery under the provisions of the Court of Chancery Funds Act, 1872, or the Paymaster General for the time being for and on behalf of the Supreme Court of Judicature under the provisions of the Supreme Court of Judicature (Funds, &c.) Act, 1883.

SCHEDULE.

See Clause 5.

ANNUITIES TO BE EXCHANGED.

	£	s.	d.
1. Annuities created for fortifications under 23 & 24 Vict. c. 109. and subsequent Acts	588,003	11	6
2. Annuities created for localisation of the military forces under 35 & 36 c. 68.	378,831	0	0
3. Annuities created, in lieu of stock held on account of savings banks, under 29 Vict. c. 5. and 32 & 33 Vict. c. 59.	3,617,845	0	0
4. Portion of annuities created under National Debt Act, 1880 (43 Vict. c. 15.)	550,583	0	0
	5,135,262	11	6

CHAP. 55.

Revenue Act, 1883.

ABSTRACT OF THE ENACTMENTS.

PART I.

Amendment of Law relating to the Customs.

PART II.

Amendment of Law relating to the Inland Revenue.

PART III.

MISCELLANEOUS.

Annuities Redemption.

PART IV.

Repeal.

An Act to amend the law relating to the Customs and Inland Revenue, and to make other provisions respecting charges payable out of the public revenue, and for other purposes.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Revenue Act, 1883.

PART I.

Amendment of Law relating to the Customs.

2. The following enactments shall, on and after the first day of January one thousand eight hundred and eighty-four, have effect as if they were contained in section forty-two of the Customs Consolidation Act, 1876, in substitution for the portion of that section repealed by this Act, that is to say—

(1.) (*a.*) Articles of foreign manufacture not imported by, or for, but bearing the name and address or name and trade-mark of a manufacturer of such articles resident, or having a place of business in the United Kingdom.

(*b.*) Articles of foreign manufacture bearing, either alone or in conjunction with other names or words, the name of a part of, or a place in, the United Kingdom, which name in the opinion of the Commissioners of Customs has been placed upon such articles in order to impart to them a special character of British manufacture.

(2.) The proprietary right of a manufacturer in any name or mark on any articles of foreign manufacture shall be proved or evidenced in such manner and upon such conditions as the Commissioners of Customs shall prescribe.

(3.) Articles bearing the name of a place which would render them subject to prohibition under this section shall not be admissible by reason of there being another place of the same name out of the United Kingdom.

(4.) Names, addresses, and marks on boxes, cases, cards, or other things in which or attached to which articles of foreign manufacture are imported, shall be deemed to be borne by the articles themselves.

(5.) The Commissioners of Customs in administering this section, whether in the exercise of any discretion or opinion or otherwise, shall act under the control of the Commissioners of Her Majesty's Treasury.

(6.) In this section the word "name" as applied to a manufacturer shall include any abbreviation or imitation of a name; and the word "Manufacturer" shall include a dealer, and a manufacturing or trading company having a place of business in the United Kingdom.

3. Notwithstanding any existing provision to the contrary in the Customs Acts, foreign spirits racked or drawn off in a warehouse may, in casks each containing not less than nine gallons, be exported or removed for exportation only to another warehouse in the United Kingdom, and may be imported into the Channel Islands, or any of them, and may be exported from the said Islands to foreign parts only, and may be removed from any one to any other of the said Islands without any licence from the officers of Customs, and may be carried coastwise from any one part to any other part of the said Islands.

4. If in any suit, prosecution, or information for the recovery of penalties under the Customs Acts in the High Court of Justice in England, the High Court of Justice in Ireland, or the Court of Session as Court of Exchequer, or the High Court of Justiciary in Scotland, judgment or decree shall be obtained against any person by default or in absence or in foro or by verdict or otherwise, and such person shall not pay the sum or sums of money for which such judgment shall have been entered up or discerned for under such decree, execution shall thereupon issue, and diligence shall proceed not only against his body but against all his real and personal estate, whether vested in himself or in any other person in trust for him, for such sum or sums of money as aforesaid, together with the costs, poundage, fees, and expenses of execution; and any person whose body shall be taken in execution as aforesaid shall be treated in the same manner in all respects as a person committed to prison by any justice for non-payment of a penalty incurred for an offence against the Customs Acts.

5. If any ship on arrival at any port or place in the United Kingdom or the Channel Islands shall not come as quickly up to the proper place of mooring or unlading as the

nature of the port or place will admit without touching at any other place, and in proceeding to such proper place shall not bring to at the station appointed by the Commissioners of Customs for the boarding of ships, or if after arrival at such place such ship shall remove therefrom except with the knowledge of the proper officer of Customs directly to some other proper place of mooring or unlading, the person having charge of such ship, whether master or pilot, shall forfeit the sum of twenty pounds.

6. If the master of any ship shall neglect or refuse to provide sufficient room and accommodation under the deck for the bed or hammock of every officer of Customs stationed on board such ship he shall forfeit the sum of twenty pounds.

7. If the proper officer of the Customs shall place any lock, mark, or seal upon any stores or upon any place or package in which the same may be on board any ship or vessel arriving in the United Kingdom, and such lock, mark, or seal shall be wilfully opened, altered, or broken, or if any stores so secured shall be secretly conveyed away either while the ship remains in the port at which she shall have so arrived, or at any other port in the United Kingdom to which she may proceed, or on her passage from one port to another, the master of such ship shall forfeit the sum of twenty pounds.

8. For the purposes of section two hundred and thirty of the Customs Consolidation Act, 1876, a borough having a separate magisterial jurisdiction situate geographically within a county shall be deemed to be "neighbouring" or "adjoining" to that county.

9. For the purpose of carrying into effect the regulations under the Sea Fisheries Act, 1868, and any Act amending the same, the Commissioners of Customs may from time to time make, and when made revoke and vary, an order declaring that such of the provisions of the Customs Consolidation Act, 1876, and the Acts amending the same, as are specified in the order, shall apply, and the same shall accordingly apply to sea fishing boats in like manner as if the word "ship" in those provisions included "sea fishing boat."

10. And whereas by the statutes now in force relating to gold and silver wares, it is enacted and provided that gold and silver plate, not being battered, which shall be imported into the United Kingdom of Great Britain and Ireland and sold, exchanged, or exposed to sale within the said United Kingdom, shall be of the respective standards now required for any ware, vessel, plate, or manufacture of gold or silver wrought or made in England; and that no gold or silver plate so imported as aforesaid, not being battered, shall be sold, exchanged, or exposed to sale within the said United Kingdom, until the same shall have been assayed, stamped, and marked, either in England, Scotland, or Ireland, in the same manner as any ware, vessel, plate, or manufacture of gold or silver wrought or made in England, Scotland, or Ireland respectively, is or are now by law required to be assayed, stamped, and marked. And that in order that gold and silver plate so imported as aforesaid may be assayed, stamped, and marked, it shall and may be lawful for any person to send the same to any assay office in the United Kingdom at which gold and silver plate is now by law required to be assayed, and when so sent it shall be assayed, tested, stamped, and marked in such and the same manner as if the same were British plate by law assayable in such office, but with the addition of the letter F, and that if any gold or silver plate so imported as aforesaid and so sent to any such assay office as aforesaid, shall on being assayed at such assay office be found or discovered to be of coarser alloy than the said respective standards, such gold or silver ware shall be cut, broken, and defaced at such assay office.

And whereas it is desirable to secure with more certainty the marking of all gold and silver plate of standard quality imported into Great Britain or Ireland to be sold, exchanged, or exposed for sale, and also to make provision for allowing the exportation of imported plate of coarser alloy than the said respective standards:

Be it enacted,—

1. That all gold and silver plate imported into Great Britain or Ireland shall be entered to be warehoused, and shall be deposited in a bonded warehouse, and no such plate shall be delivered for home use until assayed, stamped, and marked according to law.
2. That for the purpose of assay, such plate may upon such notice to the proper officer of customs, upon such security for the payment of duty, and subject to such regulations as the Commissioners of Customs may from time to time prescribe, be removed from the warehouse in charge of an officer of customs by the importer and at his risk, to, and be delivered into the hands of the officers of the assay office nearest to the port of importation.

3. That upon previous payment by the importer of the expense of assay, the officer of the assay office shall assay the plate and shall give notice of the result of such assay to the proper officer of customs, and to the importer.
4. If such plate shall be found upon assay to be of standard quality, it may thereupon be cleared for home use, and the officer of the assay office upon production of a certificate from the proper officer of customs that the duty and all proper charges have been paid, shall stamp, mark, and deliver the plate to the importer.
5. If such plate shall be found upon assay not to be of standard quality, it shall not be cut, broken, or defaced at the assay office, but shall, upon such notice and under such regulations as the Commissioners of Customs shall from time to time prescribe, be removed from the assay office in charge of an officer of customs by the importer and at his risk, and be returned to the warehouse.
6. All plate returned to the warehouse after assay may within one month from such return be exported by the importer under such conditions and upon such security as are prescribed by the Customs Laws in relation to the exportation of warehoused goods.
7. After the expiration of one month from the return of any plate to the warehouse, or sooner if the importer shall desire it, any part thereof not exported shall be cut, broken, and defaced by the proper officer of customs, and shall be delivered free of duty upon payment of all proper charges.
8. Actual deposit of plate in a warehouse under this section may, with the approval of the Commissioners of Customs, be dispensed with in cases in which the plate can be and is removed direct from the place of examination to the assay office, but plate so removed direct shall, nevertheless, for the purposes of this section be deemed to have been actually deposited.
9. The notice from the officer of the assay office of the result of the assay above referred to in this section shall be a notice prescribed by the Commissioners of Customs, and as regards the importer, shall be posted to an address to be stated by him on depositing his plate at the assay office.
10. In this section the words "proper charges" shall mean all such charges as the Commissioners of Customs, with the approval of the Commissioners of Her Majesty's Treasury, shall make for attendance of officers or otherwise. Where plate is removed to an assay office in pursuance of this section, within one month after entry, the rates for warehousing under the Customs Tariff Act, 1876, shall not be charged.
11. Articles of plate exempted from assay in the United Kingdom are not subject to the provisions of this section.
12. Plate imported for private use and not for sale shall also be exempted upon proof by statutory declaration referring to this section being furnished to the satisfaction of the Commissioners of Customs that such plate is not intended for sale or exchange.
13. But in case any such plate shall at any time thereafter be taken to an assay office to be assayed, and shall be found upon assay not to be of standard quality, such plate shall be deemed to be plate removed from a warehouse for assay under this section, and shall be dealt with accordingly. Plate taken to be assayed under this sub-section shall be identified to the satisfaction of the proper officer of the assay office.

11. This part of this Act shall be construed as one with the Customs Consolidation Act, 1876.

PART II.

Amendment of Law relating to the Inland Revenue.

12. In addition to the power given to the land tax commissioners, general commissioners, and additional commissioners by subsection two of section twenty-six of the Taxes Management Act, 1880, to meet and act within such city, town, or place as therein mentioned, the said Commissioners respectively may, with the consent of the Board of Inland Revenue, meet for the purpose of acting as such commissioners at any place outside the boundary of the division for which they act, and all things done by them, as commissioners acting for such division at that place, shall be as valid and effectual in law as if the same had been done at a place of meeting within the division.

13. The power vested in the Board of Inland Revenue by section thirty-eight of the Taxes Management Act, 1880, may be exercised in any case in England where any new parish or place has been or may be formed for the pur-

poses of poor law administration, or any amalgamation in relation to parishes or parts of parishes has been or may be effected for such purposes.

In any case of amalgamation where the transfer of jurisdiction is not provided for by subsection two of the said section thirty-eight, amalgamated parishes or parts of parishes shall be within the jurisdiction of such body of general commissioners as shall be determined by the board and specified in the order in writing containing the direction of the board as to the amalgamation in conformity with subsection one of the said section.

14. Whereas doubts have arisen as to the construction and application of sections ninety and ninety-seven of the Taxes Management Act, 1880, and it is expedient to remove those doubts: Be it therefore enacted as follows:

Section ninety-seven of the said Act shall be construed so as to confine the application thereof to cases of removal from one parish in Scotland to another parish in Scotland, and the case of removal from a parish in England or Ireland to a parish in Scotland shall be dealt with under the provisions contained in section ninety of the said Act.

15. In lieu of the stamp duty now payable under the Stamp Act, 1870, there shall be charged upon mortgage, bond, debenture, covenant, and foreign security of any kind—

Being a security for the payment or repayment of money not exceeding ten pounds - - - 0*s.* 3*d.*

PART III.

MISCELLANEOUS.

16. Whereas in the year one thousand eight hundred and eight the Commissioners of the Treasury advanced twenty-one thousand pounds to the Mayor, Commonalty, and Citizens of the City of London (in this section referred to as "the Corporation of London") for the purpose of making improvements in the port of London, and the whole of the sum so advanced was expended, with the exception of nine pounds nine shillings and fivepence halfpenny, which sum remains in the hands of the Chamberlain of the City of London as part of unclaimed balances:

And whereas in the year one thousand eight hundred and nineteen the sum of ten thousand two hundred and sixty pounds was received by the Corporation of London for the sale of certain land in the Isle of Dogs, and, after deducting certain expenses, was paid into the Exchequer, and a sum of seventeen shillings was so paid in excess of the sum which ought to have been paid:

And whereas, after deducting the said overpayment of seventeen shillings from the said balance of nine pounds nine shillings and fivepence halfpenny, there remains eight pounds twelve shillings and fivepence halfpenny due to the Exchequer:

And whereas, in each year up to the time of the sale of the City of London Canal in the year one thousand eight hundred and twenty-nine, a portion of the revenue of the canal was paid to the fund called the tonnage duty fund, arising from dues received under certain Local and Personal Acts, and was so paid in discharge of a debt due to that fund:

And whereas the sum of eighty-seven pounds fourteen shillings and ninepence, being the balance arising from such canal revenue, was not paid over to the tonnage duty fund, and, after deducting a sum of five pounds and eightpence paid by the Corporation of London for stamp duty in the year one thousand eight hundred and forty, there remains a sum of eighty-two pounds fourteen shillings and one penny on account of the said revenue in the hands of the Chamberlain of the City of London as part of unclaimed balances:

And whereas the tonnage duty fund has been transferred to the Conservators of the River Thames, and it is expedient that the said sum should be paid to the said Conservators for the credit of the tonnage duty fund: Be it therefore enacted as follows:

The Chamberlain of the City of London is hereby authorised, out of the sums in his hands on account of unclaimed balances, to pay into the Exchequer the sum of eight pounds twelve shillings and fivepence halfpenny in respect of the advances from the Exchequer as above recited, and further to pay to the Conservators of the River Thames for the credit of the tonnage duty fund the sum of eighty-two pounds fourteen shillings and one penny in part repayment of the debt due from the canal revenue, as above recited.

17. Sections seventy-six to eighty-two, both inclusive, of the Bills of Exchange Act, 1882, and section twenty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to "consolidate and amend the Statute Law of "England and Ireland relating to indictable "offences by forgery," shall extend to any document issued by a customer of any banker, and intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document, and

shall so extend in like manner as if the said document were a cheque.

Provided that nothing in this Act shall be deemed to render any such document a negotiable instrument.

For the purpose of this section Her Majesty's Paymaster General, and the Queen's and Lord Treasurer's Remembrancer in Scotland shall be deemed to be bankers, and the public officers drawing on them shall be deemed customers.

Annuities Redemption.

18. Whereas by the Consolidated Fund (Permanent Charges Redemption) Act, 1873, the Treasury are authorised, as regards certain annuities as defined by that Act which are charged on the Consolidated Fund or moneys provided by Parliament, to contract for their redemption by payment of a capital sum out of moneys provided by Parliament not exceeding the sum therein mentioned, and in the case of an annuity payable to trustees for any purpose, charitable or other, the contract for such redemption is made subject to the consent of the Court of Chancery, and the money is required to be paid into the Court of Chancery, and is to be applied by the Court for the benefit of the persons entitled thereto:

And whereas any such contract may provide for the said redemption by the transfer of Government securities as therein defined, instead of by payment of a sum of money:

And whereas it is expedient to amend the said Act as regards the redemption of annuities payable for charitable purposes: Be it therefore enacted as follows:

(1.) The Treasury may in pursuance of the Consolidated Fund (Permanent Charges Redemption) Act, 1873, contract from time to time with the Charity Commissioners for England and Wales (in this section referred to as the Charity Commissioners) for the redemption of all or any of the annuities under that Act which are payable for charitable purposes in England or Wales, and the money or securities paid or transferred for such redemption may be paid or transferred to the official trustees of charitable funds in pursuance of such contract, and upon such payment or transfer the annuities to which the contract refers shall cease to be charged on and payable out of the Consolidated Fund or moneys provided by Parliament, so however that any proportionate part of any such annuity which may be due up to the time of such payment or transfer shall be paid by the Treasury to the person entitled thereto.

(2.) The Charitable Trusts Acts, 1853 to 1869, shall apply in like manner as if any money paid or securities transferred to the said official trustees in pursuance of this section for the redemption of any annuity had been paid or transferred in pursuance of an order of the Charity Commissioners under the said Acts, and were part of the endowment of the charity entitled to the annuity, and expressions in this section shall have the same meaning as in the said Acts.

(3.) The Consolidated Fund (Permanent Charges Redemption) Act, 1883, which provides for the borrowing by the Treasury from the National Debt Commissioners of the capital sum or securities necessary for carrying into effect a contract for the redemption of any annuity as defined by the Consolidated Fund (Permanent Charges Redemption) Act, 1873, shall apply for the purposes of this section.

PART IV.

Repeal.

19. The Act mentioned in the schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

(1.) This repeal shall not affect any right acquired or liability incurred before the passing of this Act, or any legal proceeding, execution, or process to enforce the same; and any such proceeding, execution, or process may be constituted, issued, carried on and enforced as if this Act had not passed;

(2.) This repeal shall not affect any punishment or penalty for any offence committed before the passing of this Act under any enactment hereby repealed, and such offence may be prosecuted and punishment and penalty imposed in like manner as if this Act had not passed; and

(3.) This repeal shall not affect any execution upon any judgment obtained before the passing of this Act, and such execution may issue and be enforced in like manner as if this Act had not passed.

(4.) Notwithstanding such repeal, the proprietors or occupiers of warehouses approved by the Commissioners of Customs for the warehousing of goods, or given by any other persons on behalf of such proprietors or occupiers for securing the payment of the duties chargeable on warehoused goods, or for the due exporta-

tion thereof, shall remain in full force and effect against such proprietors, occupiers, and other persons and their sureties, if any; and in case proceedings shall be taken upon any such bond, the said repeal shall not be used as a defence to such proceedings, but all such bonds shall be read as if there were no condition therein contained with regard to the clearing, exporting, or rewarehousing of goods within five years.

SCHEDULE.

ACT REPEALED. Section 19.

Session and Chapter.	Title.	Extent of Repeal.
39 & 40 Vict. c. 36. -	The Customs Consolidation Act, 1876.	Section forty-two from "articles of foreign manufacture" down to "place in the United Kingdom," and from "any name, brand, or mark" down to "place in the United Kingdom," all inclusive, as from the first day of January one thousand eight hundred and eighty-four. Section forty-six. Section forty-seven from "and if the proper officer" inclusive to the end of the section. Section ninety-two. Section ninety-three. Section ninety-eight from "in which case the proper officer" inclusive to the end of the section. Section two hundred and forty-nine from "and in case judgment shall be obtained" inclusive to the end of the section.

CHAP. 56.

Education (Scotland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Laws relating to Education in Scotland, and for other purposes connected therewith.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Education (Scotland) Act, 1883, and this Act and the Education (Scotland) Act, 1872, and the Education (Scotland) Act, 1878, may be cited together as the Education (Scotland) Acts, 1872 to 1883.

2. This Act shall, except in so far as otherwise provided, come into operation on the first day of January one thousand eight hundred and eighty-four, and shall apply to Scotland only.

3. The term "Education Acts" in this Act means the Education (Scotland) Act, 1872, the Education (Scotland) Act, 1878, and this and any other Act amending the same.

In the "Education Acts" sheriff includes sheriff substitute.

A court of summary jurisdiction under this Act shall consist of a sheriff, sitting either in the ordinary sheriff court or at any place where circuit courts are held for the determination of small debt causes, or one or more justices of the peace sitting in open court, or the provost or bailie of any royal or parliamentary burgh, or a magistrate of police of any police burgh or a judge of police sitting in the police court.

4. Section sixty-nine of the Education (Scotland) Act, 1872, shall be read and have effect as if it provided that it shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and thirteen years of age, and who have not obtained a certificate of ability to read and write and of a knowledge of elementary arithmetic under section seventy-three of the said Act as amended by this Act, and also for any of his children between thirteen and fourteen years of age who have not obtained such certificate.

5. Section seventy of the Education (Scotland) Act, 1872, and section twenty-two of the Education (Scotland) Act, 1878, shall be amended as follows:—

(1.) Section seventy of the first-mentioned Act shall be read and have effect as if it did not contain the words "and are failing and omitting" and the words "and is grossly and".

(2.) Section twenty-two of the second-mentioned Act shall be read and have effect as if for the word "thirteen" therein the word "fourteen" were substituted, and as if after the words "the said fees" therein the words "at any public or inspected "school selected by the parent or, failing "such selection, appointed by the sheriff" were inserted.

6. From and after the first day of September one thousand eight hundred and eighty-five, notwithstanding the provisions of section five of the Education (Scotland) Act, 1878, and of any Act of Parliament regulating the education of children employed in labour, the said Acts shall be read and have effect as if they provided that it shall not be lawful for any person to take into his employment a child being of the age of ten years and not more than fourteen years, unless such child (1) has passed the third standard prescribed by the minutes of the Scotch Education Department regulating the administration of the parliamentary grant for education in Scotland for the year one thousand eight hundred and eighty-three, or a corresponding standard prescribed by the said minutes for any subsequent year, and is attending a public or inspected school in accordance with the provisions of the twenty-third section of the Factory and Workshop Act, 1878, or of any minute of the Scotch Education Department fixing the number of the attendances at school to be required of such children; or (2) has obtained a certificate of ability to read and write, and of a knowledge of elementary arithmetic under the seventy-third section of the Education (Scotland) Act, 1872, as amended by the immediately succeeding section.

Nothing in this section shall make it lawful to take into full-time employment any child under the age of thirteen years in a factory or workshop which is subject to the provisions of the Factory and Workshop Act, 1878.

Provided that nothing in this section shall prevent an employer from employing any child who is employed by him or by any other person before the first day of September one thousand eight hundred and eighty-five, and who attends school in accordance with the provisions of the Factory and Workshop Act, 1878.

7. A certificate of ability to read and write, and of a knowledge of elementary arithmetic, shall not be granted in favour of any child by one of Her Majesty's inspectors, under section seventy-three of the Education (Scotland) Act, 1872, unless such child has passed the fifth standard prescribed by the minutes of the

Scotch Education Department regulating the administration of the parliamentary grant for education in Scotland for the year one thousand eight hundred and eighty-three, or a corresponding standard prescribed by the said minutes for any subsequent year.

8. Passing a standard within the meaning of the two immediately preceding sections signifies passing in each of the three subjects of reading, writing, and elementary arithmetic, as prescribed for the respective standards of examination by the Minutes of the Scotch Education Department regulating the administration of the Parliamentary Grant for Education in Scotland for the year one thousand eight hundred and eighty-three, or for any subsequent year.

9. If the parent of any child without reasonable excuse neglects to provide efficient elementary education as aforesaid for his child, or fails to secure the regular attendance of his child at some public or inspected school, it shall be lawful for the school board, after due warning to the parent of such child, to complain to a court of summary jurisdiction, and such court may, if satisfied of the truth of such complaint, order that the child do attend some public or inspected school willing to receive him and named in the order, being either such as the parent may select, or, if he do not select any, then such as the court think expedient, and the child shall attend that school every time the school is open, and during the whole time such school is open for the instruction of children of similar age, including the day fixed by Her Majesty's inspector for his annual visit, or in such other regular manner as is specified in the order.

An order under this section is in this Act referred to as an attendance order.

10. Where an attendance order is not complied with without reasonable excuse, a court of summary jurisdiction, on complaint made by the school board, may, if it think fit, impose a penalty not exceeding twenty shillings, with expenses, or of imprisonment not exceeding fourteen days.

A complaint under this section shall not be repeated at any less interval than one month.

11. Any of the following reasons shall be a reasonable excuse within the meaning of sections seventy and seventy-two of the Education (Scotland) Act, 1872, and of the two immediately preceding sections of this Act, namely,—

(*a.*) That the child has been prevented from attending school by sickness or any other unavoidable cause:

(*b.*) That there is no public or inspected school which the child can attend within three miles, measured according to the nearest road, from the residence of such child.

12. Where the school board are informed by any person of any child in their district who is stated by that person not to be in course of receiving elementary education by regular attendance at some public or inspected school or otherwise, it shall be the duty of the school board to take proceedings under sections nine and ten of this Act, unless the school board, for reasons to be set forth in their minutes, think that it is inexpedient to take such proceedings.

13. Where the Scotch Education Department are of opinion that it would be expedient that two or more school boards, whether of parishes or burghs or parishes and burghs, should combine for the purpose of providing or maintaining and keeping efficient a school or schools common to such parishes or burghs or parishes and burghs, they may, after such inquiry and notice as shall seem proper, send the said school boards a requisition requiring them to combine for the purpose of providing or maintaining, and keeping efficient such school or schools, upon terms and conditions set forth in such requisition; and the said school boards shall comply with such requisition without undue delay, and if they fail they may be summarily compelled to do so by the Court of Session, on a petition and complaint at the instance of the Lord Advocate; and for the more efficient and economical working of this Act in those districts which have no public school or schools in their own district, the Scotch Education Department shall have power to combine under one board such district or districts with an adjoining district, whether burghal or landward, or partly burghal and partly landward, upon such terms and conditions as may seem to such department reasonable.

14. Section twenty-three of the Education (Scotland) Act, 1878, is hereby repealed, and in lieu thereof it is enacted as follows:

Every prosecution for penalties, or for the purpose of obtaining any order under the Education Acts, or for the purpose of obtaining or enforcing an attendance order under this Act, may take place before a court of summary jurisdiction (whose decision shall be final, but subject to the provisions of the Summary Prosecutions Appeals (Scotland) Act, 1875,) under the provisions of the Summary Jurisdiction Acts, and in any such prosecution any person appointed by the school board, or any inspector or sub-inspector of factories, workshops, or mines, as the case may be, may appear before the court and conduct the prosecution.

It shall not be lawful to award expenses against (1) any person appointed by a school board to prosecute, whether that person is or is not a procurator fiscal; or (2) against any inspector or sub-inspector acting under the Acts regulating factories, workshops, or mines respectively.

Where a prosecution, as in this section mentioned, is instituted by a school board before a court of summary jurisdiction, no member of such school board shall be qualified to act as a member of such court.

15. Where any act, neglect, or default is punishable under this Act, and also under any other enactment, proceedings may be instituted in respect of such act, neglect, or default under this Act or such other enactment, so that proceedings under one enactment only be instituted in respect of the same act, neglect, or default.

CHAP. 57.

Patents, Designs, and Trade Marks Act, 1883.

ABSTRACT OF THE ENACTMENTS.

PART I.

PRELIMINARY.

PART II.

PATENTS.

Application for and Grant of Patent.

Provisional Protection.

Protection by Complete Specification.

Patent.

Amendment of Specification.

Compulsory Licenses.

Register of Patents.

Fees.

PART III.

DESIGNS.

PART IV.

TRADE MARKS.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

International and Colonial Arrangements.

Offences.

Scotland; Ireland; &c.

Repeal; Transitional Provisions; Savings.

General Definitions.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks. (25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

2. This Act is divided into parts, as follows:—

Part I.—PRELIMINARY.
Part II.—PATENTS.
Part III.—DESIGNS.
Part IV.—TRADE MARKS.
Part V.—GENERAL.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

PART II.

PATENTS.

Application for and Grant of Patent.

4. (1.) Any person, whether a British subject or not, may make an application for a patent.

(2.) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly.

5. (1.) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the patent office in the prescribed manner.

(2.) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

(3.) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4.) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required.

(5.) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed.

6. The comptroller shall refer every application to an examiner, who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention.

7. (1.) If the examiner reports that the nature of the invention is not fairly described, or that the application specification or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may require that the application specification or drawings be amended before he proceeds with the application.

(2.) Where the comptroller requires an amendment, the applicant may appeal from his decision to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.

(6.) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant.

8. (1.) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within nine months from the date of application.

(2.) Unless a complete specification is left within that time the application shall be deemed to be abandoned.

9. (1.) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

(2.) If the examiner reports that the conditions herein-before contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void.

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

10. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specification or specifications with the drawings (if any) shall be open to public inspection.

11. (1.) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the patent office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application, but on no other ground.

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3.) The law officer shall, if required, hear the applicant and any person so giving notice and being, in the opinion of the law officer, entitled to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

12. (1.) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the patent office.

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases herein-after mentioned, that is to say—

(*a*.) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(*b*.) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative and sealed at any time within twelve months after the death of the applicant.

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall

not prevent the sealing of a patent on an earlier application.

Provisional Protection.

14. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Protection by Complete Specification.

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Patent.

16. Every patent when sealed shall have effect throughout the United Kingdon and the Isle of Man.

17. (1.) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3.) If, nevertheless, in any case, by accident mistake or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment.

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:

(*a.*) The time for making any payment shall not in any case be enlarged for more than three months.

(*b.*) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

Amendment of Specification.

18. (1.) An applicant or a patentee may, from time to time, by request in writing left at the patent office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2.) The request and the nature of such proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the patent office of opposition to the amendment.

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.

19. (1.) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

21. Every amendment of a specification shall be advertised in the prescribed manner.

Compulsory Licenses.

22. If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licenses on reasonable terms—

(*a.*) The patent is not being worked in the United Kingdom; or

(*b.*) The reasonable requirements of the public with respect to the invention cannot be supplied; or

(*c.*) Any person is prevented from working or using to the best advantage an invention of which he is possessed,

the Board may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.

Register of Patents.

23. (1.) There shall be kept at the patent office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

(2.) The register of patents shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents affecting the proprietorship in any letters patent or in any license thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office.

Fees.

24. (1.) There shall be paid in respect of the several instruments described in the Second Schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

(2.) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees.

Extension of Term of Patent.

25. (1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat, addressed to the Registrar of the Council at the Council Office, against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for Her Majesty in Council to make, from time to time, rules of

procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

Revocation.

26. (1.) The proceeding by scire facias to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Court.

(3.) Every ground on which a patent might, at the commencement of this Act, be repealed by scire facias shall be available by way of defence to an action of infringement and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by—

(*a.*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*b.*) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland.

(*c.*) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(*d.*) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee:

(*e.*) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply.

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

Crown.

27. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject.

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Legal Proceedings.

28. (1.) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

(3.) The remuneration, if any, to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

29. (1.) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the judge, at any subsequent time, particulars of the breaches complained of.

(2.) The defendant must deliver with his statement of defence, or, by order of the Court or a judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him

must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case.

30. In an action for infringement of a patent, the Court or a judge may on the application of either party make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit.

31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or a judge so certifies, then in any subsequent action for infringement, the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs charges and expenses as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same.

32. Where any person claiming to be the patentee of an invention, by circulars advertisements or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture use sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

33. Every patent may be in the form in the First Schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

34. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

36. A patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

39. The exhibition of an invention at an industrial or internaticnal exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the

purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely,—

(*a.*) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so; and

(*b.*) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

40. (1.) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the comptroller may deem generally useful or important.

(2.) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the time being in force, with their accompanying drawings, if any.

(3.) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

41. The control and management of the existing Patent Museum, and its contents shall from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as Her Majesty in Council may see fit to give.

42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade.

43. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of Her Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connexion with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

44. (1.) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to Her Majesty's Principal Secretary of State, for the War Department (herein-after referred to as the Secretary of State), on behalf of Her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State for the time being.

(3.) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the comptroller his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Secretary of State so certifies, the application and specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the patent office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State.

(5.) Such packet shall until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not

be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Secretary of State to receive the same, and shall if returned to the comptroller be again kept sealed by him.

(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

(8.) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the patent office, but before the publication of the specification or specifications, the application specification or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

Existing Patents.

45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

Definitions.

46. In and for the purposes of this Act—

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act " concerning monopolies and dispensations " with penal laws and the forfeiture there- " of"), and includes an alleged invention.

In Scotland "injunction" means "interdict."

PART III.

Designs.

Registration of Designs.

47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings photographs or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing photograph tracing representation or specimen which is not, in his opinion, suitable for the official records.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in registered Designs.

50. (1.) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

55. (1.) There shall be kept at the patent office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2.) The register of designs shall be primâ facie evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Industrial and International Exhibitions.

57. The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely,

(*a.*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(*b.*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Legal Proceedings.

58. During the existence of copyright in any design—

(*a.*) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural; and

(*b.*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication sale or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

Definitions.

60. In and for the purposes of this Act—

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

62. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connexion with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court; and in that event the Court shall have jurisdiction to hear and determine the appeal and may make such order as aforesaid.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

64. (1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:

(*a.*) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(*b.*) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(*c.*) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.

(2.) There may be added to any one or more of these particulars any letters words or figures, or combination of letters words or figures, or of any of them.

(3.) Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a trade mark under this part of this Act.

65. A trade mark must be registered for particular goods or classes of goods.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*) statements of numbers, or (*c*) statements of price, or (*d*) statements of quality, or (*e*) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller.

69. (1.) Any person may within two months of the first advertisement of the application, give notice in duplicate at the patent office of opposition to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2.) Within two months after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court.

70. A trade mark, when registered, shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

71. Where each of several persons claims to

be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court.

72. (1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2.) The comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a court of justice, or any scandalous design.

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

(*a.*) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(*b.*) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made;

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

Effect of Registration.

75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

76. The registration of a person as proprietor of a trade mark shall be primâ facie evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

Register of Trade Marks.

78. There shall be kept at the patent office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the

giving of the first notice send a second notice to the same effect.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may without removing such trade mark from the register accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for nonpayment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5.) Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Sheffield Marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:

(1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):

(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next sub-section, all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act, 1875.

(3.) An application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

(4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court.

(6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day:

(7.) The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life, estate, and

interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:

(8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:

(9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:

(10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks:

(11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks:

(12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the comptroller, who shall have power to confirm reverse or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2.) Until a new patent office is provided, the offices of the Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3.) The patent office shall be under the immediate control of an officer called the comptroller general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

83. (1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

84. There shall be a seal for the patent office, and impressions thereof shall be judicially noticed and admitted in evidence.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed implied or constructive.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

87. Where a person becomes entitled by assignment, transmission, or other operation

of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs or trade-marks, as proprietor of a patent, copyright in a design or trade-mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent, design, or trade-mark may be enforced in like manner as in respect of any other personal property.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the patent office, of or from patents specifications disclaimers and other documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making expunging or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

91. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a.*) Correct any clerical error in or in connexion with an application for a patent, or for registration of a design or trade mark; or

(*b.*) Correct any clerical error in the name style or address of the registered proprietor of a patent, design, or trade mark.

(*c.*) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

92. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply

to either of the law officers for directions in the matter.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

97. (1.) Any application, notice, or other document authorised or required to be left made or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the patent office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

99. If any person is, by reason of infancy lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a.*) For regulating the practice of registration under this Act:

(*b.*) For classifying goods for the purposes of designs and trade marks:

(*c.*) For making or requiring duplicates of specifications, amendment, drawings, and other documents:

(*d.*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications drawings amendments and other documents:

(*e.*) For securing and regulating the making printing publishing and selling of indexes to, and abridgments of, specifications and other documents in the patent office; and providing for the inspection of indexes and abridgments and other documents:

(*f.*) For regulating (with the approval of the Treasury) the presentation of copies of patent office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(*g.*) Generally for regulating the business of the patent office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as herein-after mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

International and Colonial Arrangements.

103. (1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

106. Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government Department, assumes or uses in connexion with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Scotland; Ireland; &c.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts.

For the purposes of this section "court of appeal" shall mean any court to which such action is appealed.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

109. (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only.

111. (1.) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

112. This Act shall extend to the Isle of Man, and—

(1.) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts;

(2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal; Transitional Provisions; Savings.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(*a.*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b.*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c.*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts

of the same book as the register of patents kept under this Act.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

116. Nothing in this Act shall take away abridge or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

General Definitions.

117. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as herein-after defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

SCHEDULES.

THE FIRST SCHEDULE.

FORMS OF APPLICATION, &c.

FORM A.

FORM OF APPLICATION FOR PATENT.

Section 5.

£1 Stamp.

I, (a) *John Smith*, of *29, Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (b) "*Improvements in Sewing Machines;*" that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(a) Here insert name, address and calling of inventor.
(b) Here insert title of invention.
(c) Signature of inventor.

Declared at *Birmingham*, in the county of *Warwick*, this day of 18 , (c) *John Smith*.

Before me,

(d) *James Adams*,
Justice of the Peace.

(d) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted; and the declaration must be made before a British consular officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

FORM B.

FORM OF PROVISIONAL SPECIFICATION.

Improvements in Sewing Machines. (*a*)

I, (*b*) *John Smith*, of *29, Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," to be as follows (*c*):—

* * * * * *

(*d*) *John Smith.*

Dated this day of *18* .

NOTE.—No stamp is required on this document.

(*a*) Here insert title as in declaration.
(*b*) Here insert name, address, and calling of inventor as in declaration.
(*c*) Here insert short description of invention.
(*d*) Signature of inventor.

£3 Stamp.

FORM C.

FORM OF COMPLETE SPECIFICATION.

Improvements in Sewing Machines. (*a*)

I, (*b*) *John Smith*, of *29, Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (*c*):—

* * * * * *

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (*d*).

1.
2.
3. &c.

(*e*) *John Smith.*

Dated this day of *18* .

(*a*) Here insert title, as in declaration.
(*b*) Here insert name, address, and calling of inventor, as in declaration.
(*c*) Here insert full description of invention.
(*d*) Here state distinctly the features of novelty claimed.
(*e*) Signature of inventor.

FORM D.

Section 33.

FORM OF PATENT.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting:

Whereas *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, hath by his solemn declaration represented unto us that he is in possession of an invention for "*Improvements in Sewing Machines*," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief:

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (herein-after together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention:

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention:

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

Know ye, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of

Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent licence or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: Provided that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything herein-before contained: Provided also, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything herein-before contained: Provided also that nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted: And lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee. In witness whereof we have caused these our letters to be made patent this one thousand eight hundred and and to be sealed as of the one thousand eight hundred and .

Seal of Patent Office.

Section 47.

FORM E.

FORM OF APPLICATION FOR REGISTRATION OF DESIGN.

day of 18 .

You are hereby requested to register the accompanying Design, in Class in the name of (*a*) of who claims to be the Proprietor thereof, and to return the same to .

(*a*) Here insert legibly the name and address of the individual or firm.

Statement of nature of Design .

Registration Fees enclosed £ ,, *s.*

To the Comptroller,
Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed) .

FORM F. Section 62.

FORM OF APPLICATION FOR REGISTRATION OF TRADE MARK.

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark, [*In Class —Iron in bars, sheets, and plates; in Class —Steam engines and boilers; and in Class —Warming Apparatus*], in the name of (a) , who claims to be the proprietor thereof.

Registration Fees enclosed £ „ *s.*

To the Comptroller,

Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed)

(a) Here insert legibly the name, address, and business of the individual or firm.

Note.—If the trade mark has been in use before August 13, 1875, state length of user.

THE SECOND SCHEDULE. Section 24.

Fees on instruments for obtaining Patents, and Renewal.

(a.) Up to sealing.

	£	*s.*	*d.*	£	*s.*	*d.*
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
				4	0	0
or						
On filing complete specification with first application				4	0	0

	£	s.	d.
(b.) Further before and of four years from date of patent.			
On certificate of renewal - - - - - - - - - -	50	0	0
(c.) Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.			
On certificate of renewal - - - - - - - - - -	100	0	0
Or in lieu of the fees of £50 and £100 the following annual fees :—			
Before the expiration of the fourth year from the date of the patent - -	10	0	0
" " fifth " " - -	10	0	0
" " sixth " " - -	10	0	0
" " seventh " " - -	10	0	0
" " eighth " " - -	15	0	0
" " ninth " " - -	15	0	0
" " tenth " " - -	20	0	0
" " eleventh " " - -	20	0	0
" " twelfth " " - -	20	0	0
" " thirteenth " " - -	20	0	0

THE THIRD SCHEDULE.

Section 113.

Enactments repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law "touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
7 & 8 Vict. c. 69. (a) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of "justice in His Majesty's Privy Council, and to extend its juris- "diction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.

(a.) *Note.*—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and six years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures. "Certificate of the registration of a design - - £5 0 0 And see section 65."
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict, c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

CHAP. 58.

Post Office (Money Orders) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to amend the Post Office (Money Orders) Acts, 1848 and 1880, and extend the same to Her Majesty's Dominions out of the United Kingdom. (25th August 1883.)

WHEREAS by the Post Office (Money Orders) Act, 1880, it is provided that, subject to the Post Office regulations as defined by that Act, the Postmaster General, with the consent of the Treasury, may authorise his officers to issue orders in the form set forth in the schedule to that Act, subject to the proviso that the order shall be for one of the amounts therein named, and in respect thereof the poundage therein named shall be taken for the use of Her Majesty:

And whereas it is expedient to make such further provision respecting the same as herein-after appears:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Notwithstanding anything in the Post Office (Money Orders) Act, 1880, any of the orders issued in pursuance of that Act shall, in lieu of the form specified in that Act, be in the form set forth in the schedule to this Act with such modifications as may be prescribed.

2. An order issued in pursuance of the Post Office (Money Orders) Act, 1880, shall be for the prescribed amount not exceeding twenty shillings, and there shall be taken in respect thereof, for the use of Her Majesty, the prescribed poundage not exceeding twopence.

3. The Postmaster-General may, if the post office regulations so provide, authorise any person holding office under the Crown to issue an order in pursuance of the Post Office (Money Orders) Act, 1880, and a person so authorised shall be deemed for the purpose of the issue and payment of such order, to be an officer of the Postmaster General and of the Post Office within the meaning of the said Act.

4.—(1.) Whereas by reason of the form of the order issued under the Post Office (Money Orders) Act, 1880, and of the provisions of that Act authorising the issue thereof by officers of the Postmaster General only, doubts have arisen with respect to the application of the Post Office (Money Orders) Act, 1880, to orders issued in pursuance of arrangements made with the governments of Her Majesty's dominions out of the United Kingdom, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Where an arrangement is made with the Government of any British possession for the transmission of small sums through the post offices of the United Kingdom and such British possession by means of money orders, of a like character to those issued under the Post Office (Money Orders) Act, 1880, as amended by this Act, the said Act, as amended by this Act, shall, so far as is consistent with the tenour thereof, and subject to the prescribed modifications, apply in like manner as if an order issued in pursuance of such arrangement, whether by an officer of the Post Office or of such British possession, was an order under the said Act, as amended by this Act, and such portions of the said Act as enact punishments shall apply accordingly.

Provided that—

(*a.*) Any Post Office regulations in relation to any money orders issued in pursuance of any such arrangement as aforesaid may differ from the regulations respecting any other money orders; and

(*b.*) Any money orders issued in pursuance of any such arrangement as aforesaid may be of such amount not exceeding the maximum amount in this Act mentioned and in such form and subject to such conditions respecting poundage, commission, the periods during which they are payable and other matters, as the Treasury, on the recommendation of the Postmaster General, may direct.

(2.) In this section the expression "United Kingdom" includes the Channel Islands and the Isle of Man, and the expression "British possession" means any part of Her Majesty's dominions other than the United Kingdom, the Channel Islands, and the Isle of Man.

5. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-four.

6. This Act shall be construed as one with the Post Office (Money Orders) Acts, 1848 and 1880.

7. This Act may be cited as the Post Office (Money Orders) Act, 1883, and together with the Post Office Money Orders Acts, 1848 and 1880, may be cited as the Post Office (Money Orders) Acts, 1848 to 1883.

8. The Post Office (Money Orders) Act, 1880, is hereby repealed to the extent mentioned in the third column of the Second Schedule to this Act;

Provided that all money orders issued before the commencement of this Act shall have effect, and be paid in like manner in all respects as if this Act had not passed.

FIRST SCHEDULE.

FORM OF ORDER. Section 1.

[No. of Order.]

Issuing Office Stamp, with date.

5s.*

* Alter according to amount.

Postal Order for* [five shillings].

Inland Revenue Stamp.

Postal Order *[One Penny].

To the postmaster in charge of the money order office at† , pay to† at any time within three calendar months from the last day of the month of issue the sum of * [five shillings] on account of Her Majesty's Postmaster General.

_____ Postmaster.

† The person to whom this order is issued must, before parting with it, fill in the name of the person to whom the amount is to be paid, and may fill in the name of the money order office at which the amount is to be paid.

Except when the order is paid through a banker, the person so named must sign the receipt at the foot hereof, and must also fill in the name of the money order office if that has not already been done.

Paying Office Stamp, with Date. Cancelling this Order.

1. If this order be crossed "_____ & Co.," payment will only be made through a banker, and if the name of a banker is added payment will only be made through that banker.

2. After this order has once been paid,—to whomsoever it is paid,—the Postmaster General will not be liable for any further claim.

3. If any erasure or alteration be made, or if this order be cut, defaced, or mutilated, payment may be refused.

4. The regulations under which this order is issued allow the postmaster to refuse or delay the payment of this order, but he must at once report his reasons for so doing to the Postmaster General.

5. After the expiration of three months from the last day of the month of issue this Order will be payable only on payment of a commission equal to the amount of the original poundage, with the addition (if more than three months have elapsed since the said expiration) of the amount of the original poundage for every further period of three months which has so elapsed, and for every portion of any such period of three months over and above every complete period.

Received the above-named sum.

_____, Signature.

SECOND SCHEDULE.

ACT REPEALED. Section 8.

Session and Chapter.	Title.	Extent of Repeal.
43 & 44 Vict. c. 33.	The Post Office Money Orders Act, 1880.	In section one, the first proviso, namely, from "any such order" down to "twenty shillings twopence"; and the schedule.

CHAP. 59.

Epidemic and other Diseases Prevention Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to make better provision for the Prevention of outbreaks of formidable epidemic, endemic, or infectious diseases, and to amend the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Epidemic and other Diseases Prevention Act, 1883.

2. Whenever any part of England or of Ireland appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease, and the Local Government Board, England, under the provisions of the Public Health Act, England, 1875, or the Local Government Board, Ireland, under the provisions of the Public Health Act, Ireland, 1878, make regulations for all or any of the following purposes, namely:

(1.) For the speedy interment of the dead.
(2.) For house to house visitation.
(3.) For the provision of medical aid and hospital accommodation; and
(4.) For the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease.

The purposes named in the said regulations, shall be deemed to be purposes for which sanitary authorities may borrow money, and the local authorities in England, and the sanitary authorities in Ireland, charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England and the Board of Public Works in Ireland may lend money to such authorities, as if such purposes were "works" for which loans may be granted under the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878.

Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the Local Government Board desirable in order to the prompt and effective execution of such regulations.

3. Whereas by the one hundred and fiftieth section of the Public Health Ireland Act, 1878, the board of guardians of any union in which regulations for prevention of the spread of formidable epidemic, endemic, or infectious diseases made by the Local Government Board are declared to be in force, are the authority appointed to superintend and see to the execution of such regulations, to the exclusion of all other sanitary authorities.

And whereas in the event of the outbreak of any formidable epidemic, such exclusion of the urban sanitary authority in cities and large towns might lead to delay and inconvenience.

Be it enacted that whenever the Local Government Board, Ireland, shall make any such regulations, the Board may direct the urban sanitary authority within any district in which such regulations shall be declared to be in force, to superintend and see to the execution of such regulations, or any of them, either independently or jointly with the board of guardians of any union within which or within part of which regulations so issued by the Local Government Board are declared to be in force, and thereupon every urban sanitary authority so directed by the Local Government Board shall have the like powers and authority in every respect as the board of guardians of any union within such district.

CHAP. 60.

Labourers (Ireland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

An Act to better the condition of Labourers in Ireland.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Labourers (Ireland) Act, 1883.

2. This Act shall extend to Ireland only.

3. For the purposes of this Act the terms "rural sanitary district" (herein-after called the sanitary district) and "rural sanitary authority" (herein-after called the sanitary authority) shall have the meanings assigned to them respectively by the sixth section of the Public Health (Ireland) Act, 1878, and this Act shall, in so far as is consistent with the scope and tenor thereof, be construed as one with the said Act.

Scheme by Sanitary Authority.

4. Where a representation as herein-after mentioned is made to the sanitary authority that the existing house accommodation for agricultural labourers and their families within any section of the sanitary district, to be defined in such representation, is deficient, having regard to the ordinary requirements of the district, or is unfit for human habitation owing to dilapidation, the want of light, air, ventilation, or proper conveniences, or to any other sanitary defects, and that such deficiency or sanitary defects cannot be effectually remedied otherwise than by an improvement scheme for the erection of other dwellings in lieu of or in addition to the dwellings already

existing in the section, the sanitary authority shall take such representation into their consideration at a meeting of which not less than fourteen days public notice has been given, and of which a special notice has been sent to each member of the sanitary authority not less than fourteen days before the day of meeting, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution that an improvement scheme ought to be made in respect of such section, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such section.

The sanitary authority may from time to time postpone their decision as to passing a resolution, or may postpone the making of a scheme, to any subsequent meeting specified by them at the time of such postponement, and in such case not less than three days notice of such meeting shall be sent to each member of the sanitary authority.

Two or more sections may be included in one improvement scheme.

The Local Government Board may, if they think fit, exercise for the purposes of this Act the powers conferred upon them by the twelfth section of the Public Health (Ireland) Act, 1878, of forming two or more sanitary districts or contributory places into a united district, as if the purposes of this Act were among the purposes specified in the said section; and the provisions of section thirteen of the said Act as to the governing body of a united district, and of section fourteen as to the constitution of a joint board, shall apply in the case of such united district, and such united district shall be deemed to be a rural sanitary district for the purposes of this Act.

5. A representation in pursuance of the last preceding section shall mean a representation signed by not less than twelve persons rated for the relief of the poor within the sanitary district; provided that if, after the area upon which the cost of the scheme is to be charged shall have been proposed by the sanitary authority, it shall appear that less than twelve of the persons who shall have signed the representation are resident within the said area, then the said representation, and all proceedings consequent thereon, shall cease to be of any force or validity, unless within one month after the making of the scheme an approval in writing of the said representation and proceedings shall be signed and forwarded to the sanitary authority by so many additional persons, rated as aforesaid and resident within the said area, as, with those who shall have already signed the representation and are resident within the said area, shall make up the number of twelve. The representation, if made on the ground of insufficient house accommodation, shall set forth specific instances of such insufficiency, and if made on the ground of sanitary defects shall be accompanied by a certificate of a sanitary officer of the sanitary authority to which the representation is made in corroboration of the sanitary defects alleged. The representation shall also define the section to which the scheme is to apply, and shall contain a suggestion on the part of the signatories as to the locality or localities in their opinion most suitable for the erection of the proposed new dwellings.

6. The improvement scheme of a sanitary authority shall be accompanied by maps, particulars, and estimates; it may exclude any part of the section in respect of which a representation is made, or may include any neighbouring lands within that district if the sanitary authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for the purposes for which it is intended; it shall distinguish the lands proposed to be taken compulsorily. It shall further propose the erection of a sufficient number of labourers cottages so as to provide for the accommodation of the labouring class in suitable dwellings, with the requisite approaches to such dwellings; it shall also provide for proper sanitary arrangements, and for a plot or garden not exceeding half a statute acre being allotted to each dwelling. It may also provide for such scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the sanitary authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the sanitary authority and such person. The scheme shall also specify the area which the sanitary authority propose as the area upon which the cost to be incurred in carrying the scheme into execution shall be charged. The scheme shall avoid all interference with the demesne and amenity of residence of the owner of the lands proposed to be taken, or with any home farm, or lands immediately adjoining and customarily occupied with such residence, and in all cases lands shall be selected with due regard to the general situation and convenience of the owner's property, so as to diminish the value thereof as little as possible.

Confirmation of Scheme.

7. Upon the completion of an improvement scheme the sanitary authority shall publish during three consecutive weeks in the month of September, or October, or November in some two or more newspapers circulating within the jurisdiction of the sanitary authority, an advertisement stating the fact of a scheme having been made, the limits of the section to which the scheme relates, the estimated cost of carrying the scheme into effect, and the proposed area of charge, and naming a convenient place where a copy of the scheme may be seen at all reasonable hours: and during the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands, such notice to be served—

(*a.*) By delivery of the same personally to the person required to be served, or, if such person is absent abroad or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or

(*b.*) By leaving the same at the usual or last known place of abode of such person as aforesaid; or

(*c.*) By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such person.

One notice addressed to the occupier or occupiers without naming him or them and left at any house shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

Upon compliance with the provisions contained in this section with respect to the publication of advertisements and the service of notices, the sanitary authority shall present a petition to the Local Government Board praying that an order may be made confirming such scheme. The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Local Government Board may from time to time require.

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the Local Government Board think fit to proceed with the case, they shall direct a local inquiry to be held for the purpose of ascertaining the correctness of the representation made as to the section, and the deficiency of houses for agricultural labourers and their sanitary defects, and the sufficiency of the scheme, and any local objections to be made to such scheme, and as to the propriety of confirming such scheme.

After receiving the report made upon such inquiry the Local Government Board may make a Provisional Order declaring the limits of the section to which the scheme relates, and authorising such scheme to be carried into execution. The Provisional Order shall also specify the areas which are to be contributory places for the purposes of this Act, upon which the expenses incurred under this Act are to be charged. Such Provisional Order may be made either absolutely or with such conditions and alterations of the scheme as the Local Government Board may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the sanitary authority to serve a copy of any Provisional Order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Act to be served, except tenants for a month or a less period than a month.

A Provisional Order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament, and it shall be lawful for the Local Government Board as soon as conveniently may be to obtain such confirmation; and any Provisional Order made in pursuance of this Act, when confirmed by Parliament with such modifications as may seem fit to Parliament, shall be deemed to be a Public General Act of Parliament, and is in this Act referred to as the confirming Act.

Any Act confirming any Provisional Order made in pursuance of this Act may be repealed, altered, or amended by any Provisional Order made by the Local Government Board and confirmed by Parliament.

The Local Government Board may make such order as they think fit in favour of any persons whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

All costs, charges, and expenses incurred by the Local Government Board in relation to any Provisional Order under this Act shall, to such an amount as the Local Government

Board think proper to direct, and all costs, charges, and expenses of any person, to such amount as may be allowed by the Local Government Board in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the sanitary authority under this Act, and shall be paid to the Local Government Board and to such person respectively, in such manner and at such times, and either in one sum or by instalments, as the Local Government Board may order, with power for the Local Government Board to direct interest to be paid, at such rate, not exceeding five pounds in the hundred by the year, as the Local Government Board may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

Any order made by the Local Government Board in pursuance of this section may be made a rule of Her Majesty's High Court of Justice in Ireland, and be enforced accordingly.

8. A Provisional Order of the Local Government Board for confirming an improvement scheme under this Act shall become absolute, and shall take effect, without any Act of Parliament confirming the same, in case

(*a*) the order does not authorise the purchase or taking of any land otherwise than by agreement; and

(*b*) a petition against the order, signed by not less than three ratepayers liable to pay rates in respect of property situate within the area declared by such order to be chargeable, is not lodged with the Local Government Board within such time, not less than one month after the making and publication of the Provisional Order, as the Local Government Board may from time to time by regulation prescribe.

9. Where any Bill for confirming a Provisional Order authorising an improvement scheme is referred to a Committee of either House of Parliament upon the petition of any person opposing such Bill, the Committee shall take into consideration the circumstances under which such opposition was made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the Bill as the Committee may think just.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The decision of the majority of the members of the Committee for the time being present and voting on any question under this section shall be deemed to be the decision of the Committee.

10. Where a representation is made to the sanitary authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, such sanitary authority shall as soon as possible send a copy of the representation, accompanied by their reasons for not acting upon it, to the Local Government Board, and upon the receipt thereof the Local Government Board may, if they think it necessary, direct a local inquiry to be held and a report to be made to them with respect to the correctness of the representation made to the sanitary authority, and any matters connected therewith on which the Local Government Board may desire to be informed.

11. In any case in which an order has been or shall be made under section three of the Labourers Cottages and Allotments (Ireland) Act, 1882, or under section nineteen of the Land Law (Ireland) Act, 1881, for providing accommodation for the labourers employed on any holding, and such order has not been complied with within six months after the date of such order, it shall be the duty of the sanitary authority of the district in which such holding is situate to make such complaint as mentioned in, and to put in force, the provisions of section four of the Labourers Cottages and Allotments (Ireland) Act, 1882.

Execution of Scheme by Local Authority.

12. When the confirming Act authorising any improvement scheme of a sanitary authority under this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution, as soon as practicable. They may sell or let all or any part of such lands to any purchasers or lessees for the purposes and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution, and in particular they shall insert in any grant or lease of any part of the section provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prescribing the maximum rents to be charged therefor, and prohibiting the division of buildings, and any addition to

or alteration of the character of buildings, without the consent of the sanitary authority and of the Local Government Board, and for the re-vesting of the land in the sanitary authority, or their re-entry thereon on breach of any provision in the grant or lease, and also that there shall be allotted to each dwelling so to be erected by such grantee or lessee a plot of ground not exceeding half a statute acre.

Provided that in any grant or lease of any part of the section to which the scheme applies the sanitary authority, subject to the approval of the Local Government Board, shall impose suitable conditions and restrictions as to the elevation, size, and design of the dwellings and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

The sanitary authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying out of the scheme in respect of such land by such person.

13. It shall not be lawful for the sanitary authority to make a letting (save as expressly provided by this Act) of any tenement erected or acquired under this Act, or any part thereof, to any person other than an agricultural labourer.

It shall not be lawful for the sanitary authority to permit any such tenement or part thereof to be held by any person other than an agricultural labourer as occupier thereof.

It shall not be lawful for the sanitary authority to make a letting of any such tenement to an agricultural labourer for a longer term than from month to month.

It shall be the duty of the sanitary authority to make lettings of the tenements erected or acquired by them under this Act upon such terms and conditions that the tenancies created by such lettings shall be cottier tenancies within the meaning of the Landlord and Tenant Law Amendment Act (Ireland), 1860, save only that the rents reserved in such lettings may exceed the limits prescribed by the eighty-first section of that Act; and tenancies created by a sanitary authority under this Act shall not be excluded from the provisions of the Landlord and Tenant Law Amendment Act (Ireland), 1860, which relate to cottier tenancies by reason only that the rents reserved exceed such limits.

In every such letting the sanitary authority shall insert a condition binding the tenant not to assign, or sub-let, or sub-divide, or part with the possession of the tenement or any part thereof, or make any letting in conacre, or allow any part of such premises to be occupied by a lodger; and it shall be the duty of the sanitary authority, in case any breach of such condition occurs, to take all such proceedings as may be necessary for the purpose of terminating the tenancy of such tenant and of recovering the possession of the tenement.

The conditions in this section contained shall apply and extend to the assignees or lessees of the sanitary authority in respect of any purchased lands sold or let under the next preceding section.

14. When any house situate on any land acquired by a sanitary authority under this Act, and occupied by an agricultural labourer, is unfit for human habitation, the sanitary authority shall, after making provision under this Act for the accommodation of such labourer, pull down such house, or apply it for some purpose other than as a dwelling-house.

15. If within two years after the confirmation of any Provisional Order under this Act the sanitary authority have failed to make arrangements for the erection of labourers dwellings, the said land shall, in case the person from whom the same was acquired, his heirs or assigns, so requires, be reconveyed to him or them, in a condition at least as suitable for agricultural or grazing purposes as it was when it was originally taken possession of, at the price paid for the same by the sanitary authority, or if such person, his heirs or assigns, omits, after one month's notice, to signify his or their intention to repurchase on such terms, then the Local Government Board may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Act, and to a special condition on the part of the purchaser to erect upon the said land labourers dwellings in accordance with plans to be approved by the sanitary authority, and subject to such other reservations and regulations as the Local Government Board may deem necessary.

16. Any sanitary authority may for the purposes and subject to the provisions of this Act purchase or take on lease, sell, or exchange any lands within their district, and may for the like purposes, or for the proper drainage or sanitary requirements of the labourers dwellings within their district, purchase, either within or without their district, any

land covered with water, or any water not needed for the use of the inhabitants of the district in which it may be found, or right to take or convey water. And for the purposes of such purchase the Lands Clauses Acts shall be incorporated with this Act; provided that the sanitary authority shall not purchase or take any lands otherwise than by agreement except under the authority of a Provisional Order confirmed by Parliament in accordance with this Act.

In the case of any purchase of lands otherwise than by agreement, such purchase and the provisions of the Provisional Order relating thereto shall, at the option of the owner of the lands, estate, or interest proposed to be purchased, be at an end in the following events:—

(*a.*) In cases in which the owner of the lands, estate, or interest shall have become entitled to a certificate under the fourteenth section of the Railways (Ireland) Act, 1851, if the purchase money is demanded by such owner, and remains unpaid for a period of thirty days or upwards after such demand:

(*b.*) In cases falling within the eighteenth or nineteenth sections of the Railways (Ireland) Act, 1851, if the sanitary authority make default for a period of thirty days or upwards in dealing with the purchase money as provided by those sections respectively:

Provided that the election of the owner of the lands, estate, or interest to declare such purchase to be at an end shall be notified by him in writing to the sanitary authority within a period not exceeding thirty days after the expiration of the time limited by this section within which the purchase money should be paid or otherwise dealt with as aforesaid.

Any lands acquired by a sanitary authority in pursuance of any powers in this Act contained, and not required for the purpose for which they were acquired, shall, except where otherwise expressly provided by this Act, in case the person from whom such lands were acquired, his heirs or assigns, so requires, be reconveyed to him or them, in a condition at least as suitable for agricultural or grazing purposes as it was when it was originally taken possession of, at the price paid for such lands by the sanitary authority, or if such person, his heirs or assigns, omits, after one month's notice, to signify his intention to repurchase such lands on such terms, shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale, and also the proceeds of any other sale of lands acquired by a sanitary authority under this Act, and any fine paid to a sanitary authority on account of any letting of any such lands, shall be applied towards the discharge of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or, if no such principal moneys are outstanding, shall be carried to the account of such fund or rate.

17. The expenses incurred by a sanitary authority in execution of this Act shall be special expenses within the meaning of Part Five of the Public Health (Ireland) Act, 1878.

A sanitary authority shall have the same power of borrowing on the credit of the rates out of which special expenses are payable under this Act as they have under the Public Health (Ireland) Act, 1878, for sanitary purposes, and shall have the same power of mortgaging any property acquired by them under this Act as they have of mortgaging land to which section two hundred and thirty-nine of the Public Health (Ireland) Act, 1878, applies.

The following sections of the Public Health (Ireland) Act, 1878, shall be incorporated with this Act; (that is to say),

Section two hundred and thirty-eight, as to regulations concerning the exercise of borrowing powers; except sub-section (1) of that section:

Section two hundred and forty, as to form of mortgages:

Section two hundred and forty-one, as to register of mortgages:

Section two hundred and forty-two, as to transfer of mortgages:

Section two hundred and forty-three, as to the appointment of a receiver:

Section two hundred and forty-seven, as to the borrowing powers of joint boards.

Provided always that no rate or rates to be levied for the purposes of this Act shall in any one year exceed in the whole one shilling in the pound upon the rateable value of the property to be rated.

18. The Treasury may authorise the Board of Works to advance from time to time, out of any moneys in their hands, to sanitary authorities, such sums as the Treasury think expedient for the purposes of this Act.

Advances made by the Board of Works to a sanitary authority in pursuance of this section shall be repayable within such periods and at such rate of interest as are set forth in a Minute of the Treasury, made on the sixteenth day of August one thousand eight hundred

and seventy-nine, with reference to loans to which section two of the Public Works Loans Act, 1879, applies, or as the Treasury may from time to time fix in pursuance of that section, and, save as regards such periods and rate of interest, the enactments relating to loans made by the Board of Works under the Public Health (Ireland) Act, 1878, shall, so far as is consistent with this section, apply in like manner as if an advance under this section were a loan made in pursuance of those enactments.

19. The accounts of a rural sanitary authority, acting in execution of this Act, shall be audited in the same manner, and with the same powers in the officers auditing the same, and subject to the same provisions as the accounts of that authority in its character of sanitary authority are for the time being required to be audited according to law.

20. The Artizans and Labourers Dwellings Improvement Act, 1875, as amended by any Act or Acts, shall extend to all urban sanitary districts in Ireland containing, according to the last published census, a population of twelve thousand and upwards; and also to any other urban sanitary district in Ireland to which the Local Government Board may by Provisional Order declare that the said Act shall extend.

Such Provisional Order may be made by the Local Government Board in the manner in which Provisional Orders are made by them under the Public Health (Ireland) Act, 1878.

No such Provisional Order shall be made except upon the petition of the urban sanitary authority of such sanitary district, nor, in the event of any objection being taken to such petition, until after a local inquiry with respect to such petition has been held by the Local Government Board.

21. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; (that is to say,)

"Local Government Board" means the Local Government Board for Ireland:

"Lands Clauses Acts" means and includes the Lands Clauses Consolidation Act, 1845, as the same is amended by the Lands Clauses Consolidation Acts Amendment Act, 1860; the Railways Act (Ireland), 1851; the Railways Act (Ireland), 1860; the Railways Act (Ireland), 1864; and the Railway Traverse Act:

"Treasury" means the Commissioners of Her Majesty's Treasury:

"Board of Works" means the Commissioners of Public Works in Ireland:

The term "Agricultural Labourer" means a person who habitually works for hire in agricultural work upon the land of some other person, and whose principal means of living is such hire; and includes a herdsman. The term does not include any person who is not paid for his labour by wages.

22. This Act shall continue in force for five years after the passing thereof, and until the end of the session of Parliament next ensuing.

Provided that the expiration of this Act shall not affect or prejudice anything that shall have been done, or any right, title, or security that shall have been previously acquired under this Act; and that the powers of every sanitary authority to carry into operation every scheme that shall have become absolute before such expiration, and all powers of rating and other powers and authorities conferred on them by this Act in relation thereto, shall continue to be in full force and effect as if this Act had not expired.

CHAP. 61.

Agricultural Holdings (England) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

PART I.

IMPROVEMENTS.

Compensation for Improvements.

1. *General right of tenant to compensation.*

As to Improvements executed before the Commencement of Act.

2. *Restriction as to improvements before Act.*

PART II.

Distress.

PART III.

General Provisions.

An Act for amending the Law relating to Agricultural Holdings in England. (25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

IMPROVEMENTS.

Compensation for Improvements.

1. Subject as in this Act mentioned, where a tenant has made on his holding any improvement comprised in the First Schedule hereto, he shall, on and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an incoming tenant: Provided always, that in estimating the value of any improvement in the First Schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

As to Improvements executed before the Commencement of Act.

2. Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with the exceptions following, that—

(1.) Where a tenant has within ten years before the commencement of this Act made an improvement mentioned in the third part of the First Schedule hereto, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement; or

(2.) Where a tenant has executed an improvement mentioned in the first or second part of the said First Schedule within ten years previous to the commencement of this Act, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in

respect of such improvement, and the landlord within one year after the commencement of this Act declares in writing his consent to the making of such improvement, then such tenant on quitting his holding at the determination of a tenancy after the commencement of this Act may claim compensation under this Act in respect of such improvement in the same manner as if this Act had been in force at the time of the execution of such improvement.

As to Improvements executed after the Commencement of Act.

3. Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the First Schedule hereto, and executed after the commencement of this Act, unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

4. Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part of the First Schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his agent duly authorised in that behalf, notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

5. Where, in the case of a tenancy under a contract of tenancy current at the commencement of this Act, any agreement in writing or custom, or the Agricultural Holdings (England) Act, 1875, provides specific compensation for any improvement comprised in the First Schedule hereto, compensation in respect of such improvement, although executed after the commencement of this Act, shall be payable in pursuance of such agreement, custom, or Act of Parliament, and shall be deemed to be substituted for compensation under this Act.

Where in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement mentioned in the third part of the First Schedule hereto, and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a contract of tenancy current at the commencement of this Act in respect of an improvement mentioned in the third part of the First Schedule hereto, specific compensation for which is not provided by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875.

Regulations as to Compensation for Improvements.

6. In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there

shall be taken into account in reduction thereof:

(*a.*) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and

(*b.*) In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom; and

(*c.*) Any sums due to the landlord in respect of rent or in respect of any waste committed or permitted by the tenant, or in respect of any breach of covenant or other agreement connected with the contract of tenancy committed by the tenant, also any taxes, rates, and tithe rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord.

There shall be taken into account in augmentation of the tenant's compensation—

(*d.*) Any sum due to the tenant for compensation in respect of a breach of covenant or other agreement connected with a contract of tenancy and committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste by the tenant or of breach by the tenant committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

Procedure.

7. A tenant claiming compensation under this Act shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to make such claim.

Where a tenant gives such notice, the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste or any breach of covenant or other agreement.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

8. The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

9. Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows:—

(1.) If the parties concur, there may be a single referee appointed by them jointly:

(2.) If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed:

(3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee:

(4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring to act, fails to act, the party appointing him shall appoint another referee:

(5.) Notice of every appointment of a referee by either party shall be given to the other party:

(6.) If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the county court shall within fourteen days appoint a competent and impartial person to be a referee:

(7.) Where two referees are appointed, then (subject to the provisions of this Act) they shall before they enter on the reference appoint an umpire:

(8.) If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire:

(9.) If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the county court shall within fourteen days appoint a competent and impartial person to be the umpire.

(10.) Every appointment, notice, and request under this section shall be in writing.

10. Provided that, where two referees are appointed, an umpire may be appointed as follows:

(1.) If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the Land Commissioners for England, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those commissioners.

(2.) In every other case, if either party on

appointing a referee requires, by notice in writing to the other, that the umpire shall be appointed by the county court, then, unless the other party dissents by notice in writing therefrom, the umpire, and any successor to him, shall on the application of either party be so appointed, and in case of such dissent the umpire, and any successor to him, shall be appointed, on the application of either party, by the Land Commissioners for England.

11. The powers of the county court under this Act relative to the appointment of a referee or umpire shall be exerciseable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the court.

12. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other.

13. The referee or referees or umpire may call for the production of any sample, or voucher, or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

14. The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties.

15. The award shall be in writing, signed by the referee or referees or umpire.

16. A single referee shall make his award ready for delivery within twenty-eight days after his appointment.

Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.

17. In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement, if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for, and the award shall, when necessary, distinguish such improvements and the amount awarded in respect thereof; and an award given under this section shall be subject to the appeal provided by this Act.

18. Where two referees are appointed and act, if they fail to make their award ready for delivery within the time aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the county court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

19. The award shall not award a sum generally for compensation, but shall, so far as possible, specify—

(*a.*) The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account under the provisions of this Act in reduction or augmentation of such compensation;

(*b.*) The time at which each improvement, act, or thing was executed, done, committed, or permitted;

(*c.*) The sum awarded in respect of each improvement, act, matter, and thing; and

(*d.*) Where the landlord desires to charge his estate with the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.

20. The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard

being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case.

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the registrar of the county court, on the application of either party, but that taxation shall be subject to review by the judge of the county court.

21. The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise.

22. A submission or award shall not be made a rule of any court, or be removable by any process into any court, and an award shall not be questioned otherwise than as provided by this Act.

23. Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the county court on all or any of the following grounds:

1. That the award is invalid;
2. That the award proceeds wholly or in part upon an improper application of or upon the omission properly to apply the special provisions of sections three, four, or five of this Act;
3. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation;
4. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation;

and the judge shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

If no appeal is so brought, the award shall be final.

The decision of the judge of the county court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the county court shall act thereon.

24. Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the judge of the county court, as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

25. Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the county court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.

26. Where the appointment of a person to act as the next friend of a married woman is required for the purposes of this Act, the county court may make such appointment, and may remove or change that next friend if and as occasion requires.

A woman married before the commencement of the Married Women's Property Act, 1882, entitled for her separate use to land, her title to which accrued before such commencement as aforesaid, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other woman married before the commencement of the Married Women's Property Act, 1882, is desirous of doing any act under this Act in respect of land, her title to which accrued before such commencement as aforesaid, her husband's concurrence shall be requisite, and she shall be examined apart from him by the county court, or by the judge of the county court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

27. The costs of proceedings in the county court under this Act shall be in the discretion of the court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the court.

28. Any notice, request, demand, or other

instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served.

Charge of Tenant's Compensation.

29. A landlord, on paying to the tenant the amount due to him in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, or on expending such amount as may be necessary to execute an improvement under the second part of the First Schedule hereto, after notice given by the tenant of his intention to execute such improvement in accordance with this Act, shall be entitled to obtain from the county court a charge on the holding, or any part thereof, to the amount of the sum so paid or expended.

The Court shall, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, make an order charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the court thinks fit.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will in the opinion of the court, after hearing such evidence (if any) as it thinks expedient, have become exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

The estate or interest of any landlord holding for an estate or interest determinable or liable to forfeiture by reason of his creating or suffering any charge thereon shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

Capital money arising under the Settled Land Act, 1882, may be applied in payment of any moneys expended and costs incurred by a landlord under or in pursuance of this Act in or about the execution of any improvement mentioned in the first or second parts of the schedule hereto, as for an improvement authorised by the said Settled Land Act; and such money may also be applied in discharge of any charge created on a holding under or in pursuance of this Act in respect of any such improvement as aforesaid, as in discharge of an incumbrance authorised by the said Settled Land Act to be discharged out of such capital money.

30. The sum charged by the order of a county court under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns, in the tenancy where the landlord is himself a tenant of the holding.

31. Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or in any character otherwise than for his own benefit, the amount due from such landlord in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, shall be charged and recovered as follows and not otherwise; (that is to say,)

(1.) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding only.

(2.) Such landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the county court a charge on the holding to the amount of the sum required to be paid or which has been paid, as the case may be, to the tenant.

(3.) If such landlord neglect or fail within one month after the tenant has quitted his holding to pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled to obtain from the county court in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge or in raising the amount due thereunder.

(4.) The court shall on proof of the tenant's title to have a charge made in his favour make an order charging the holding with payment of the amount of the charge, including costs, in like manner and form as in case of a charge which a landlord is entitled to obtain.

32. Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a county court under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.

Notice to Quit.

33. Where a half-year's notice, expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the holding, by writing under their hands, agree that this section shall not apply, in which case a half year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

Fixtures.

34. Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Provided as follows:—

1. Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding:
2. In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding:
3. Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it:
5. At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

Crown and Duchy Lands.

35. This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of this Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person as Her Majesty, her heirs or successors, may appoint in writing under the Royal Sign Manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in respect of an improvement mentioned in the first or second part of the First Schedule hereto, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866, and the amount thereof shall be charged and repaid as in that section provided with respect to the costs, charges, and expenses therein mentioned.

Any compensation payable under this Act by those Commissioners, or either of them, in respect of an improvement mentioned in the third part of the First Schedule hereto, shall be deemed to be part of the expenses of the management of the Land Revenues of the Crown, and shall be payable to those Commissioners out of such money and in such manner

as the last-mentioned expenses are by law payable.

36. This Act shall extend and apply to land belonging to Her Majesty, her heirs and successors, in right of the Duchy of Lancaster.

With respect to such land for the purposes of this Act, the Chancellor for the time being of the Duchy shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement mentioned in the first or second part of the First Schedule to this Act shall be deemed to be an expense incurred in improvement of land belonging to Her Majesty, her heirs or successors, in right of the Duchy, within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, and shall be raised and paid as in that section provided with respect to the expenses therein mentioned.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement mentioned in the third part of the First Schedule to this Act shall be paid out of the annual revenues of the Duchy.

37. This Act shall extend and apply to land belonging to the Duchy of Cornwall.

With respect to such land, for the purposes of this Act, such person as the Duke of Cornwall for the time being, or other the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, from time to time, by sign manual, warrant, or otherwise, appoints, shall represent the Duke of Cornwall or other the personage aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

Any compensation payable under this Act by the Duke of Cornwall, or other the personage aforesaid, in respect of an improvement mentioned in the first or second part of the First Schedule to this Act shall be deemed to be payable in respect of an improvement of land within section eight of the Duchy of Cornwall Management Act, 1863, and the amount thereof may be advanced and paid from the money mentioned in that section, subject to the provision therein made for repayment of sums advanced for improvements.

Ecclesiastical and Charity Lands.

38. Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord shall not be exercised by the archbishop or bishop, in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners for England.

39. Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person, officer, or authority who, in case the benefice were vacant, would be entitled to present thereto, or of the Governors of Queen Anne's Bounty (that is, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).

In every such case the Governors of Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the county court a charge on the holding, in respect thereof, in favour of themselves.

Every such charge shall be effectual, notwithstanding any change of the incumbent.

40. The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners for England and Wales.

Resumption for Improvements, and Miscellaneous.

41. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes:

The erection of farm labourers cottages or other houses, with or without gardens;

The providing of gardens for existing farm labourers cottages or other houses;

The allotment for labourers of land for gardens or other purposes;

The planting of trees;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith;

The obtaining of brick earth, gravel, or sand;

The making of a watercourse or reservoir;

The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

42. Subject to the provisions of this Act in relation to the Crown, duchy, ecclesiastical, and charity lands, a lordlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were in the case of an estate of inheritance owner thereof in fee, and in the case of a leasehold possessed of the whole estate in the leasehold.

43. When, by any Act of Parliament, deed, or other instrument, a lease of a holding is authorised to be made, provided that the best rent, or reservation in the nature of rent, is by such lease reserved, then, whenever any lease of a holding is, under such authority, made to the tenant of the same, it shall not be necessary, in estimating such rent or reservation, to take into account against the tenant the increase (if any) in the value of such holding arising from any improvements made or paid for by him on such holding.

PART II.

Distress.

44. After the commencement of this Act it shall not be lawful for any landlord entitled to the rent of any holding to which this Act applies to distrain for rent, which became due in respect of such holding, more than one year before the making of such distress, except in the case of arrears of rent in respect of a holding to which this Act applies existing at the time of the passing of this Act, which arrears shall be recoverable by distress up to the first day of January one thousand eight hunded and eighty-five to the same extent as if this Act had not passed.

Provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then for the purpose of this section the rent of such holding shall be deemed to have become due at the expiration of such quarter or half year as aforesaid, as the case may be, and not at the date at which it legally became due.

45. Where live stock belonging to another person has been taken in by the tenant of a holding to which this Act applies to be fed at a fair price agreed to be paid for such feeding by the owner of such stock to the tenant, such stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being found, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or if any part of such price has been paid exceeding the amount remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying to the distrainer a sum equal to such price as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding: Provided always, that so long as any portion of such live stock shall remain on the said holding the right to distrain such portion shall continue to the full extent of the price originally agreed to be paid for the feeding of the whole of such live stock, or if part of such price has been bonâ fide paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid.

Agricultural or other machinery which is the bonâ fide property of a person other than the tenant, and is on the premises of the tenant under a bonâ fide agreement with him for the hire or use thereof in the conduct of

his business, and live stock of all kinds which is the bonâ fide property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrear.

46. Where any dispute arises—
(*a*) in respect of any distress having been levied contrary to the provisions of this Act; or
(*b*) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of such stock; or
(*c*) as to any other matter or thing relating to a distress on a holding to which this Act applies:
such dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such county court or court of summary jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires, any such dispute as mentioned in this section shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of such court of summary jurisdiction under this section may, on giving such security to the other party as the court may think just, appeal to a court of general or quarter sessions.

47. Where the compensation due under this Act, or under any custom or contract, to a tenant has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord shall not be entitled to distrain for more than the balance.

48. An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court.

49. No person whatsoever making any distress for rent on a holding to which this Act applies when the sum demanded and due shall exceed the sum of twenty pounds for or in respect of such rent shall be entitled to any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed and set forth in the Second Schedule hereto.

50. So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed as respects any holding to which this Act applies, and the landlord or other person levying a distress on such holding may sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold. The costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the party requesting the removal.

51. The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same shall, in the case of any distress on a holding to which this Act applies, be extended to a period of not more than fifteen days, if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional costs that may be occasioned by such extension of time. Provided that the landlord or person levying the distress may, at the written request or with the written consent of the tenant, or such owner as aforesaid, sell the goods and chattels distrained or part of them at any time before the expiration of such extended period as aforesaid.

52. From and after the commencement of this Act no person shall act as a bailiff to levy any distress on any holding to which this Act applies unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of the judge of a county court; and every county court judge shall, on or before the thirty-first day of December one thousand eight hundred and eighty-three, and afterwards from time to time as occasion shall require, appoint a competent number of fit and proper persons to act as such bailiffs as aforesaid. If any person so appointed shall be proved to the satisfaction of the said judge to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his appointment summarily cancelled by the said judge.

PART III.

General Provisions.

53. This Act shall come into force on the first day of January one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

54. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

55. Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the First Schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity.

56. Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

57. A tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorised by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act, but where he is not entitled to compensation under or in pursuance of this Act he may recover compensation under any other Act of Parliament, or any agreement or custom, in the same manner as if this Act had not passed.

58. A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

59. Subject as in this section mentioned, a tenant shall not be entitled to compensation in respect of any improvements, other than manures as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

A final notice to quit means a notice to quit which has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

(1.) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, has quitted his holding at the expiration of that year; and

(2.) Where a tenant, whether a tenant from year to year or a lessee, previously to beginning any such improvement, has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

60. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

61. In this Act—

"Contract of tenancy" means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year.

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause

such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act:

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding:

"Tenant" means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year:

"Tenant" includes the executors, administrators, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid:

"Holding" means any parcel of land held by a tenant:

"County court," in relation to a holding, means the county court within the district whereof the holding or the larger part thereof is situate:

"Person" includes a body of persons and a corporation aggregate or sole:

"Live stock" includes any animal capable of being distrained:

"Manures" means any of the improvements numbered twenty-two and twenty-three in the third part of the First Schedule hereto:

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

62. On and after the commencement of this Act, the Agricultural Holdings (England) Act, 1875, and the Agricultural Holdings (England) Act, 1875, Amendment Act, 1876, shall be repealed.

Provided that such appeal shall not affect—

(*a.*) any thing duly done or suffered, or any proceedings pending under or in pursuance of any enactment hereby repealed; or

(*b.*) any right to compensation in respect of improvements to which the Agricultural Holdings (England) Act, 1875, applies, and which were executed before the commencement of this Act; or

(*c.*) any right to compensation in respect of any improvement to which the Agricultural Holdings (England) Act, 1875, applies, although executed by a tenant after the commencement of this Act if made under a contract of tenancy current at the commencement of this Act; or

(*d.*) any right in respect of fixtures affixed to a holding before the commencement of this Act;

and any right reserved by this section may be enforced after the commencement of this Act in the same manner in all respects as if no such repeal had taken place.

63. This Act may be cited for all purposes as the Agricultural Holdings (England) Act, 1883.

64. This Act shall not apply to Scotland or Ireland.

FIRST SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

(1.) Erection or enlargement of buildings.
(2.) Formation of silos.
(3.) Laying down of permanent pasture.
(4.) Making and planting of osier beds.
(5.) Making of water meadows or works of irrigation.
(6.) Making of gardens.
(7.) Making or improving of roads or bridges.
(8.) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(9.) Making of fences.
(10.) Planting of hops.
(11.) Planting of orchards or fruit bushes.
(12.) Reclaiming of waste land.
(13.) Warping of land.
(14.) Embankment and sluices against floods.

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

(15.) Drainage.

PART III.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS NOT REQUIRED.

(16.) Boning of land with undissolved bones.
(17.) Chalking of land.
(18.) Clay-burning.
(19.) Claying of land.
(20.) Liming of land.
(21.) Marling of land.
(22.) Application to land of purchased artificial or other purchased manure.
(23.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

SECOND SCHEDULE.

Levying distress. Three per centum on any sum exceeding 20*l.* and not exceeding 50*l.* Two and a half per centum on any sum exceeding 50*l.*

To bailiff for levy, 1*l.* 1*s.*

To man in possession, if boarded, 3*s.* 6*d.* per day: if not boarded, 5*s.* per day.

For advertisements the sum actually paid.

To auctioneer. For sale five pounds per centum on the sum realised not exceeding 100*l.*, and four per centum on any additional sum realised not exceeding 100*l.*, and on any sum exceeding 200*l.* three per centum. A fraction of 1*l.* to be in all cases considered 1*l.*

Reasonable costs and charges where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress; such costs and charges in case the parties differ to be taxed by the registrar of the county court of the district in which the distress is made.

CHAP. 62.

Agricultural Holdings (Scotland) Act, 1883.

ABSTRACT OF THE ENACTMENTS.

Compensation for Improvements.

1. *General right of tenant to compensation.*

As to Improvements executed before the Commencement of Act.

2. *Restriction as to improvements before Act.*

As to Improvements executed after the Commencement of Act.

3. *Consent of landlord as to improvements in first part of schedule.*
4. *Notice to landlord as to improvements in second part of schedule.*
5. *Reservation as to existing and future leases.*

Regulations as to Compensation for Improvements.

6. *Compensation for improvements.*

Procedure.

7. *Notice of intended claim.*
8. *Compensation agreed or settled by reference.*
9. *Appointment of referee or referees and overman.*
10. *Requisition for appointment of overman by the sheriff.*
11. *Mode of submission to reference.*
12. *Power for referee, &c. to require production of documents, administer oaths, &c.*
13. *Power to proceed in absence.*
14. *Form of award.*
15. *Time for award of referee or referees.*
16. *Reference to and award by overman.*

An Act for amending the Law relating to Agricultural Holdings in Scotland.

(25th August 1883.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Compensation for Improvements.

1. Subject as in this Act mentioned, a tenant who has made on his holding any improvement specified in the schedule hereto, shall, from and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an

incoming tenant: Provided always, that in estimating the value of any improvement in the schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

As to Improvements executed before the Commencement of Act.

2. Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with these exceptions, namely,—

(1.) Where a tenant has within ten years before the commencement of this Act executed an improvement specified in the third part of the schedule hereto which he was not under an express obligation to make, and he is not entitled under any contract or custom to compensation in respect of such improvement; or

(2.) Where a tenant has executed an improvement mentioned in the first or second part of this schedule within ten years previous to the commencement of this Act, and he is not entitled under any contract or custom to compensation in respect of such improvement, and the landlord, within one year after the commencement of this Act, declares in writing his consent to the making of the improvement. In either of these cases the tenant, on quitting his holding at the determination of the tenancy after the commencement of this Act, may claim compensation under this Act in respect of the improvement which he has executed in the same manner as if this Act had been in force at the time of the execution of such improvement.

As to Improvements executed after the Commencement of Act.

3. Compensation under this Act shall not be payable in respect of any improvement specified in the first part of the schedule hereto, and executed after the commencement of this Act, unless the landlord, or his agent duly authorised on that behalf, has previously to the execution of the improvement, and after the passing of this Act, consented in writing to the execution of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, the compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

4. Compensation under this Act shall not be payable in respect of any improvement specified in the second part of the schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his duly authorised agent, notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of an agreement being made, that the improvement is to be executed by the tenant, the compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may undertake to execute the improvement himself, and unless the notice is previously withdrawn, proceed to do so in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum, payable for a period of twenty-five years, as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sums to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall, in respect thereof, be entitled to compensation under this Act.

Where in the case of a tenancy under a lease current at the passing of this Act there is in such lease, or in any relative writing made prior to the passing hereof, an express stipulation limiting the outlay on any improvement specified in the second part of the schedule hereto, the tenant shall have no claim to compensation under this Act for any such improvement in excess of the sum provided for in such stipulation.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in terms of the lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

5. Where, in the case of a tenancy under a lease current at the commencement of this Act, any agreement in writing or custom provides specific compensation for any improvement specified in the schedule hereto, compensation in respect of such improvement, although

executed after the commencement of this Act, shall be payable in pursuance of such agreement or custom, and shall be deemed to be substituted for compensation under this Act.

Where, in the case of a tenancy under a lease beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement specified in the third part of the schedule hereto, and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement and not under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a lease current at the commencement of this Act in respect of an improvement specified in the third part of the schedule hereto, specific compensation for which is not provided by any agreement in writing or custom.

Regulations as to Compensation for Improvements.

6. In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there shall be taken into account in reduction thereof:

(*a.*) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and

(*b.*) In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding, according to the rules of good husbandry or according to the terms of any written contract specifying such rules, of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except in so far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed.

The amount of compensation payable to the tenant shall be subject to deduction of any sums due to the landlord:

(1.) For rent payable in respect of the holding;

(2.) For any taxes, rates, or public burdens, or interest moneys payable in respect of drainage, premiums of insurance payable in respect of the holding for which the tenant is liable as between him and the landlord;

(3.) For the breach of any stipulation of the lease, or of any contract relative to the lease, committed by the tenant;

(4.) For any deterioration committed or permitted by the tenant;

There shall be added to the tenant's compensation any sum due to the tenant for compensation in respect of a breach of any stipulation of a lease, or other contract relative to a lease, committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of deterioration by the tenant or of breach of any stipulation by the tenant committed or permitted in relation to cultivation or management more than four years before the determination of the tenancy.

Procedure.

7. Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act.

Where a tenant gives such a notice the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim for compensation under this Act.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

8. The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid to the tenant or to the landlord under this Act.

If in any case they do not so agree the difference shall be settled by a reference.

9. Where there is a reference under this Act, a single referee, or two referees and an overman, shall be appointed as follows:

(1.) If the parties concur, a single referee may be appointed by them jointly:

(2.) If before an award is pronounced the single referee dies or becomes incapable of acting, or for seven days after notice from the parties of his appointment he fails to accept the reference and to act, the proceedings shall begin afresh, as if no referee had been appointed:

(3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee:

(4.) If before an award is pronounced one of two referees dies or becomes incapable of acting, or for seven days after notice from the party appointing him of his appointment fails to accept the reference and to act, the party appointing him shall appoint another referee:

(5.) Notice of every appointment of a referee by either party shall be given to the other party:

(6.) If for seven days after notice by one party to the other to appoint a referee, or failing a referee appointed, another referee, the other party fails to do so, then, on the application of the party giving notice, the sheriff shall within fourteen days appoint a competent and impartial person to be a referee:

(7.) Where two referees are appointed they shall before they enter on the reference appoint an oversman:

(8.) If before an award is pronounced an oversman dies or becomes incapable of acting, the referees shall appoint another oversman:

(9.) If for seven days after request from either party the referees fail to appoint an oversman, or failing an oversman appointed, another oversman, then, on the application of either party, the sheriff shall within fourteen days appoint a competent and impartial person to be the oversman:

(10.) Every appointment, notice, and request under this section shall be in writing.

The powers of the sheriff under this section shall be exerciseable by him although he may not be at the time within the county.

10. Where two referees are appointed, an oversman may be appointed, as follows:

If either party on appointing a referee requires by notice in writing to the other that the oversman shall be appointed by the sheriff, then the oversman and any successor to him shall be appointed, on the application of either party, by the sheriff.

11. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it, and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other.

12. The referee or referees or oversman may call for the production of any sample or voucher or other document or evidence which is in the possession or power of either party, or which either party can produce, and which seems to the referee or referees or oversman necessary for the determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

13. The referee or referees or oversman may proceed in the absence of either party where this course appears to him or them expedient after notice given to the parties.

14. The award shall be in writing, signed by the referee or referees or oversman as the case may be.

15. A single referee shall pronounce his award and have the same ready for delivery within twenty-eight days after his appointment.

Two referees shall pronounce their award and have the same ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they may from time to time jointly have fixed by writing under their hands, so that they have their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.

16. Where two referees are appointed and act, if they fail to pronounce their award and have the same ready for delivery within the time aforesaid, then, on the expiration of that time, their powers as referees shall cease and determine, and thereupon the matters referred to them shall stand referred to the oversman.

The oversman shall pronounce his award and have the same ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the devolution of the reference to him, or within such extended time (if any) as the sheriff, on the application of the oversman, or of either party, may fix, so that the oversman pronounce his award and have the same ready for delivery within a time not exceeding in the whole forty-nine days after notice to him as aforesaid.

The powers of the sheriff under this section shall be exerciseable by him although he may not be at the time within the county.

In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation, as under any of those sections, is to be deemed to be substituted for compensation under this Act, if and so far as the same can consistently with

the terms of the agreement, if any, be ascertained by the referees or the oversman, shall be awarded in respect of any improvements thereby provided for, and the award shall, when necessary, distinguish such improvements, and the amount awarded in respect thereof, and an award given under this section shall be subject to the appeal provided by this Act.

17. The award shall not find due or decern for a sum generally for compensation, but shall, as far as reasonably may be, specify,—

(*a.*) The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account in reduction or augmentation of such compensation;

(*b.*) The time at which each of the improvements, acts, or things was executed, committed, permitted, or omitted;

(*c.*) The sum awarded in respect of each improvement, act, matter, or thing; and

(*d.*) Where the landlord desires to charge his estate with the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.

18. The expenses of and connected with the reference, including the remuneration of the referee or referees and oversman, and other proper expenses, shall be borne and paid by either party in whole or by the parties in such proportions as to the referee or referees or oversman appears just, regard being had to the reasonableness or unreasonableness of the claims of the parties or either of them, and to the whole circumstances of the case.

The award may decern for the payment of the whole or any part of the expenses by either party to the other, and in that case the award shall specify the amount to be so paid.

The amount of the expenses shall be subject to taxation by the auditor of the sheriff court, on the application of either party, but that taxation shall be subject to review by the sheriff.

19. The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of the money awarded for compensation, expenses, or otherwise.

20. Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the sheriff on all or any of the following grounds:

(1.) That the award is invalid;

(2.) That the award proceeds wholly or in part upon an improper application of, or upon the omission properly to apply, the special provisions of sections three, four, or five of this Act;

(3.) That compensation has been awarded for improvements, acts, or things, or for breaches of stipulations or agreements, or for committing or permitting deterioration, in respect of which the party claiming was not entitled to compensation;

(4.) That compensation has not been awarded for improvements, acts, or things, or for breaches of stipulations or agreements, or for committing or permitting deterioration in respect of which the party claiming was entitled to compensation;

and the sheriff shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or oversman, with such directions as he may think fit.

If no appeal is so brought the award shall be final.

The decision of the sheriff on appeal shall be final.

21. Where any money agreed or awarded or ordered on appeal to be paid for compensation, expenses, or otherwise, is not paid within one month after the time when it is agreed or awarded or ordered to be paid, it shall be competent to record the agreement or award in the books of the sheriff court, to the effect of enabling execution to pass thereon in common form as upon an extract registered bond or decree arbitral; and any order for payment made by a sheriff on appeal shall be enforced in the same manner as a decree for payment made under his ordinary jurisdiction is enforced.

22. Where a landlord or a tenant is a pupil or minor, or is of unsound mind, not having a tutor, curator, or other guardian, the sheriff, on the application of any person interested, may appoint to him a tutor or curator for the purposes of this Act, and may recall the appointment of such tutor or curator and appoint another tutor or curator if and as occasion requires.

23. The Court of Session may by act of sederunt from time to time prescribe a scale of expenses for such proceedings in the sheriff court, and such expenses shall be taxed by the auditor of the sheriff court.

Charge of Tenant's Compensation.

24. A landlord on paying to the tenant the amount due to him in respect of compen-

sation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, or on his defraying himself the cost of improvements proposed to be executed by the tenant, shall be entitled to obtain from the sheriff authority to charge the holding, or the estate of which it forms part, in respect thereof.

The sheriff shall have power, on proof of the payment, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, to grant authority to the landlord to charge the holding, or the estate of which it forms part, by executing and registering in the register of sasines a bond and disposition in security over it for repayment of the amount paid, or any part thereof, with such interest, and by such instalments, as the sheriff may determine; or, if the landlord has only a leasehold interest in the holding, by executing and duly registering in the register of sasines an assignation of the lease in security and for repayment of the amount paid, or any part thereof, with such interest and by such instalments, as the sheriff may determine.

But, where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall by such bond and disposition in security or assignation be made payable after the time when the improvement in respect whereof compensation is paid will, where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will in the judgment of the sheriff, after hearing such evidence (if any) as he thinks expedient, have become exhausted; and such bond and disposition in security or assignation shall specify the times at which the total amount charged and each instalment thereof shall be payable.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assignees.

Any charge under this section shall rank after all prior charges and burdens heritably secured upon the holding or estate.

Where a holding or estate is charged by the landlord under this section, such charge shall not be deemed to be a contravention of any prohibition against charging or burdening contained in the deed or instrument under which the holding or estate is held by the landlord.

The price of any entailed land sold under the provisions of the Entail Acts, where such price is entailed estate within the meaning of those Acts, may be applied by the landlord in respect of the remaining portion of the entailed estate, or in respect of any other estate belonging to him, and entailed upon the same series of heirs, in payment of any expenditure and costs incurred by him in pursuance of this Act for executing or paying compensation for any improvement mentioned in the first or second parts of the schedule hereto, or in discharge of any charge with which the estate is burdened in pursuance of this Act in respect of such improvement.

25. Any company now or hereafter incorporated by Parliament, or incorporated under the Companies Acts, and having power to advance money for the improvement of land, or for the cultivation and farming of land, may make an advance of money upon a bond and disposition in security, or upon an assignation, as the case may be, executed by authority of the sheriff under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.

26. The sum charged by the order of a sheriff under this Act shall be a charge on the holding or the estate of which it forms part for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; provided that the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assignees, where the landlord has only a leasehold interest in the holding.

Removing for Nonpayment of Rent.

27. In any case in which the landlord's right of hypothec for the rent has ceased and determined—

When six months rent of the holding is due and unpaid, it shall be lawful for the landlord to raise an action of removing before the sheriff against the tenant, concluding for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is brought, and unless the arrears of rent then due are paid, or caution is found to the satisfaction of the sheriff for the same, and for one year's rent further, the sheriff may decern the tenant to remove, and eject him at such term in the same manner as if the lease were determined, and the tenant had been legally warned to remove.

A tenant so removed shall have the rights of an outgoing tenant to which he would have been entitled if his lease had naturally expired at such term of Whitsunday or Martinmas.

The second and third sections of the

Hypothec Abolition (Scotland) Act, 1880, are hereby repealed, and the provisions of the fifth section of the Act of Sederunt anent Removing of the fourteenth day of December one thousand seven hundred and fifty-six shall not apply in any case in which the procedure under this section is competent.

Notice of Termination of Tenancy.

28. Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end—

(*a.*) In the case of leases for three years and upwards, not less than one year, nor more than two years, before the termination of the lease:

(*b.*) In the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease.

Failing such notice by either party the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year.

Notice by the landlord to the tenant under this section shall be given in the form and manner prescribed by the Sheriff Courts (Scotland) Act, 1853, and shall come in place of the notice required by the said Act.

Provided that nothing contained in this section shall affect the right of the landlord to remove a tenant who has been sequestrated under the Bankruptcy (Scotland) Act, 1856, or who by failure to pay rent or otherwise has incurred any irritancy of his lease, or other liability to be removed:

The provisions relative to notice herein contained shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes, or to subjects let for any period less than a year.

29. A tenant may by will, or other testamentary writing, bequeath his lease to any person (herein-after called "the legatee"), subject to the following provisions:—

(*a.*) The legatee shall intimate the testamentary bequest to the landlord or his known agent within twenty-one days after the death of the tenant, unless he is prevented by some unavoidable cause from making intimation within that time, and in that event he shall make intimation as soon as possible thereafter.

(*b.*) Intimation to the landlord or his known agent by the legatee shall import acceptance of the lease by the legatee.

(*c.*) Within one month after intimation has been made to the landlord or his known agent, he may intimate to the legatee that he objects to receive him as tenant under the lease;

If the landlord or his known agent makes no such intimation within one month, the lease shall be binding on the landlord and the legatee respectively as landlord and tenant as from the date of the death of the deceased tenant.

(*d.*) If the landlord or his known agent intimates that he objects to receive the legatee as tenant under the lease, the legatee may present a petition to the sheriff, praying for decree declaring that he is tenant under the lease as from the date of the death of the deceased tenant, of which petition due notice shall be given to the landlord, who may enter appearance, and state his grounds of objection; and if any reasonable ground of objection is established to the satisfaction of the sheriff, he shall declare the bequest to be null and void; but otherwise he shall decern and declare in terms of the prayer of the petition.

(*e.*) The decision of the sheriff under such petition as aforesaid shall be final.

(*f.*) Pending any proceedings under this section, the legatee shall have possession of the holding, unless the sheriff shall otherwise direct on cause shown.

(*g.*) If the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the lease shall descend to the heir of the tenant in the same manner as if the bequest had not been made.

Fixtures.

30. Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy:

Provided as follows:—

1. Before the removal of any such fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all his other obligations to the landlord in respect to the holding:

2. In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding:
3. Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any building or other part of the holding by the removal:
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it:
5. At any time before the expiration of such notice the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building specified in the notice given by the tenant as aforesaid, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

Crown Lands.

31. This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of this Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person as Her Majesty, her heirs or successors, may appoint in writing under the Royal Sign Manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, Land and Revenues, or either of them, in respect of an improvement of the first class, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866, and the amount thereof shall be charged and repaid as in that section provided with respect to the costs, charges, and expenses therein mentioned.

Any compensation payable under this Act by those Commissioners, or either of them, in respect of an improvement of the second class, or of the third class, shall be deemed to be part of the expenses of the management of the Land Revenues of the Crown, and shall be payable by those Commissioners out of such money and in such manner as the last-mentioned expenses are by law payable.

Ecclesiastical and Charity Lands.

32. The powers by this Act conferred on a landlord shall not be exercised by ministers in respect of their glebes, except with the previous approval in writing of the Presbytery of the bounds, and shall not be exercised by trustees for ecclesiastical, educational, or charitable purposes, except with the previous approval in writing of one of Her Majesty's Principal Secretaries of State.

33. Subject to the provisions of this Act in relation to Crown, ecclesiastical, and charity lands, a landlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were absolute owner of the holding.

General Provisions.

34. This Act shall come into force on the first day of January one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

35. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment of the landlord.

36. Any contract or agreement made by a tenant by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement specified in the schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act) shall, so far as it deprives him of such right, be void.

37. Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on

quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained in the tenancy, and quitted the holding at the time at which the incoming tenant quits the same.

38. A tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorised by this Act in respect of any improvement for which he is entitled to compensation under this Act, but where he is not entitled to compensation under this Act he may recover compensation under any agreement or custom in the same manner as if this Act had not passed.

39. A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

40. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a lease or other contract, or of any improvements, deteriorations, away-going crops, fixtures, tax, rate, teind, rent, or other thing.

41. It shall be no objection to the validity of any consent in writing or agreement in writing within the provisions of this Act signed by the party or parties thereto or by any person or persons authorised by him or them that such consent or agreement has not been executed in accordance with the statutes regulating the execution of deeds in Scotland.

42. In this Act—

"Lease" means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year:

A tenancy from year to year under a lease current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a lease current at the commencement of this Act until the first day after the commencement of this Act, on which either the landlord or tenant of such tenancy could, the one by giving notice to the other, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act:

"Determination of tenancy" means the termination of a lease by reason of effluxion of time, or from any other cause:

"Landlord" in relation to a holding means any person for the time being entitled to receive the rents and profits of or to take possession of any holding:

"Tenant" means the holder of land under a lease:

"Landlord" or "tenant" includes the executors, administrators, assignees, legatee, disponee, or next-of-kin, husband, guardian, curator bonis, or trustees in bankruptcy, of a landlord or tenant:

"Holding" means any piece of land held by a tenant:

"Absolute owner" means the owner or person capable of disposing, by disposition or otherwise, of the fee simple or, dominium utile, of the whole interest of or in land, although the land or his interest therein is burdened, charged, or encumbered:

"Person" includes a body of persons and a corporation:

"Sheriff Courts (Scotland) Act, 1853," means an Act passed in the sixteenth and seventeenth year of Her present Majesty's reign, chapter eighty, intituled "An Act to facilitate procedure "in the Sheriff Courts in Scotland":

"Companies Acts" means the Companies Acts, 1862 to 1880, and any Act amending the same:

"Sheriff" includes sheriff substitute.

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under this Act in respect of compensation for improvements.

43. This Act may be cited for all purposes as the Agricultural Holdings (Scotland) Act, 1883, and shall apply to Scotland only.

SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

(1.) Erection or enlargement of building.
(2.) Formation of silos.
(3.) Laying down of permanent pasture.
(4.) Making of water meadows or works of irrigation.
(5.) Making of gardens.
(6.) Making or improving roads or bridges.
(7.) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for supply of water for agricultural or domestic purposes.
(8.) Making of permanent fences.
(9.) Reclamation of waste land.
(10.) Weiring or embanking of land and sluices against floods.

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

(11.) Drainage.

PART III.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS NOT REQUIRED.

(12.) Boning of land with undissolved bones.
(13.) Claying of land or spreading blaes upon land.
(14.) Liming of land.
(15.) Marling of land.
(16.) Application to land of purchased artificial or other purchased manure.
(17.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

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A TABLE

OF

All the STATUTES passed in the Fourth Session of the Twenty-second Parliament of the United Kingdom of Great Britain and Ireland.

46 & 47 VICTORIA, 1883.

PUBLIC GENERAL ACTS.

The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.

District Gas, Swanage Gas and Water, and Ystrad Gas and Water.

xlvii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Western Districts Tramways, Edgbaston and Harborne Tramways, North Birmingham Tramways, Oldham, Ashton-under-Lyne, Hyde, and District Tramways, South Birmingham Tramways, and Southend-on-Sea and District Tramways.

xlviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Blandford District Water, Farnborough District Water, Gosport Water, Herne Bay Water, Newmarket Water, Newport and Pillgwenlly Water, and Pontypridd Water.

lxxx. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Brafield-on-the-Green, Brentor, Cairau, Clungunford, Cogenhoe or Cooknoe, Courteenhall, Cwmcarvan, Great Houghton, Hope-Mansell, Hopton-Castle, Horton, Lamerton, Lew-Trenchard, Little-Houghton, Llandough, Llangaffo, Llangeinwen, Lower Slaughter, Michaelstone-super-Ely, Mitchel-Troy, Newington-Bagpath, Newland, Owlpen, Pennarth, Peterstone-super-Ely, Peter-Tavy, Road or Rode, Ruardean, Saint Bride-super-Ely, Saint Fagans, Tavistock, Thrushelton, Upper-Slaughter, Walford, Whitchurch, and Wootton, to the Townships of Brimington, Claylane, Coal-Aston, Morton, North-Wingfield, Pilsley, Tapton, Unstone, and Woodthorpe, and to the Tything of Lea-Bailey.

lxxxi. An Act to confirm certain Provisional Orders of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the Parishes of Birmingham and Lambeth.

lxxxii. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Dorset.

lxxxiii. An Act to confirm Provisional Orders of the Local Government Board for Ireland relating to the towns of Carlow and Listowel, and to the Newtownards Gas Undertaking.

lxxxiv. An Act to confirm the Provisional Order for the inclosure of the Common Fields and Pastures, situate in the parish of Hildersham, in the county of Cambridge, in pursuance of a Report of the Land Commissioners for England.

lxxxv. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Didcot Improvements, situate in the several parishes of Didcot, East Hagbourne, and Long Wittenham, and in the chapelry of Appleford in the parish of Sutton Courtney, in the county of Berks.

lxxxvi. An Act to provide for the repair and maintenance of certain Highways in the New Forest in the county of Southampton.

lxxxvii. An Act to provide for the repair and maintenance of certain Highways in the Forest of Dean in the county of Gloucester.

lxxxviii. An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.

lxxxix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bethesda, the Borough of Darlington, the Evesham Joint Hospital District, the Faversham Joint Hospital District, the Improvement Act District of Kington, the Lower Thames Valley Main Sewerage District, the Boroughs of Maldon and Sandwich, and the Local Government Districts of Torquay, and Wanstead and Woodford.

xc. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Barnet Union, the Local Government Districts of Brentford, Chilvers Coton, and Nuneaton, the Stourbridge Main Drainage District, the Borough of Stratford-upon-Avon, the Rural Sanitary District of the Stroud Union, and the Local Government District of Wellington (Somerset).

xci. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Leeds.

xcii. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the city of Limerick.

xciii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to South Shields Corporation Tramways, and Wolverton and Stony Stratford Tramways.

xciv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Saint George-in-the-East, within the Metropolis.

xcv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Limehouse, within the Metropolis.

xcvi. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated in Lambeth, within the Metropolis.

xcvii. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Greenwich, within the Metropolis.

xcviii. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the burgh of Fraserburgh.

xcix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Kingston-upon-Hull and Leeds, and the District of Weston-super-Mare.

cxxxi. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Aldershot and Farnborough Tramways Extensions, Bradford Corporation Tramways, Hartlepool Tramways, Liverpool Corporation Tramways, Macclesfield Tramways, and North Staffordshire Tramways.

cxxxii. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

cxxxiii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Colchester Tramways, Halifax and Districts Tramways, Oxford Tramways Extensions, Rhyl, Voryd, and Plastirion Tramways, Spen Valley and District Tramways, and Yarmouth and Gorleston Tramways Extension.

cxxxiv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Local Government District of Festiniog.

cxxxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Cheltenham, the Local Government District of Croydon, the Borough of Dorchester, the Rural Sanitary District of the Hendon Union, and the Local Government Districts of Malvern and Willenhall.

cxxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Ashton-in-Makerfield, the Borough of Ashton-under-Lyne and the Local Government Districts of Dukinfield and Hurst, the Boroughs of Burnley and Doncaster, the Town of Hove, the Local Government District of Hucknall-under-Huthwaite, the Improvement Act District of Llandudno, the Borough of Middlesbrough, the Port of Newport (Mon.), the Borough of Rochdale and the Local Government Districts of Sutton-in-Ashfield and West Ham.

cxxxvii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Bognor, the Borough of Cheltenham, the Improvement Act District of Chiswick, the Borough of Plymouth, the Local Government District of Skipton, the Borough of Stockton and the Local Government District of South Stockton, and the Local Government Districts of Stroud and Wallasey.

cxxxviii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Black-Torrington, Bradford, Bridgerule-East, Carhampton, Dodington, Fulwood, High-Hampton, Hinders-Lane-and-Dockham, Holford, Monksilver, Old-Cleve, Pancrasweek, Pleasley, Porlock, Pyworthy, Selworthy, Stogumber, Sutcombe, Upper-Langwith, and Withycombe; to the Townships of East-Dean, Hucknall-under-Huthwaite, and Sutton-in-Ashfield; and to the Tything of Lea-Bailey.

clxxxiv. An Act to transfer to one of Her Majesty's principal Secretaries of State the powers vested in the Admiralty and the Board of Ordnance in relation to gunpowder magazines and stores in the River Mersey, and amend the Acts relating to those magazines and stores.

ccxiii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Cambridge, Canterbury, Chelsea,

Finchley, Folkestone, Gravesend, Greenock, Greenwich, High Wycombe, Ipswich, Maidstone, and Sunderland.

ccxiv. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Aston, Birkdale, Dudley, Saltley, Ulverston, West Bromwich, and Wolverhampton.

ccxv. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Balsall Heath, Birmingham, Redditch, and Walsall.

ccxvi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Barton Eccles Winton and Monton, Carlisle, Croydon, Luton, Margate, Nelson, Rochester, Scarborough, and Sudbury.

ccxvii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bermondsey, Clerkenwell, Hampstead, Holborn, Hornsey, St. George's-in-the-East, St. Giles' (Brush), St. James' and St. Martin's, St. Luke's, and Wandsworth.

ccxviii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Limehouse, Poplar, Richmond (Surrey), Rotherhithe, St. Giles's (Pilsen Joel), St. Olave, St. Saviour's (Southwark), Shoreditch, and Wednesbury and Darlaston.

ccxix. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Barnes and Mortlake, Hackney, Islington, St. Pancras (Middlesex), and Whitechapel.

ccxx. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bradford, Brighton, Hanover Square District (London), Norwich, South Kensington District (London), Strand District (London), and Victoria District (London).

ccxxi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bristol, Grantham, and Lowestoft.

ccxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Chiswick and St. George-the-Martyr, Southwark.

ccxxiii. An Act for confirming a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to Dundee.

ccxxiv. An Act to confirm a Provisional Order of the Local Government Board relating to the Improvement Act District of West Hartlepool.

ccxxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Haslingden, Ramsbottom, and Rawtenstall.

ccxxvi. An Act to amend the Law relating to Highways in the Isle of Wight, and for other purposes.

LIST OF THE LOCAL AND PRIVATE ACTS.

LOCAL ACTS.

The Titles to which the Letter P. *is prefixed are Public Acts of a Local Character.*

i. An Act for rendering valid certain Letters Patent granted to William Chetham for "Improvements in Self-acting Temples for "Looms."

P. ii. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Burgh Saint Peter Improvements, situate in the parish of Burgh Saint Peter, in the county of Norfolk.

iii. An Act for the abandonment of the Rhins of Galloway Railway.

iv. An Act for granting further Powers to the British American Land Company.

v. An Act for reviving and rendering valid certain Letters Patent granted to Thomas John Mullings for a new and improved process for extracting Oil and Fat and oily and fatty matters from Wool and other substances

and the apparatus connected therewith and applicable thereto.

vi. An Act to authorise the carrying into effect of an arrangement for the Sale to and purchase by the Mayor Aldermen and Burgesses of Brighton for the purpose of a Public Park of certain Lands part of the Estates in the County of Sussex devised by the Will of William Stanford Esquire and for other purposes.

vii. An Act to confer further powers on the Swindon and Cheltenham Extension Railway Company; and for other purposes.

viii. An Act to continue and amend the Aberdeenshire Roads Act, 1865; and for other purposes.

ix. An Act to provide for the dissolution of the British Fisheries Society; and for other purposes.

P. x. An Act to confirm certain Orders made by the Board of Trade under the Sea Fisheries Act, 1868, relating to Hamford Water, Hunstanton (le Strange), and Swansea.

xi. An Act for abolishing the Church Rate now leviable in the Parish of Saint Saviour, Southwark; for vesting in the Lord Bishop of the diocese the right of presentation to the Chaplaincy of the Parish Church, and for other purposes.

xii. An Act for reducing the Capital of Price's Patent Candle Company (Limited), and for other purposes.

xiii. An Act to confer further powers on the South-eastern Railway Company and for other purposes.

xiv. An Act for enabling the Caledonian Railway Company to make certain Railways in the Counties of Stirling and Midlothian; and to abandon a certain authorised Railway in the County of Lanark; for extending the time of construction of certain of their authorised Railways in Lanarkshire; for releasing the remainder of a sum deposited by the Callander and Oban Railway Company; and for other purposes.

xv. An Act for extending the powers of the Telegraph Construction and Maintenance Company Limited; and for other purposes.

xvi. An Act for authorising the Sale of the old Church of Saint Peter (Clifton) in the City of Bristol and of premises connected therewith.

xvii. An Act for incorporating and conferring Powers on the Leatherhead and District Waterworks Company.

P. xviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Abertillery, the Rural Sanitary Districts of the Horsham and Penzance Unions, the Boroughs of Portsmouth and Scarborough, the Local Government Districts of Shirley-and-Freemantle and Staines, the City of Truro, and the Local Government Districts of Walton-on-the-Hill and Wimbledon.

P. xix. An Act to confirm a Provisional Order made under the General Police and Improvement (Scotland) Act, 1862, relating to the Burgh of Broughty Ferry.

xx. An Act to extend the time limited by the Swansea Harbour Act 1874 for the completion of the Docks Railways and Works by that Act authorised; to enable the Swansea Harbour Trustees to raise a further sum of money for the purposes of their Undertaking; and to annul a certain Agreement between the Swansea Harbour Trustees and the Corporation of Swansea.

P. xxi. An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.

xxii. An Act to confer further powers on the Ordinary Courts of Directors of the Scottish Widows' Fund and Life Assurance Society.

xxiii. An Act for amending the Metropolitan Street Improvements Act, 1877.

xxiv. An Act for enabling the Caledonian and the Glasgow and South-western Railway Companies to execute certain Works and acquire certain Lands in the Counties of Renfrew, Lanark and Ayr, in connexion with their Glasgow and Paisley and Glasgow and Kilmarnock Joint Lines of Railway; and for other purposes.

xxv. An Act to confer further Powers upon the North London Railway Company for the acquisition of Lands and the raising of Capital; and to empower the London and North-western Railway Company to subscribe towards such Capital; and for other purposes.

xxvi. An Act for amending and extending the Acts relating to the Standard Life Assurance Company, and for making further provisions with respect thereto.

xxvii. An Act to amend the Acts relating to the Dock Company at Kingston-upon-Hull; to confer further Powers on the said Company; and for other Purposes.

xxviii. An Act to extend the Powers of the Company of Proprietors of Lambeth Waterworks.

xxix. An Act to amend the Dublin (South) City Market Acts 1876 and 1879; and for other purposes.

P. xxx. An Act to confirm a Provisional Order made by the Lord Lieutenant of Ireland in Council, under the Tramways (Ireland) Act, 1860, extending the time for the completion of the Dublin and Blessington Steam Tramways.

xxxi. An Act for conferring further powers upon the Cheshire Lines Committee and for other purposes.

xxxii. An Act for authorising the Portishead District Water Company to construct additional Works and to purchase additional Lands and for other purposes.

xxxiii. An Act for sanctioning a Settlement of the Claims of the Mortgagees of the Exeter Canal against the Corporation of the City of Exeter; for empowering the Corporation to borrow for the purpose of carrying into effect such settlement and of improving the said Canal and for other purposes.

xxxiv. An Act to enable the Corris Railway Company to use their Railways for Passenger Traffic and for other purposes.

xxxv. An Act to make provision with respect to the support of public sewers and sewage works in the mining districts in the borough of Wigan and neighbouring places.

xxxvi. An Act to authorise the Metropolitan Railway Company to raise additional Capital to amend their Acts and for other purposes.

xxxvii. An Act for regulating the Faculty of Procurators in Paisley; for making provision for the present and contingent Liabilities thereof; for the distribution of the Funds and the ultimate dissolution of the Faculty; and for other relative purposes.

xxxviii. An Act for incorporating and conferring powers on the Halesowen Gas Company, and for other purposes.

xxxix. An Act to confirm an agreement between the London, Tilbury, and Southend Railway Company and the East and West India Dock Company, with reference to a supply of water and for other purposes.

P. xl. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the township of Rathmines and Rathgar, and to the towns of Tralee and Warrenpoint.

xli. An Act to enable the Watford Gas and Coke Company to erect and maintain additional works to acquire more land and to raise further capital and for other purposes.

P. xlii. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for Cummersdale, Cumberland; Hayfield, Derbyshire; Little Eaton, Derbyshire; Stroud, Gloucestershire; and Treuddyn, Flintshire, to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

P. xliii. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Inverness, Lamlash, Leven, Methil, Porthleven, Truro, and Wick and Pulteney.

P. xliv. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Killarney.

P. xlv. An Act to confirm a Provisional Order made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Whitby.

P. xlvi. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Bilston Gas, Broadstairs Gas, Calne Gas, Enfield Gas, Ferndale Gas, Saint Neots Gas, Tadcaster and Wetherby District Gas, Swanage Gas and Water, and Ystrad Gas and Water.

P. xlvii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Western Districts Tramways, Edgbaston and Harborne Tramways, North Birmingham Tramways, Oldham, Ashton-under-Lyne, Hyde and District Tramways, South Birmingham Tramways, and South-end-on-Sea and District Tramways.

P. xlviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Blandford District Water, Farnborough District Water, Gosport Water, Herne Bay Water, Newmarket Water, Newport and Pillgwenlly Water, and Pontypridd Water.

xlix. An Act for conferring further powers on the Hounslow and Metropolitan Railway Company; and for other purposes.

l. An Act for empowering the Local Board of Health for the district of Workington in the county of Cumberland to take water from the River Derwent to construct waterworks and to supply water and to enable the Cockermouth and Workington Joint Water Committee and the said Local Board to

agree for the transfer to the said Local Board of the undertaking of the said Joint Committee and for other purposes.

li. An Act to vary and extend the Powers of the East London Railway Company in respect of the Railway authorised by the East London Railway Act 1882 to expedite the opening of a connexion by Railway between the North and South sides of the River Thames and for other purposes.

lii. An Act for amalgamating the Llynvi and Ogmore Railway Company with the Great Western Railway Company.

liii. An Act for rendering valid certain Letters Patent granted to Joseph Law and Henry Law for "Improvements in appliances for "heating hardening, and tempering Wire "used in the manufacture of Cars for Card-"ing Fibres."

liv. An Act to authorise the Cambrian Railways Company to extend their Pier and Works at Aberdovey to purchase land at Abereirch to establish Hotels and Refreshment Rooms in connexion with their Railway to establish Savings Banks and for other purposes.

lv. An Act for authorising the Downham and Stoke Ferry Railway Company to extend their Railway to Gooderstone to raise further money and for other purposes.

lvi. An Act for the sale and transfer to the Great Eastern Railway Company of the Undertakings of the Tendring Hundred Railway Company and of the Clacton-on-Sea Railway Company; and for other purposes.

lvii. An Act to provide for the Conversion of Statutable Securities of the Corporation of Sheffield into Corporation Stock; to make better provision and enlarge the powers of the Corporation with respect to sanitary matters and matters of Local Government Police and the Administration of Justice; to authorise the Corporation to raise money for Tramway purposes and for Loans to certain Public Bodies within the Borough; and for other purposes.

lviii. An Act for transferring to the Rural Sanitary Authority for the rural sanitary district of the Chesterfield Union in the county of Derby the undertaking of the Staveley Waterworks Company and for the dissolution of that Company and for other purposes.

lix. An Act for amending the Provisions of the Belfast Harbour Acts respecting the Constitution and Election of the Belfast Harbour Commissioners; and for conferring on the said Commissioners further Powers in relation to Victoria Park; and for other purposes.

lx. An Act to extend the Municipal Boundary of the City of Aberdeen; to authorise the Town Council to make new streets, execute certain street improvements, and construct a connecting railway to the Gasworks; and for other purposes.

lxi. An Act for conferring further powers on the Glasgow and South-Western Railway Company for the Construction of Works and the Acquisition of Lands and for Vesting in them the Saint Enoch Station at Glasgow and for empowering them to raise Additional Capital and for other purposes.

lxii. An Act to extend the Borough of Longton and to make further provision for the Improvement and good Government of the Borough and for other purposes.

lxiii. An Act for enabling the North-eastern Railway Company to make new railways and for conferring Additional Powers on the Company in relation to their own Undertaking and the Undertakings of other Companies; and for other purposes.

lxiv. An Act to authorise the Waterford and Limerick Railway Company to raise further Capital and for other purposes.

lxv. An Act to enable the Wrexham Mold and Connah's Quay Railway Company to make New Railways to raise further Capital and for other purposes.

lxvi. An Act to authorise the Glasgow Yoker and Clydebank Railway Company to make a Railway in the Parish of Govan and for purposes.

lxvii. An Act for conferring further powers on the London Chatham and Dover Railway Company and for other purposes.

lxviii. An Act to authorise a Railway in Alloa Parish from the North British Railway to the Alloa Railway; to confirm an agreement as to running powers, &c.; to extend to ships not freighted the obligation of the North British Railway Company to tow Ships freighted under the Tay Viaduct; and for other purposes.

lxix. An Act to enable the President Vice-Presidents Treasurer and Governors of the Asylum for the Deaf and Dumb Poor to acquire by Agreement and to hold the fee simple and inheritance of the site of the institution and premises in the Old Kent Road and for other purposes.

lxx. An Act to consolidate with amendments the Local Acts and Orders in force in the Borough of Birmingham and for other purposes.

lxxi. An Act to make better provision in relation to the gas and water supply health local government and improvement of the borough of Heywood the borrowing of money and for other purposes.

lxxii. An Act for making further provision respecting the continuation already authorised of Pall Mall and Ray Street in the city of Liverpool; and for other purposes.

lxxiii. An Act for more effectually protecting from Inundation by the Sea and for otherwise improving the Island of Canvey in the County of Essex and for other purposes.

lxxiv. An Act for repealing and re-enacting portions of the Acts and Order relating to the Harbour of Penzance and for other purposes.

lxxv. An Act to authorise the Bristol Port and Channel Dock Company to create and issue a New Debenture Stock and for other purposes.

lxxvi. An Act to confer further powers with respect to the Borrowstounness Harbour; and for other purposes.

lxxvii. An Act to amend and extend the Acts relating to the Borough of Burnley and to make further provision for its Local Government and Improvement to authorise the Construction of new Waterworks and for other purposes.

lxxviii. An Act for conferring further powers on the Corporation of Nottingham with respect to street improvements and to the supply of water and gas and to other matters of local government for making further provisions with respect to certain allotments and roads in the borough and for other purposes.

lxxix. An Act to make provision for regulating the navigation of the River Thames between Cricklade in the county of Wilts and Yantlet Creek in the county of Kent and to confer further powers on the Conservators of the River Thames and for other purposes relating thereto.

P. lxxx. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Brafield-on-the-Green, Brentor, Cairau, Clungunford, Cogenhoe or Cooknoe, Courteenhall, Cwmcarvan, Great-Houghton, Hope-Mansell, Hopton-Castle, Horton, Lamerton, Lew-Trenchard, Little-Houghton, Llandough, Llangaffo, Llangeinwen, Lower Slaughter, Michaelstone-super-Ely, Mitchel-Troy, Newington-Bagpath, Newland, Owlpen, Pennarth, Peterstone-super-Ely, Peter-Tavy, Road or Rode, Ruardean, Saint Bride-super-Ely, Saint Fagans, Tavistock, Thrushelton, Upper-Slaughter, Walford, Whitchurch, and Wootton, to the Townships of Brimington, Claylane, Coal-Aston, Morton, North-Wingfield, Pilsley, Tapton, Unstone, and Woodthorpe, and to the Tything of Lea-Bailey.

P. lxxxi. An Act to confirm certain Provisional Orders of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the Parishes of Birmingham and Lambeth.

P. lxxxii. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Dorset.

P. lxxxiii. An Act to confirm Provisional Orders of the Local Government Board for Ireland relating to the towns of Carlow and Listowel, and to the Newtownards Gas Undertaking.

P. lxxxiv. An Act to confirm the Provisional Order for the inclosure of the Common Fields and Pastures, situate in the parish of Hildersham, in the county of Cambridge, in pursuance of a Report of the Land Commissioners for England.

P. lxxxv. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Didcot Improvements, situate in the several parishes of Didcot, East Hagbourne, and Long Wittenham, and in the chapelry of Appleford in the parish of Sutton Courtney, in the county of Berks.

P. lxxxvi. An Act to provide for the repair and maintenance of certain Highways in the New Forest in the county of Southampton.

P. lxxxvii. An Act to provide for the repair and maintenance of certain Highways in the Forest of Dean in the county of Gloucester.

P. lxxxviii. An Act to confirm certain Provisional Orders under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same.

P. lxxxix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bethesda, the Borough of Darlington, the Evesham Joint Hospital District, the Faversham Joint Hospital District, the Improvement Act District of Kington, the Lower Thames Valley Main Sewerage

District, the Boroughs of Maldon and Sandwich, and the Local Government Districts of Torquay, and Wanstead and Woodford.

P. xc. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Barnet Union, the Local Government Districts of Brentford, Chilvers Coton, and Nuneaton, the Stourbridge Main Drainage District, the Borough of Stratford-upon-Avon, the Rural Sanitary District of the Stroud Union, and the Local Government District of Wellington (Somerset).

P. xci. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Leeds.

P. xcii. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the city of Limerick.

P. xciii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to South Shields Corporation Tramways, and Wolverton and Stony Stratford Tramways.

P. xciv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Saint George-in-the-East, within the Metropolis.

P. xcv. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Limehouse, within the Metropolis.

P. xcvi. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated in Lambeth, within the Metropolis.

P. xcvii. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for the improvement of an unhealthy area situated at Greenwich, within the Metropolis.

P. xcviii. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the burgh of Fraserburgh.

P. xcix. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Boroughs of Kingston-upon-Hull and Leeds, and the District of Weston-super-Mare.

c. An Act to authorise the Anstruther and Saint Andrews Railway Company to construct an extension of their authorised Railway to join the Saint Andrews Branch Railway of the North British Railway; and for other purposes.

ci. An Act to enable the Maryport and Carlisle Railway Company to reduce the Maximum Tolls and Rates chargeable upon their Railways and to make such reduced Tolls and Rates permanent and binding on the Company.

cii. An Act for authorising the Construction of a Dock at Seafield in the County of Fife with Railways thereto and for other purposes.

ciii. An Act to enable the Corporation of Brighton to raise further Moneys for their Waterworks Undertaking.

civ. An Act to authorise the Construction of Tramways in the Township of Blackrock and in the Township of Kingstown in the County of Dublin and for other purposes.

cv. An Act for the Construction of a Tramway from Castlederg to Victoria Bridge in the County of Tyrone and for other purposes.

cvi. An Act to make further provision respecting the borrowing of Money by the Corporation of Glasgow and for other purposes.

cvii. An Act to authorise the Great Eastern Railway Company to construct additional Railways and to improve parts of their existing Railway in the County of Essex; to construct a Graving Dock at Harwich; to execute other works; to purchase additional lands and to exercise further powers; and for other purposes.

cviii. An Act to enable the Wrexham Mold and Connah's Quay Railway Company to consolidate their debenture and other stocks and share capital and to raise a further sum of money for their Undertaking and for other purposes.

cix. An Act to alter and amend the Acts relating to the Alliance and Dublin Consumers' Gas Company; to enable that Company to acquire further lands, to raise additional capital; and for other purposes.

cx. An Act for empowering the London and North-western Railway Company to construct new railways and for vesting in them the undertaking of the Lancashire Union Railways Company and for other purposes.

cxi. An Act to confer Additional Powers upon the Midland Railway Company for the Construction of Railways and other Works and the Acquisition of Lands: For Confirming Agreements with other Companies: For raising further Capital: and for other purposes.

cxii. An Act for authorising the amalgamation of the Undertakings of the Portsmouth Street Tramways Company the Gosport Street Tramways Company and the General Tramways Company of Portsmouth Limited and for other purposes.

cxiii. An Act to authorise the making of a Railway in Wiltshire to be called the Pewsey and Salisbury Railway.

cxiv. An Act to authorise the construction of the Kirkaldy and District Tramways, in the County of Fife; and for other purposes.

cxv. An Act for the transfer of the Undertakings of the Ribble Navigation Company to the Mayor Aldermen and Burgesses of the Borough of Preston and to enable them to improve the River Ribble and the Navigation thereof and to construct Docks and other works at Preston and for extending the Borough of Preston and for other purposes.

cxvi. An Act to confer further powers on the Church Fenton Cawood and Wistow Railway Company; and for other purposes.

cxvii. An Act for making a Railway from Billinghay to Metheringham in the County of Lincoln; and for other purposes.

cxviii. An Act to confer further Powers upon the Cleator and Workington Junction Railway Company for the Extension of their Railways; and for other purposes.

cxix. An Act to amend the Halesowen and Bromsgrove Branch Railways Act, 1865, and for other purposes.

cxx. An Act to confer further Powers on the Swindon and Cheltenham Extension Railway Company; and for other purposes.

cxxi. An Act for granting further Powers to the Swindon Marlborough and Andover Railway Company; and for other purposes.

cxxii. An Act to provide for the Sale and appropriation of portions of certain lands in the Township of Southcoates in the Parish of Drypool in the Borough of Kingston-upon-Hull known as the Drypool Parish Burial Ground and for the application of the moneys arising from such Sale and for other purposes.

cxxiii. An Act for making a Canal from the Harbour of East Tarbert to West Loch Tarbert, in the County of Argyll, and Works in connection therewith, and for other purposes.

cxxiv. An Act to provide for the abolition of the Vicar's Rate leviable in the Parish of the Holy Trinity, Coventry, in the County of Warwick; for securing an income for the Vicar from other sources; and for other relative purposes.

cxxv. An Act to enable the Mayor Aldermen and Burgesses of the Borough of Cork to raise a further sum of Money for the purposes of the Bridges and Works authorised by the Cork Improvement Act, 1875.

cxxvi. An Act to authorise the Saint Helens and District Tramways Company to construct additional Tramways to use Steam or Mechanical Power upon their Tramways to abandon parts of their authorised Tramways and for other purposes.

cxxvii. An Act to make further and other Provisions as to the Subscription by the Belfast and Northern Counties Railway Company to the Undertaking of the Limavady and Dungiven Railway Company; and as to the appointment of Directors of the Ballymena Cushendall and Redbay Railway Company; and for other purposes.

cxxviii. An Act to revive and extend the Time limited by the Ballymena Cushendall and Redbay Railway Act 1878 for the compulsory taking of Lands and to extend the Time limited by that Act for the completion of the Railway thereby authorised; and for other purposes.

cxxix. An Act to consolidate the Capital of the Didcot Newbury and Southampton Junction Railway Company; to change the Name of the Company; and for other purposes.

cxxx. An Act for Amalgamating the Londonderry and Enniskillen Railway Company with the Great Northern Railway Company (Ireland).

P. cxxxi. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Aldershot and Farnborough Tramways Extensions, Bradford Corporation Tramways, Hartlepool Tramways, Liverpool Corporation Tramways, Macclesfield Tramways, and North Staffordshire Tramways.

P. cxxxii. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

P. cxxxiii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Colchester Tramways, Halifax and Districts Tramways, Oxford Tramways Extensions, Rhyl, Voryd, and Plastirion Tramways

Spen Valley and District Tramways, and Yarmouth and Gorleston Tramways Extension.

P. cxxxiv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Local Government District of Festiniog.

P. cxxxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Cheltenham, the Local Government District of Croydon, the Borough of Dorchester, the Rural Sanitary District of the Hendon Union, and the Local Government Districts of Malvern and Willenhall.

P. cxxxvi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Ashton-in-Makerfield, the Borough of Ashton-under-Lyne and the Local Government Districts of Dukinfield and Hurst, the Boroughs of Burnley and Doncaster, the Town of Hove, the Local Government District of Hucknall-under-Huthwaite, the Improvement Act District of Llandudno, the Borough of Middlesbrough, the Port of Newport (Mon.), the Borough of Rochdale and the Local Government Districts of Sutton-in-Ashfield and West Ham.

P. cxxxvii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Bognor, the Borough of Cheltenham, the Improvement Act District of Chiswick, the Borough of Plymouth, the Local Government District of Skipton, the Borough of Stockton and the Local Government District of South Stockton, and the Local Government Districts of Stroud and Wallasey.

P. cxxxviii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Black-Torrington, Bradford, Bridgerule-East, Carhampton, Dodington, Fulwood, High-Hampton, Hinders-Lane-and-Dockham, Holford, Monksilver, Old-Cleve, Pancrasweek, Pleasley, Porlock, Pyworthy, Selworthy, Stogumber, Sutcombe, Upper-Langwith, and Withycombe; to the Townships of East-Dean, Hucknall-under-Huthwaite, and Sutton-in-Ashfield; and to the Tything of Lea-Bailey.

cxxxix. An Act for conferring further powers on the Plymouth and Dartmoor Railway Company for the construction of Works the raising of Money and otherwise in relation to their Undertaking and for providing for the distribution of the proceeds of the sale of a portion of the Undertaking of the Company and for other purposes.

cxl. An Act to extend the time for constructing the Coventry and District Tramways and to empower the Coventry and District Tramways Company to raise additional capital.

cxli. An Act to extend the time for constructing the Gateshead and District Tramways and to empower the Gateshead and District Tramways Company to raise additional capital.

cxlii. An Act for authorising the North London Tramways Company to abandon the Construction of a portion of their Authorised Undertaking and to use Steam or Mechanical Power for working their Tramways.

cxliii. An Act to authorise the Hull Barnsley and West Riding Junction Railway and Dock Company to construct New Railways and other Works to amend the Acts relating to the Company and for other purposes.

cxliv. An Act for extending the Boundaries of the Borough of Hartlepool and for other purposes.

cxlv. An Act for conferring further Powers upon the London and North-western Railway Company in connexion with their own undertaking and upon that Company and the Lancashire and Yorkshire Railway Company in respect of their North Union Railway and upon the Lancashire Union Railways Company in respect of their Undertaking and for other purposes.

cxlvi. An Act for authorising the Rhondda and Swansea Bay Railway Company to extend their Railway to Swansea and for other purposes.

cxlvii. An Act to amalgamate the Undertakings of the Norwood (Middlesex) and Sunningdale District Water Companies; and for other purposes.

cxlviii. An Act for authorising the Dumbarton Water Commissioners to make and maintain additional Waterworks; for regulating the Streets and Buildings within the Burgh of Dumbarton; and for other purposes.

cxlix. An Act to dissolve the Stoke-upon-Trent and Fenton Joint Gas Committee and for other purposes.

cl. An Act to extend the time limited for the compulsory purchase of lands and houses and completion of the railway and works

authorised by the Ramsey and Somersham Junction Railway Act 1875 and for other purposes.

cli. An Act to authorise the Lydd Railway Company to make a Railway from Loose to Headcorn in the county of Kent to raise further money and for other purposes.

clii. An Act to authorise the Cork and Kenmare Railway Company to construct Railways in substitution for portions of those authorised by the Cork and Kenmare Railway Act 1881 to abandon so much of the Railways authorised by that Act as will be rendered unnecessary by reason of the construction of the substituted Railways to alter certain provisions of the said Act as to Borrowing powers and Baronial Guarantee and for other purposes.

cliii. An Act for making a Railway from Ballina to Killala and a Harbour at Killala in the County of Mayo and for other purposes.

cliv. An Act to confer further powers on the Banbury and Cheltenham Direct Railway Company for the construction of Works and the raising of money; and for other purposes.

clv. An Act to grant traffic facilities to the Central Wales and Carmarthen Junction Railway Company.

clvi. An Act to authorise the Trustees of the Clyde Navigation to construct Docks, Quays, Roads, Tramways, a Railway, and other Works at and connected with the Harbour of Glasgow and the River Clyde, and to borrow Money; and for other purposes.

clvii. An Act to authorise the Manchester Sheffield and Lincolnshire Railway Company to construct new Railways and other works and to confer further powers upon that Company in connexion with their undertaking and for other purposes.

clviii. An Act for the Establishment and Regulation of a Market to be called Paddington Market in the Parish of St. Mary Paddington in the county of Middlesex and for other purposes.

clix. An Act to confer further powers upon the Borough of Portsmouth Waterworks Company for the construction of works and the raising of money to extend their limits for the supply of Water and for other purposes.

clx. An Act to confer further powers on the Southsea Railway Company for the construction of new and the completion of their authorised Railways and to confirm an Agreement between that Company and the London and South-Western Railway Company: To provide for the abandonment of certain roads authorised by the London Brighton and South Coast Railway (Various Powers) Act 1882; and for other purposes.

clxi. An Act to empower the Taff Vale Railway Company to construct a new Railway at Merthyr and to acquire additional Lands and to raise further Capital and for other purposes.

clxii. An Act to enable the Limerick Waterworks Company to construct additional Works and to raise additional Capital and for other purposes.

clxiii. An Act for incorporating the Newborough Drainage Commissioners and for conferring on them Powers for the Purchase of Land for Drainage Works and for the Borrowing of Money and for Amending the Newborough Drainage Acts and for other purposes.

clxiv. An Act for constituting a separate Canal Undertaking and Capital of the Regent's Canal City and Docks Railway Company; and for other purposes.

clxv. An Act for empowering the Mayor Aldermen and Burgesses of the Borough of Portsmouth to construct a Wharf and other Works at Landport in the Borough of Portsmouth in the county of Southampton and for other purposes.

clxvi. An Act for incorporating the East and West Yorkshire Union Railways Company and for other purposes.

clxvii. An Act to confer further powers upon the South London Tramways Company and for other purposes.

clxviii. An Act to authorise the Hastings and Saint Leonards Gas Company to raise further Capital and for other purposes.

clxix. An Act for conferring further Powers with relation to the Lancashire and Yorkshire Railway and the Preston and Wyre Railway and for other purposes.

clxx. An Act for the Abandonment of the Market Deeping Railway.

clxxi. An Act to amend the Powers of the Cork Harbour Commissioners with respect to Rates and Dues and for other purposes.

clxxii. An Act for the granting of Further Powers to the Ipswich Gaslight Company.

clxxiii. An Act for suppressing the sinecure Rectory of Sock Dennis in the County of Somerset and providing for the application of the Tithe Rent-charge thereof.

clxxiv. An Act to amalgamate the Undertakings of the Croydon Tramways Company

and the Norwood District Tramways Company, and to authorise the construction of new Tramways in and near Croydon and Norwood, in the county of Surrey; and for other purposes.

clxxv. An Act to confer further Powers upon the Great Northern Railway Company with respect to their own and other Undertakings to enable them to acquire the Undertaking of the Hatfield and Saint Albans Railway Company and for other purposes.

clxxvi. An Act for making a Railway to be called "The Lambourn Valley Railway," and for other purposes.

clxxvii. An Act for enabling the Metropolitan Board of Works to alter and re-construct Hammersmith Bridge; for providing for the free use by the Public of the East and West Ferry Roads in the Parish of Poplar in the County of Middlesex; and for other purposes.

clxxviii. An Act for enabling the Metropolitan Board of Works to make certain New Streets and Street Improvements in the Metropolis and for other purposes.

clxxix. An Act for the transfer of the Newport Dock Company's Undertaking to the Alexandra (Newport and South Wales) Docks and Railway Company and to empower that Company to make a New Lock and other works and for other purposes.

clxxx. An Act to authorise the Pontypridd Caerphilly and Newport Railway Company to construct a Railway in the County of Monmouth and for other purposes.

clxxxi. An Act for incorporating the Hawarden and District Waterworks Company and for conferring Powers on that Company; and for other purposes.

clxxxii. An Act to authorise the Staines and West Drayton Railway Company to divert a portion of their authorised Railway near Staines, and to extend the same into the Town of Staines; and for other purposes.

clxxxiii. An Act for incorporating the Skegness Chapel St. Leonards and Alford Tramways Company and authorising them to construct a Tramway from Skegness to Bilsby in the parts of Lindsey in the County of Lincoln and for other purposes.

P. clxxxiv. An Act to transfer to one of Her Majesty's Principal Secretaries of State the powers vested in the Admiralty and the Board of Ordnance in relation to gunpowder magazines and stores in the River Mersey, and amend the Acts relating to those magazines and stores.

clxxxv. An Act for rendering valid certain Letters Patent granted to Herbert John Haddan for Improvements in Electric Lamps.

clxxxvi. An Act for authorising the construction of a railway in the County of Kent to be called the Bexley Heath Railway and for other purposes.

clxxxvii. An Act for incorporating the Borough of Portsmouth Kingston Fratton and Southsea Tramways Company: and for empowering them to construct Tramways: and for other purposes.

clxxxviii. An Act for authorising the London and South-western Railway Company to construct new Railways in the Counties of Southampton and Dorset and to widen part of their Ringwood Christchurch and Bournemouth Railway and jointly with the Midland Railway Company to construct a new Railway in the County of Dorset; and for other purposes.

clxxxix. An Act for authorising the London and South-western Railway Company to make new railways and deviations and widenings of railways and other works and to purchase additional lands and for conferring other powers upon them in relation to their own and other undertakings; for empowering the Company and the London Brighton and South Coast Railway Company to construct a railway and to acquire lands and to exercise other powers; for the sale or amalgamation to or with the undertaking of the Company of the Salisbury and Dorset Junction Railway; to empower the Company to construct certain railways of the North Cornwall Railway Company and to appoint a director of and take and hold part of the capital of that Company; for the sale or lease to the Company and the London Brighton and South Coast Railway Company of the Southsea Railway; for authorising and varying or annulling agreements between the Company and other Corporations bodies Companies and persons; and for other purposes.

cxc. An Act to authorise the Mersey Railway Company to raise additional capital and for other purposes.

cxci. An Act to amend the Metropolitan District Railway Act 1881; and for other purposes in relation thereto.

cxcii. An Act for incorporating the Windsor and Eton Waterworks Company and for vesting in them the Windsor and Eton Waterworks and for other purposes.

cxciii. An Act to authorise the Great Western Railway Company to make and maintain certain Railways and Works; For vesting in the Great Western Railway Company the Undertakings of the Stratford-upon-Avon Railway Company and the Watlington and Princes Risborough Railway Company; For confirming Agreements between the Great Western Railway Company and other Companies; and for other purposes.

cxciv. An Act for making a Railway from Barrmill to Kilwinning and for other purposes.

cxcv. An Act to authorise the Construction and Maintenance of a Graving Dock, and other Works in connexion therewith, at King's Lynn, in the County of Norfolk.

cxcvi. An Act to extend the time for the completion of the Freshwater Yarmouth and Newport Railway and for the purchase of land therefor; to authorise the Freshwater Yarmouth and Newport Railway Company to raise additional capital and for other purposes.

cxcvii. An Act to authorise the construction and maintenance of a Dock at the mouth of the River Ogmore and of a railway aqueduct and other works in connexion therewith in the County of Glamorgan and for other purposes.

cxcviii. An Act for incorporating the South Hayling Bridge Company and for empowering them to construct a Bridge over the Langstone Channel between Hayling Island and Southsea with approach Roads thereto in the County of Southampton and for other purposes.

cxcix. An Act to authorise the Eastern and Midlands Railway Company to construct new Works and for other purposes.

cc. An Act to enable the Barnet District Gas and Water Company to extend their limits of Water Supply; to construct new Water Works; to extend their Gas Works; and to raise additional Capital; and for other purposes.

cci. An Act to incorporate a Company for making a Pier Head and other works in connexion therewith at the seaward end of the Chain Pier Brighton in the county of Sussex; to enable the Company to hold shares in the Chain Pier Company; to acquire the undertaking of the Chain Pier Company; and for other purposes.

ccii. An Act for incorporating the Holsworthy and Bude Railway Company, and authorising them to make and maintain the Holsworthy and Bude Railway, and for other purposes.

cciii. An Act for empowering the Brentford and Isleworth Tramways Company to construct new Tramways and Roads in the County of Middlesex, to extend the time for making and completing the Tramways authorised by the Brentford and Isleworth Tramways Extension Act, 1880, and for other purposes.

cciv. An Act to enable the London Tilbury and Southend Railway Company to construct new Railways and for other purposes.

ccv. An Act for authorising the Construction of Railways to connect the Teign Valley Railway and the town of Chagford with Exeter; and for other purposes.

ccvi. An Act for authorising the construction of a Railway from Hornsey to Hendon and Harrow, to be called the London Hendon and Harrow Railway; and for other purposes.

ccvii. An Act to confer further Powers on the Metropolitan District Railway Company.

ccviii. An Act for granting further Powers to the Metropolitan Outer Circle Railway Company, and for other purposes.

ccix. An Act to authorise the construction of Railways in Shropshire and Staffordshire and for facilitating communication between the Midland Counties of England and Milford Haven and Swansea respectively.

ccx. An Act to authorise the Construction of a Railway from Oxford to Aylesbury and for other purposes.

ccxi. An Act for making further provision respecting the borrowing of Money by the Corporation of Portsmouth; and for other purposes.

ccxii. An Act for constituting a separate Undertaking of the Regent's Canal City and Docks Railway Company, for amending their Act of incorporation; and for other purposes.

P. ccxiii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Cambridge, Canterbury, Chelsea, Finchley, Folkestone, Gravesend, Greenock, Greenwich, High Wycombe, Ipswich, Maidstone, and Sunderland.

P. ccxiv. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Aston, Birkdale, Dudley, Saltley,

Ulverston, West Bromwich, and Wolverhampton.

P. ccxv. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Balsall Heath, Birmingham, Redditch, and Walsall.

P. ccxvi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Barton Eccles Winton and Monton, Carlisle, Croydon, Luton, Margate, Nelson, Rochester, Scarborough, and Sudbury.

P. ccxvii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bermondsey, Clerkenwell, Hampstead, Holborn, Hornsey, St. George's-in-the-East, St. Giles' (Brush), St. James' and St. Martin's, St. Luke's, and Wandsworth.

P. ccxviii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Limehouse, Poplar, Richmond (Surrey), Rotherhithe, St. Giles's (Pilsen Joel), St. Olave, St. Saviour's (Southwark), Shoreditch, and Wednesbury and Darlaston.

P. ccxix. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Barnes and Mortlake, Hackney, Islington, St. Pancras (Middlesex), and Whitechapel.

P. ccxx. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bradford, Brighton, Hanover Square District (London), Norwich, South Kensington District (London), Strand District (London), and Victoria District (London).

P. ccxxi. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bristol, Grantham, and Lowestoft.

P. ccxxii. An Act for confirming certain Provisional Orders made by the Board of Trade under the Electric Lighting Act, 1882, relating to Chiswick and St. George-the-Martyr, Southwark.

P. ccxxiii. An Act for confirming a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to Dundee.

P. ccxxiv. An Act to confirm a Provisional Order of the Local Government Board relating to the Improvement Act District of West Hartlepool.

P. ccxxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Haslingden, Ramsbottom, and Rawtenstall.

P. ccxxvi. An Act to amend the Law relating to Highways in the Isle of Wight, and for other purposes.

ccxxvii. An Act to authorise the Peckham and East Dulwich Tramways Company to construct new Tramways in the County of Surrey and for other purposes.

ccxxviii. An Act to confer further powers on the Stratford-upon-Avon, Towcester and Midland Junction Railway Company in reference to their own Undertaking and the Undertaking of the East and West Junction Railway Company; and for other purposes.

ccxxix. An Act to enable the Milford Docks Company to create an additional amount of Debenture Stock in place of other Capital, to effect a settlement of the affairs of the Company, and for other purposes.

ccxxx. An Act for incorporating the Plymouth Devonport and South-Western Junction Railway Company and authorising them to make and maintain the Plymouth Devonport and South-Western Junction Railway and for authorising arrangements between them and the London and South-Western Railway Company and for other purposes.

ccxxxi. An Act for the Abandonment of the Ennis and West Clare Railway.

ccxxxii. An Act to empower the Dublin Southern District Tramways Company to double certain of their existing Tramways; and for other purposes.

PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

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1. An Act to authorise the Trustees under the Settlement of Marriage between Sir George Douglas Clerk, of Penicuik, Bart., and Miss Aymée Elizabeth Georgina Napier, and the said Sir George Douglas Clerk, to sell lands; to pay debts; and for other purposes.
2. An Act to enable the Trustees of Sir Robert Peel's Settled Estates to raise money for payment of his debts, and for vesting in such Trustees his life interest in and certain of his powers over the Settled Estates and for other purposes.
3. An Act to amend "The Earl of Aylesford's Estate Act, 1882."
4. An Act to enable Edward Cecil Guinness to sell and convey to the Commissioners of Public Works in Ireland the fee simple of certain lands, situate in the Parish of St. Peter, in the City of Dublin, free from all incumbrances.
5. An Act to enable the Trustees of Captain John Harrison's Settled Estates to raise Money for Payment of Improvements made and to be made thereon and for Vesting in such Trustees his Life-interest in the Settled Estates and for other purposes in relation thereto.

INDEX

TO THE

PUBLIC GENERAL ACTS,

46 & 47 VICTORIA.—A.D. 1883.

NOTE.—The capital letters placed after the chapter have the following signification :—

E.	*that the Act relates to*		England (and Wales, if it so extend).
S.	,,	,,	Scotland exclusively.
I.	,,	,,	Ireland exclusively.
W.	,,	,,	Wales exclusively.
E. & I.	,,	,,	England and Ireland.
E. & S.	,,	,,	England and Scotland.
U.K.	,,	,,	Great Britain and Ireland (and Colonies, if it so extend).
C.	,,	,,	The Colonies, or any of them.

*** Several Public Acts of a Local Character which have been placed among the Local Acts are included in this Index. These Acts are distinguished by their Chapters being given in Roman Numerals.

* Certain express provisions extend to Scotland and Ireland.

TABLES

SHOWING

THE EFFECT OF THE YEAR'S LEGISLATION.

TABLE A.—Acts of 46 & 47 Vict. (in order of Chapter), showing their effect on former Acts.
TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 46 & 47 Vict.

(A.)

Acts of 46 & 47 Vict. (in order of Chapter), showing their effect on former Acts.

Ch.

1. *Consolidated Fund (Permanent Charges Redemption)* [U.K.]
   Amends 36 & 37 Vict. c. 57., Consolidated Fund (Permanent Charges Redemption) Act, 1873.

2. *Consolidated Fund (No. 1)* (6,355,258*l.* 9*s.* 8*d.* [U.K.]

3. *Explosive Substances* [U.K.]
   Amends the law relating to Explosive Substances.
   Applies 38 & 39 Vict. c. 17., Explosives Act, 1875.

4. *National Gallery (Loan)* [U.K.]
   Authorises loan of Works of Art.

5. *Consolidated Fund (No. 2)* (6,240,100*l.*) [U.K.]

6. *Army (Annual)* [U.K.]
   Continues, and amends, 44 & 45 Vict. c. 58., Army Act, 1881.

7. *Bills of Sale (Ireland) Act* (1879) *Amendment* [I.]
   Amends 42 & 43 Vict. c. 50., Bills of Sale (Ireland) Act, 1879.

8. *Glebe Loan (Ireland) Acts Amendment* [I.]
   Amends 33 & 34 Vict. c. 112., Amends 34 & 35 Vict. c. 100., Amends 38 & 39 Vict. c. 30., Amends 41 & 42 Vict. c. 6., Amends 43 & 44 Vict. c. 2., } Glebe Loan (Ireland) Acts, 1870 to 1880.

Ch.

9. *Isle of Man Harbours* [E.]
   Construes Act with 35 & 36 Vict. c. 23., Isle of Man Harbours Act, 1872.
   Amends, and applies, 10 & 11 Vict. c. 27., Harbours, &c. Act, 1847.

10. *Customs and Inland Revenue* [U.K.]
    Grants Import Duties on Tea.
    Amends 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876, as regards certain explosive substances.
    Alters date of expiration of certain game licences and gun licences taken out under 23 & 24 Vict. c. 90., Game Certificates, &c. Act, 1860, and 33 & 34 Vict. c. 57., Gun Licence Act, 1870.
    Grants duties of Income Tax, and applies former Acts.

11. *Poor Law Conferences* [E.]
    Provides for expenses incurred by guardians of the poor in relation to Poor Law Conferences.
    Applies 42 & 43 Vict. c. 12., Poor Law Act, 1879.

12. *Prevention of Crime (Ireland) Act*, 1882, *Amendment (Audience of Solicitors)* [I.]
    Amends 45 & 46 Vict. c. 25., Prevention of Crime (Ireland) Act, 1882.

13. *Consolidated Fund (No. 3)* (5,973,912*l.*) [U.K.]

14. *Constabulary and Police (Ireland)* [I.]
    Amends 37 & 38 Vict. c. 80., Constabulary (Ireland) Act, 1874.
    Amends 10 & 11 Vict. c. 100., Constabulary and Police (Ireland) Act, 1847.

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.

14. *Constabulary and Police (Ireland)*—cont.
Amends 34 & 35 Vict. c. 76., Summary Jurisdiction (Ireland) Amendment Act, 1871.
Applies 6 & 7 Will. 4. c. 29.

15. *Lands Clauses (Umpire) Act* [E. & I.]
Amends 8 & 9 Vict. c. 18., Lands Clauses Consolidation Act, 1845.

16. *Lord Alcester's Grant* [U.K.]
Grants 25,000*l.* to Baron Alcester.

17. *Lord Wolseley's Grant* [U.K.]
Grants 30,000*l.* to Baron Wolseley.

18. *Municipal Corporations* [E.]
Amends and extends 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.
Repeals 17 & 18 Vict. c. 71., Borough Rates Act, 1854.
Applies 17 & 18 Vict. c. 57., Returning Officers Act, 1854.
Applies 6 & 7 Vict. c. 18., Parliamentary Registration Act, 1843.
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 16 & 17 Vict. c. 137., &c., Charitable Trusts Acts, 1853 to 1869.

19. *Medical Act* (1858) *Amendment* [I.]
Amends 21 & 22 Vict. c. 90., Medical Act (1858).

20. *Registry of Deeds Office (Ireland) Holidays* [I.]
Amends 2 & 3 Will. 4. c. 87., Registry of Deeds, &c., Ireland.

21. *Annual Turnpike Acts Continuance* [E.]
Continues and repeals certain Turnpike Acts as set forth in Schedules 1 to 7.

22. *Sea Fisheries* [U.K., &c.]
Amends 31 & 32 Vict. c. 45., Sea Fisheries Act, 1868.
Exempts certain British sea-fishing boats from application of section 176 of 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.
Continues 6 & 7 Vict. c. 79. (Fisheries Act 1843), as to French Convention.
Repeals part of 6 & 7 Vict. c. 79., Fisheries Act, 1843.
Repeals part of 31 & 32 Vict. c. 45., Sea Fisheries Act, 1868.
Repeals section 15 of 40 & 41 Vict. c. 42., Fisheries Act, 1877.
Repeals provisionally part of 31 & 32 Vict. c. 45., Sea Fisheries Act, 1868.
Repeals provisionally section 3 of 38 Vict. c. 15., Sea Fisheries Act, 1875.
Applies Merchant Shipping Acts as regards lights and "wreck."

Ch.

22. *Sea Fisheries*—cont.
Applies 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876, &c.
Applies in England, Summary Jurisdiction Acts, 42 & 43 Vict. c. 49., &c.
Applies in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., Summary Jurisdiction Acts, 1864 and 1881.
Applies in Ireland, 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851, &c.

23. *Consolidated Fund* (No. 4) (15,182,707*l.*) [U.K.]

24. *Relief of Distressed Unions (Ireland)* [I.]
Applies 32 & 33 Vict. c. 42., Applies 44 & 45 Vict. c. 71., } Irish Church Acts, 1869 and 1881.

25. *Prison Service (Ireland)* [I.]
Explains and amends s. 32 of 40 & 41 Vict. c. 49. (General Prisons (Ireland) Act, 1877), as to the term "prison service."

26. *Sea Fisheries (Ireland)* [I.]
Constitutes Fishery Piers and Harbours Commission, and creates Sea Fisheries Fund.
Applies 32 & 33 Vict. c. 42., Applies 44 & 45 Vict. c. 71., } Irish Church Acts, 1869 and 1881.
Applies Fishery Piers and Harbours Acts.
Exempts grants under this Act from enactments contained in s. 2 of 29 & 30 Vict. c. 45., Fishery Piers and Harbours Act, 1866, and in sub-section 4 of s. 4 of 9 & 10 Vict. c. 3., Fishery Piers and Harbours Act, 1846.

27. *Metropolitan Board of Works (Money)* [E.]
Amends 45 & 46 Vict. c. 33., Metropolitan Board of Works (Money) Act, 1882.
Amends 32 & 33 Vict. c. 102., Metropolitan Board of Works (Loans) Act, 1869.
Applies 18 & 19 Vict. c. 120., Metropolis Management Act, 1855.
Applies Main Drainage Acts.
Applies 24 & 25 Vict. c. 98., as to forgery of Metropolitan Bills.
Empowers Board to expend moneys for purposes described in First Schedule.

28. *Companies* [U.K.]
Amends 25 & 26 Vict. c. 89., Amends 30 & 31 Vict. c. 131., } Companies Acts, 1862 and 1867.

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.
29. *Supreme Court of Judicature (Funds, &c.)* [E.]
Amends, and applies, 35 & 36 Vict. c. 44., Chancery Funds Act, 1872.

30. *Companies (Colonial Registers)* [C.]
Applies Companies Acts, 1862 to 1880.

31. *Payment of Wages in Public-houses Prohibition.* [E. & S.]
Extends prohibition as to payment of wages in public-houses, &c. contained in 35 & 36 Vict. c. 76., Coal Mines Regulation Act, 1872, and 35 & 36 Vict. c. 77., Metalliferous Mines Regulation Act, 1872.
Applies, in England, Summary Jurisdiction Acts.
Applies in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

32. *Greenwich Hospital* [U.K.]
Enacts that grants under Order in Council of 1875 shall be deemed to have been authorised by 28 & 29 Vict. c. 89., Greenwich Hospital Act, 1865.

33. *Irish Reproductive Loan Fund Amendment* [I.]
Amends 37 & 38 Vict. c. 86., Irish Reproductive Loan Fund Act, 1874.

34. *Cheap Trains* [E. & S.]
Amends sections 4 and 7 of 5 & 6 Vict. c. 79., Duties on Stage Carriages, &c.
Repeals section 20 of 5 & 6 Vict. c. 55*., Regulation of Railways and Conveyance of Troops.
Repeals in part 7 & 8 Vict. c. 85*., Construction of Railways.
Repeals section 18 of 16 & 17 Vict. c. 69*., Service in the Navy.
Repeals sections 1 and 2 of 21 & 22 Vict. c. 75*., Cheap Trains.
Repeals section 14 of 26 & 27 Vict. c. 33*., Inland Revenue.
Applies 44 & 45 Vict. c. 58., Army Act, 1881.

35. *Diseases Prevention (Metropolis)* [E.]
Provides for isolation and treatment of Cholera and other patients.
Applies 18 & 19 Vict. c. 116., Diseases Prevention Act, 1855.
Applies 30 & 31 Vict. c. 6., Metropolitan Poor Act, 1867.

* Except so far as relates to Ireland, and except as respects the conveyance of forces by Companies who lose the benefit of this Act (s. 10).

Ch.
35. *Diseases Prevention (Metropolis)*—cont.
Applies 18 & 19 Vict. c. 120., Metropolis Management Act, 1855.
Applies Lands Clauses Acts.
Provides for application of 18 & 19 Vict. c. 116., Diseases Prevention Act, 1855, to hamlet of Mottingham (Kent).

36. *City of London Parochial Charities* [E.]
Appoints Charity Commissioners to be Commissioners under this Act, to exercise powers of 16 & 17 Vict. c. 137, Charitable Trusts Act, 1853, &c.
Extends section 11 of 16 & 17 Vict. c. 137., Extends sections 6 to 9 of 18 & 19 Vict. c. 124., } Charitable Trusts Acts, 1853 and 1855.
Construes Act with, and applies, Charitable Trusts Acts, 1853 to 1869.

37. *Public Health Act, 1875 (Support of Sewers) Amendment* [E.]
Amends 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 10 & 11 Vict. c. 17., Waterworks Clauses Act, 1847.

38. *Trial of Lunatics* [E. & I.]
Repeals s. 1 of 39 & 40 Geo. 3. c. 94., Criminal Lunatics.
Repeals s. 16 of 1 & 2 Geo. 4. c. 33., Lunatics (Ireland).
Repeals s. 3 of 3 & 4 Vict. c. 54., Criminal Lunatics.
Applies 3 & 4 Vict. c. 54., Criminal Lunatics.

39. *Statute Law Revision.* [U.K.]
Repeals (with Savings) the enactments described in the Schedule.
[*These Enactments will be found in their chronological order in Table B. See p. 408 et seq.*]

40. *Expiring Laws Continuance* [U.K.]
Continues (as specified in Schedule) the following Acts, and enactments amending the same; viz.:—
5 & 6 Will. 4. c. 27., Linen, &c. Manufactures (Ireland).
3 & 4 Vict. c. 89., Poor Rates (Stock in Trade Exemption).
4 & 5 Vict. c. 35., Copyhold, Inclosure, and Tithe Commissioners (now Land Commissioners).
4 & 5 Vict. c. 59., Application of Highway Rates to Turnpike Roads.
10 & 11 Vict. c. 32., Landed Property Improvement (Ireland).
10 & 11 Vict. c. 98., Ecclesiastical Jurisdiction.
11 & 12 Vict. c. 32., County Cess (Ireland).
14 & 15 Vict. c. 104., Episcopal, &c. Estates.
23 & 24 Vict. c. 19., Dwellings for Labouring Classes (Ireland).

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.

40. *Expiring Laws Continuance*—cont.
    - 24 & 25 Vict. c. 109., Salmon Fishery (England).
    - 26 & 27 Vict. c. 105., Promissory Notes.
    - 27 & 28 Vict. c. 20., Promissory Notes, &c. (Ireland).
    - 28 & 29 Vict. c. 46., Militia Ballots Suspension.
    - 28 & 29 Vict. c. 83., Locomotives on Roads.
    - 29 & 30 Vict. c. 52., Prosecution Expenses.
    - 32 & 33 Vict. c. 21., Election Commissioners Expenses.
    - 32 & 33 Vict. c. 56., Endowed Schools (Schemes).
    - 34 & 35 Vict. c. 87., Sunday Observance Prosecutions.
    - 35 & 36 Vict. c. 33., Parliamentary and Municipal Elections (Ballot).
    - 36 & 37 Vict. c. 48., Regulation of Railways.
    - 38 & 39 Vict. c. 48., Police Expenses.
    - 38 & 39 Vict. c. 84., Returning Officers Expenses.
    - 39 & 40 Vict. c. 21., Juries (Ireland).
    - 41 & 42 Vict. c. 41., Returning Officers Expenses (Scotland).
    - 41 & 42 Vict. c. 72., Sale of Liquors on Sunday (Ireland).
    - 43 Vict. c. 18., Parliamentary Elections.

41. *Merchant Shipping* (*Fishing Boats*) [U.K., except Scotland.]
    - Amends 17 & 18 Vict. c. 104., &c., Merchant Shipping Acts, 1854 to 1880.
    - Construes Act with, and applies, Merchant Shipping Acts, 1854 to 1882.
    - Repeals in part 17 & 18 Vict. c. 104., Merchant Shipping Act, 1854.*
    - Repeals section 13 (1) of 25 & 26 Vict. c. 63., Merchant Shipping Acts Amendment Act, 1862.*
    - Repeals section 8 of 36 & 37 Vict. c. 85., Merchant Shipping Acts Amendment Act, 1873.*
    - Repeals in part 43 & 44 Vict. c. 16., Merchant Seamen (Payment of Wages and Rating) Act, 1880.*
    - Repeals that part remaining unrepealed of 50 Geo. 3. c. 108., British Fisheries.*
    - Incorporates Part I. of 17 & 18 Vict. c. 104., Merchant Shipping Act, 1854.
    - Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
    - Applies 18 & 19 Vict. c. 120., Metropolis Management Act, 1855.
    - Applies 30 & 31 Vict. c. 101., Public Health (Scotland) Act, 1867.
    - Applies 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.

42. *Public Works Loans* [U.K.]
    - Grants 3,000,000*l.* for Public Works, and 1,200,000*l.* for Public Works in Ireland.
    - Grants 400,000*l.* to Irish Land Commission under 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881, and under 46 & 47 Vict. c. 43., Tramways and Public Companies (Ireland) Act, 1883.
    - Borrowing powers for purposes of 46 & 47 Vict. c. 43., Tramways and Public Companies (Ireland) Act, 1883: Extends section 6 of 45 & 46 Vict. c. 62., Public Works Loans Act, 1882.
    - Amends 45 & 46 Vict. c. 47., Arrears of Rent (Ireland) Act, 1882.
    - Amends, and applies, 40 & 41 Vict. c. 27., Public Works Loans (Ireland) Act, 1877.
    - Applies 38 & 39 Vict. c. 89., Public Works Loans Act, 1875.
    - Makes provision as to certain Loans respecting Arbroath Harbour; Athlunkard Bridge, Limerick; Green Street Court House, Dublin; and certain Lands and Mills on river Corrib, Galway.

43. *Tramways and Public Companies* (*Ireland*) [I.]
    - Amends 45 & 46 Vict. c. 47., Arrears of Rent (Ireland) Act, 1882.
    - Amends 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881.
    - Amends Tramways (Ireland) Acts, 23 & 24 Vict. c. 152., &c.
    - Applies 33 & 34 Vict. c. 46., Landlord and Tenant (Ireland) Act, 1870.
    - Construes Act with Tramways (Ireland) Acts.

44. *Borough Constables* [E.]
    - Explains the effect of section 195 of 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.

45. *Counterfeit Medals* [U.K.]
    - Provides against sale of Medals resembling current coin.

46. *Corrupt Practices* (*Suspension of Elections*) [E.]
    - Suspends elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.

47. *Provident Nominations and Small Intestacies* [U.K.]
    - Extends portions of the following Acts; viz.,
        - 38 & 39 Vict. c. 60. s. 15 (3), (4), Friendly Societies Act, 1875.
        - 39 & 40 Vict. c. 45. s. 11. (5), (6), Industrial, &c. Societies Act, 1876.

* Except so far as relates to Scotland.

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.
47. *Provident Nominations and Small Intestacies* —cont.
39 & 40 Vict. c. 22. s. 10., Trade Union Act Amendment Act, 1876.
26 & 27 Vict. c. 87. ss. 41 to 43, Trustee Savings Bank Act, 1863.
7 & 8 Vict. c. 83. s. 10., Savings Banks Act, 1844.
45 & 46 Vict. c. 51. s. 6. (e), Government Annuities Act, 1882.

48. *Cholera Hospitals (Ireland)* [I.]
Provides for the erection of temporary Cholera Hospitals.

49. *Statute Law Revision and Civil Procedure* [E.]
Repeals (with Savings) the enactments described in the Schedule. [*These enactments will be found in Table B. See p.* 417.]
Repeals enactments in Part II. of Schedule to 42 & 43 Vict. c. 59., Civil Procedure Acts Repeal Act, 1879.
Extends 36 & 37 Vict. c. 66., Applies 38 & 39 Vict. c. 77., } Supreme Court of Judicature Acts, 1873 and 1875.

50. *Appropriation* [U.K.]

51. *Corrupt and Illegal Practices Prevention* [U.K.]
Repeals s. 36 of 60 Geo. 3. & 1 Geo. 4. c. 11., Elections (Ireland).
Repeals 1 & 2 Geo. 4. c. 58. (except s. 3), Elections (Ireland).
Repeals s. 82 of 4 Geo. 4. c. 55., Elections (Ireland).
Repeals in part 17 & 18 Vict. c. 102., Corrupt Practices Prevention Act, 1854.
Repeals 21 & 22 Vict. c. 87., Corrupt Practices Prevention Act, 1854, Continuance.
Repeals 26 & 27 Vict. c. 29. (except s. 6), Corrupt Practices at Elections of Members of Parliament.
Repeals in part 30 & 31 Vict. c. 102., Representation of the People Act, 1867.
Repeals s. 25 of 31 & 32 Vict. c. 48., Representation of the People (Scotland) Act, 1868.
Repeals s. 12 of 31 & 32 Vict. c. 49., Representation of the People (Ireland) Act, 1868.
Repeals part of s. 18 of 31 & 32 Vict. c. 58., Parliamentary Electors Registration Act, 1868.
Repeals in part 31 & 32 Vict. c. 125., Parliamentary Elections Act, 1868.

Ch.
51. *Corrupt and Illegal Practices Prevention*— cont.
Repeals in part 35 & 36 Vict. c. 33., Ballot Act, 1872.
Repeals in part 42 & 43 Vict. c. 75., Parliamentary Elections and Corrupt Practices Act, 1879.
Repeals 43 Vict. c. 18. (except ss. 1 and 3), Parliamentary Elections and Corrupt Practices Act, 1880.
Amends and extends 15 & 16 Vict. c. 57., Election Commissioners Act, 1852.
Applies 31 & 32 Vict. c. 125., Parliamentary Elections Act, 1868.
Applies 35 & 36 Vict. c. 33., Ballot Act, 1872.
Applies 38 & 39 Vict. c. 84, Parliamentary Elections (Returning Officers) Act, 1875.
Applies 30 & 31 Vict. c. 102., Representation of the People Act, 1867.
Applies 17 & 18 Vict. c. 102., Applies 26 & 27 Vict. c. 29., } Corrupt Practices Prevention Acts, 1854 and 1863.
Applies 42 & 43 Vict. c. 22., Prosecution of Offences Act, 1879.
Applies 32 & 33 Vict. c. 21., Applies 34 & 35 Vict. c. 61., } Election Commissioners Expenses Acts, 1869 and 1871.
Applies 6 Vict. c. 18., Parliamentary Registration Act, 1843.
Applies Summary Jurisdiction Acts.
Continues Act until 31st December 1884.

52. *Bankruptcy* [E. (Certain express provisions relate to Scotland and Ireland.)]
Amends and consolidates the Law of Bankruptcy.
Repeals as to England the following enactments:—
13 Edw. 1. c. 18. in part. The Statutes of Westminster the Second, chapter eighteen, Execution by levying of lands and goods, &c.
32 & 33 Vict. c. 62. in part, Debtors Act, 1869.
32 & 33 Vict. c. 71., Bankruptcy Act, 1869.
32 & 33 Vict. c. 83. in part, Bankruptcy Repeal and Insolvent Court Act, 1869.
33 & 34 Vict. c. 76., Absconding Debtors Act, 1870.
34 & 35 Vict. c. 50., in part, Bankruptcy Disqualification Act, 1871.

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.

52 *Bankruptcy*—cont.
- 38 & 39 Vict. c. 77. in part, Supreme Court of Judicature Act, 1875.
- Extends 24 Geo. 3. c. 26. House of Commons (Election).
- Applies 32 & 33 Vict. c. 62., Debtors Act, 1869.
- Applies 3 & 4 Will. 4. c. 74., Fines and Recoveries.
- Applies 38 & 39 Vict. c. 77., Supreme Court of Judicature Act, 1875.
- Applies 13 & 14 Vict. c. 60., Trustee Act, 1850.
- Applies 32 & 33 Vict. c. 71., Bankruptcy Act, 1869.
- Consolidates London Bankruptcy Court with Supreme Court of Judicature.
- Construes Act with 36 & 37 Vict. c. 66., Supreme Court of Judicature Act, 1875.

53. *Factories and Workshops* [U.K.]
- Amends, explains, and applies 41 & 42 Vict. c. 16., Factory, &c, Act, 1878.

54. *National Debt* [U.K.]
- Amends 38 & 39 Vict. c. 45., Sinking Fund Act, 1875.
- Extends 26 & 27 Vict. c. 14., Savings Banks Act, 1863.

55. *Revenue* [U.K.]
- Repeals in part, and amends, 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.
- Amends 33 & 34 Vict. c. 97., Stamp Act, 1870.
- Amends 36 & 37 Vict. c. 57., Consolidated Fund (Permanent Charges Redemption) Act, 1873.
- Extends, &c. 43 & 44 Vict. c. 19., Taxes Management Act, 1880.
- Extends 45 & 46 Vict. c. 61., Bills of Exchange Act, 1882.
- Extends 24 & 25 Vict. c. 98., Indictable Offences by Forgery.
- Applies Charitable Trusts Acts, 1853 to 1869.
- Applies 46 & 47 Vict. c. 1., Consolidated Fund (Permanent Charges Redemption) Act, 1883.
- Construes Act with 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.

56. *Education (Scotland)* [S.]
- Amends 35 & 36 Vict. c. 62., and Amends 41 & 42 Vict. c. 78. } Education (Scotland) Acts, 1872 and 1878.

Ch.

57. *Patents, Designs, and Trade Marks* [U.K.]
- Amends and consolidates the Law relating to Patents, &c.
- Repeals (as in Third Schedule) the following enactments:—
  - 21 Jas. I. c. 3. in part, Statute of Monopolies.
  - 5 & 6 Will. 4. c. 62. s. 11., Statutory Declarations Act, 1835.
  - 5 & 6 Will. 4. c. 83., Letters Patent for Inventions.
  - 2 & 3 Vict. c. 67., Letters Patent for Inventions.
  - 5 & 6 Vict. c. 100., Copyright of Designs.
  - 6 & 7 Vict. c. 65., Copyright of Designs.
  - 7 & 8 Vict. c. 69 in part,* Judicial Committee: Patents.
  - 13 & 14 Vict. c. 104., Copyright of Designs.
  - 15 & 16 Vict. c. 83., Patent Law Amendment Act, 1852.
  - 16 & 17 Vict. c. 5., Letters Patent for Inventions.
  - 16 & 17 Vict. c. 115., Patent Law Amendment Act, 1852, Amendment.
  - 21 & 22 Vict. c. 70., Copyright of Designs.
  - 22 Vict. c. 13., Patents for Inventions.
  - 24 & 25 Vict. c. 73., Copyright of Designs.
  - 28 & 29 Vict. c. 3., Industrial Exhibitions Act, 1865.
  - 33 & 34 Vict. c. 27., Protection of Inventions Act, 1870.
  - 33 & 34 Vict. c. 97, in part, Stamp Act, 1870.
  - 38 & 39 Vict. c. 91., Trade Marks Registration Act, 1875.
  - 38 & 39 Vict. c. 93., Copyright of Designs Act, 1875.
  - 39 & 40 Vict. c. 33., Trade Marks Registration Amendment Act, 1876.
  - 40 & 41 Vict. c. 37., Trade Marks Registration Extension Act, 1877.
  - 43 & 44 Vict. c. 10. s. 5., Great Seal Act, 1880.
  - 45 & 46 Vict. c. 72. s. 16., Revenue, Friendly Societies, and National Debt Act, 1882.
- Applies Cutlers' Company's Acts as to Sheffield Marks.

* Sections 6 and 7 of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

Table A.—Acts of 46 & 47 Vict. (in order of Chapter), &c.—*continued.*

Ch.

58. *Post Office (Money Orders)* [U.K., &c.]
Amends 11 & 12 Vict. c. 88. } Post Office (Money Orders) Acts, 1848 and 1880.
Amends and extends 43 & 44 Vict. c. 33. }

59. *Epidemic and other Diseases Prevention* [E. & I.]
Amends 38 & 39 Vict. c. 55., Public Health Act (England), 1875.
Amends 41 & 42 Vict. c. 52., Public Health Act (Ireland), 1878.

60. *Labourers (Ireland)* [I.]
Construes Act with, and incorporates part of, 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.
Incorporates Lands Clauses Acts.
Extends 38 & 39 Vict. c. 36., Artizans, &c. Dwellings Act, 1875.
Applies 45 & 46 Vict. c. 60., Labourers Cottages, &c. (Ireland) Act, 1882.
Applies 23 & 24 Vict. c. 154., Landlord and Tenant, &c. Act (Ireland), 1860.

Ch.

61. *Agricultural Holdings (England)* [E.]
Repeals section 1 of 2 Will. & Mar. c. 5., Distress.
Repeals 38 & 39 Vict. c. 92., } Agricultural Holdings (England) Acts, 1875 and 1876.
Repeals 39 & 40 Vict. c. 74., }
Applies 29 & 30 Vict. c. 62., Crown Lands Act, 1866.
Applies 57 Geo. 3. c. 97., Duchy of Lancaster.
Applies 26 & 27 Vict. c. 49., Duchy of Cornwall Management Act, 1863.

62. *Agricultural Holdings (Scotland)* [S.]
Repeals sections 2 & 3 of 43 Vict. c. 12., Hypothec Abolition (Scotland) Act, 1880.
Applies 16 & 17 Vict. c. 80., Sheriff Courts (Scotland) Act, 1853.
Applies 29 & 30 Vict. c. 32., Crown Lands Act, 1866.

(B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 46 & 47 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 46 & 47 Vict.
13 Edw. 1. c. 18. in part -	Execution by levying of lands, &c.	Repealed*.	52
21 Jas. 1. c. 3. in part -	Statute of Monopolies - -	Repealed -	57
2 Will. & Mar. c. 5. s. 1. -	Distress - - - -	Repealed -	61
39 & 40 Geo. 3. c. 94. s. 1. -	Criminal Lunatics - - -	Repealed -	38
50 Geo. 3. c. 108. (that part remaining unrepealed.)† -	British Fisheries - - -	Repealed -	41
60 Geo. 3. & 1 Geo. 4. c. 11. s. 36. - - -	Elections (Ireland) - - -	Repealed -	51
1 & 2 Geo. 4. c. 33. s. 16 -	Lunatics (Ireland) - - -	Repealed -	38
,, c. 58. (except s. 3.)	Elections (Ireland) - - -	Repealed -	51
4 Geo. 4. c. 55. s. 82. - -	Elections (Ireland) - - -	Repealed -	51
2 & 3 Will. 4. c. 87. - -	Registry of Deeds, &c. (Ireland) -	Amended -	20
5 & 6 Will. 4. c. 62. s. 11. -	Statutory Declarations Act, 1835 -	Repealed -	57
,, c. 83. - -	Letters Patent for Inventions -	Repealed -	57
2 & 3 Vict. c. 67. - -	Letters Patent for Inventions -	Repealed -	57
3 & 4 Vict. c. 54. s. 3. -	Criminal Lunatics - - -	Repealed -	38
5 & 6 Vict. c. 55. s. 20. -	Regulation of Railways and Conveyance of Troops - -	Repealed‡.	34
,, c. 79. ss. 4. and 7.	Duties on Stage Carriages, &c. -	Amended -	34
,, c. 100. - -	Copyright of Designs - -	Repealed -	57
6 & 7 Vict. c. 65. - -	Copyright of Designs - -	Repealed -	57
,, c. 79. in part -	Fisheries Act, 1843 - - -	Repealed -	22
7 & 8 Vict. c. 69. in part§ -	Judicial Committee: Patents -	Repealed -	57
,, c. 85. in part -	Construction of Railways - -	Repealed‡.	34
8 & 9 Vict. c. 18. - -	Lands Clauses Consolidation Act, 1845.	Amended -	15
10 & 11 Vict. c. 27. - -	Harbours, &c. Act, 1847 - -	Amended -	9
,, c. 100. - -	Constabulary and Police (Ireland) -	Amended -	14
11 & 12 Vict. c. 88. - -	Post Office (Money Orders) Act, 1848.	Amended -	58
13 & 14 Vict. c. 104. - -	Copyright of designs - -	Repealed -	57
15 & 16 Vict. c. 57. - -	Election Commissioners Act, 1852 -	Amended -	51
,, c. 83. - -	Patent Law Amendment Act, 1852	Repealed -	57
16 & 17 Vict. c. 5. - -	Letters Patent for Inventions -	Repealed -	57
,, c. 69. s. 18. -	Service in the Navy - -	Repealed‡.	34
,, c. 115. - -	Patent Law Amendment - -	Repealed -	57
17 & 18 Vict. c. 71. - -	Borough Rates Act, 1854 - -	Repealed -	18
,, c. 102. in part -	Corrupt Practices - - -	Repealed -	51
,, c. 104. in part†	Merchant Shipping Act, 1854 -	Repealed -	41
21 & 22 Vict. c. 70. - -	Copyright of Designs - -	Repealed -	57
,, c. 75. ss. 1 and 2	Cheap Trains - - -	Repealed‡.	34
,, c. 87 - -	Corrupt Practices - - -	Repealed -	51
,, c. 90. - -	Medical Act (1858) - - -	Amended -	19
22 Vict. c. 13. - -	Patents for Inventions - -	Repealed -	57

* As to England.
† Except so far as relates to Scotland.
‡ Except so far as relates to Ireland, &c.
§ Sections 6 and 7 of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 46 & 47 Vict.
23 & 24 Vict. c. 152. - -	Tramways (Ireland) - -	Amended -	43
24 & 25 Vict. c. 73. - -	Copyright of Designs - -	Repealed -	57
25 & 26 Vict. c. 63. s. 13. (1).*	Merchant Shipping Acts Amendment.	Repealed -	41
,, c. 89. - -	Companies Act, 1862 - -	Amended -	28
26 & 27 Vict. c. 29. (except s. 6.)	Corrupt Practices - - -	Repealed -	51
,, c. 33. s. 14. -	Inland Revenue - - - -	Repealed† -	34
28 & 29 Vict. c. 3. - -	Industrial Exhibitions Act, 1865 -	Repealed -	57
30 & 31 Vict. c. 102. in part -	Representation of the People Act, 1867.	Repealed -	51
,, c. 131. - -	Companies Act, 1867 - -	Amended -	28
31 & 32 Vict. c. 45. - -	Sea Fisheries Act, 1868 - -	Amended -	22
,, c. 48. s. 25. -	Representation of the People (Scotland) Act, 1868.	Repealed -	51
,, c. 49. s. 12. -	Representation of the People (Ireland) Act, 1868.	Repealed -	51
,, c. 58. s. 18. in part.	Parliamentary Electors Registration Act, 1868.	Repealed -	51
,, c. 125. in part -	Parliamentary Elections Act, 1868	Repealed -	51
32 & 33 Vict. c. 62. in part -	Debtors Act, 1869 - - -	Repealed‡ -	52
,, c. 71. - -	Bankruptcy Act, 1869 - -	Repealed‡ -	52
,, c. 83. in part -	Bankruptcy Repeal and Insolvent Court Act, 1869.	Repealed‡ -	52
,, c. 102. - -	Metropolitan Board of Works (Loans).	Amended -	27
33 & 34 Vict. c. 27. - -	Protection of Inventions Act, 1870	Repealed -	57
,, c. 76. - -	Absconding Debtors Act, 1870 -	Repealed‡ -	52
,, c. 97. - -	Stamp Act, 1870 - - -	Amended -	55 and 57
,, c. 112. - -	Glebe Loan (Ireland) Act, 1870 -	Amended -	8
34 & 35 Vict. c. 50. in part -	Bankruptcy Disqualification Act, 1871.	Repealed -	52
,, c. 76. - -	Summary Jurisdiction (Ireland) -	Amended -	14
,, c. 100. - -	Glebe Loan (Ireland) Act, 1871 -	Amended -	8
35 & 36 Vict. c. 33. in part -	Ballot Act, 1872 - - -	Repealed -	51
,, c. 44. - -	Chancery Funds Act, 1872 -	Amended -	29
,, c. 62. - -	Education (Scotland) - -	Amended -	56
36 & 37 Vict. c. 57. - -	Consolidated Fund, &c. Act, 1873 -	Amended -	1 and 55
,, c. 85. s. 8.* -	Merchant Shipping Acts Amendment.	Repealed -	41
37 & 38 Vict. c. 80. - -	Constabulary (Ireland) - -	Amended -	14
,, c. 86. - -	Irish Reproductive Loan Fund Act, 1874.	Amended -	33
38 Vict. c. 15. s. 3. - -	Sea Fisheries Act, 1875 - -	Repealed§ -	22
38 & 39 Vict. c. 30. - -	Glebe Loan (Ireland) Act, 1875 -	Amended -	8
,, c. 45. - -	Sinking Fund Act, 1875 - -	Amended -	54
,, c. 55. - -	Public Health Act, 1875 - -	Amended -	37 and 59
,, c. 77. in part -	Supreme Court of Judicature Act, 1875.	Repealed‡ -	52
,, c. 91. - -	Trade Marks Registration -	Repealed -	57

* Except so far as relates to Scotland.
† Except so far as relates to Ireland, &c.
‡ As to England.
§ Provisionally.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 46 & 47 Vict.
38 & 39 Vict. c. 92. - -	Agricultural Holdings (England) Act, 1875.	Repealed -	61
,, c. 93. - -	Copyright of Designs - -	Repealed -	57
39 & 40 Vict. c. 33. - -	Trade Marks Registration - -	Repealed -	57
,, c. 36. - -	Customs Consolidation Act, 1876 -	Amended -	10 and 55
,, c. 74. - -	Agricultural Holdings (England) Act, 1876.	Repealed -	61
40 & 41 Vict. c. 27. - -	Public Works Loans (Ireland) -	Amended -	42
,, c. 37. - -	Trade Marks Registration -	Repealed -	57
,, c. 42. s. 15. -	Fisheries Act, 1877 - -	Repealed -	22
,, c. 49. s. 32 -	General Prisons (Ireland) Act, 1877	Amended -	25
41 & 42 Vict. c. 6. - -	Glebe Loan (Ireland) Act, 1878 -	Amended -	8
,, c. 16. - -	Factory, &c. Act, 1878 - -	Amended -	53
,, c. 52. - -	Public Health (Ireland) - -	Amended -	59
,, c. 78. - -	Education (Scotland) - -	Amended -	56
42 & 43 Vict. c. 50. - -	Bills of Sale (Ireland) Act, 1879 -	Amended -	7
,, c. 75. in part -	Parliamentary Elections and Corrupt Practices.	Repealed -	51
43 Vict. c. 12. ss. 2. and 3.	Hypothec Abolition (Scotland) Act, 1880.	Repealed -	62
,, c. 18. (except ss. 1. and 3.)	Parliamentary Elections and Corrupt Practices.	Repealed -	51
43 & 44 Vict. c. 2. - -	Glebe Loan (Ireland) Act, 1880 -	Amended -	8
,, c. 10. s. 5. -	Great Seal Act, 1880 - -	Repealed -	57
,, c. 16. in part* -	Merchant Seamen (Payment of Wages, &c.)	Repealed -	41
,, c. 33. - -	Post Office (Money Orders) Act, 1880.	Amended -	58
44 & 45 Vict. c. 49. - -	Land Law (Ireland) Act, 1881 -	Amended -	43
,, c. 58. - -	Army Act, 1881 - - -	Amended -	6
45 & 46 Vict. c. 25. - -	Prevention of Crime (Ireland) Act, 1882.	Amended -	12
,, c. 33. - -	Metropolitan Board of Works (Money).	Amended -	27
,, c. 47. - -	Arrears of Rent (Ireland) Act, 1882	Amended -	42 and 43
,, c. 50. - -	Municipal Corporations Act, 1882	Amended -	18
,, c. 72. s. 16. -	Revenue, Friendly Societies, and National Debt Act, 1882.	Repealed -	57

* Except so far as relates to Scotland.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Repeals effected by the Statute Law Revision Act,
46 & 47 Vict. c. 39.

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
32 & 33 Vict. c. 1. - -	Consolidated Fund.
,, c. 4. - -	Mutiny.
,, c. 5. - -	Marine Mutiny.
,, c. 6. - -	Regulation of Railways.
,, c. 8. - -	Consolidated Fund.
,, c. 10. ss. 3., 8.	Removal of Prisoners from one Colony to another for Punishment.
,, c. 11. s. 5. -	Coasting Trade and Merchant Shipping (British Possessions).
,, c. 14. in pt. -	Duties of Customs and Inland Revenue.
,, c. 15. s. 2 in pt.	Qualification of Persons holding Civil Service Pensions, &c. to sit in Parliament.
,, c. 16. -	Norfolk Island (Diocese of Tasmania).
,, c. 18. s. 2. -	Lands Clauses Consolidation Act Amendment.
,, c. 19. s. 39. in pt.	Mining Partnerships within Stannaries of Devon and Cornwall, &c.
,, c. 20. -	Validity of certain Statutes of University of Oxford.
,, c. 22. -	Exchequer Bonds.
,, c. 24. s. 1. in pt.	Newspapers, Pamphlets, &c., and Printers, Typefounders, and Reading Rooms.
,, c. 27. in pt. -	Beerhouses, &c.
,, c. 29. -	Title Deeds for Inam Lands.
,, c. 33. s. 6. -	Collection of Judicial Statistics (Scotland).
,, c. 34. s. 1. -	Appointment of Deputies by Stipendiary Magistrates.
,, c. 37. -	District Prothonotaries of Court of Common Pleas of Lancaster, &c.
,, c. 39. -	Hospitals, &c. (Scotland).
,, c. 41. s. 16. in pt.	Rating of Occupiers, and Poor's Rate.
,, c. 43. s. 4. in pt.	Payment of Diplomatic Salaries, Allowances, and Pensions.
,, c. 44. in pt. -	Greenwich Hospital, and Application of its Revenues.
,, c. 45. s. 6. in pt.	Repayment of Loans to Poor Law Unions.
,, c. 47. s. 6. -	High Constables.
,, c. 53. in pt. -	Cinque Ports Act Amendment.
,, c. 54. in pt. -	Relief of the destitute Poor (Ireland).
,, c. 58. in pt. -	Public Schools.
,, c. 59. in pt. -	Investments for Savings Banks and Post Office Savings Banks.
,, c. 62. s. 7. -	Abolition of Imprisonment for Debt, &c.
,, c. 63. in pt. -	Metropolitan Poor.
,, c. 65. -	Corrupt Practices amongst Freemen Electors of City of Dublin.
,, c. 67. in pt. -	Uniformity in Assessment of Rateable Property in the Metropolis.
,, c. 68. s. 1. -	Law of Evidence.
,, c. 71. in pt. -	Bankruptcy Law Consolidation.
,, c. 78. s. 2. in pt.	Criminal Lunatics.
,, c. 82. in pt. -	Metropolitan Building Act, 1855, Amendment.
,, c. 83. in pt. -	Insolvent Debtors Court, &c.
,, c. 85. -	Expiring Laws Continuance.
,, c. 90. in pt. -	Turnpike Acts Continuance.
,, c. 91. in pt. -	Salaries, Expenses, and Funds of Courts of Law (England).

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
32 & 33 Vict. c. 92. in pt. -	Fisheries (Ireland).
,, c. 93. -	Consolidated Fund.
,, c. 96. in pt. -	Contagious Diseases.
,, c. 97 in. pt. -	Better Government of India.
,, c. 98. s. 2. -	Government of India.
,, c. 100. in pt.	Borrowing Money for purpose of Sanitary Act, 1866.
,, c. 102. in pt.	Borrowing of Money by Metropolitan Board of Works.
,, c. 103. in pt.	Warehousing of Wines and Spirits, &c.
,, c. 108. -	Sanitary Act, 1866, so far as relates to Ireland.
,, c. 109. s. 1. -	Presentations of Benefices, &c.
,, c. 110. in pt.	Charitable Trusts Acts Amendment.
,, c. 111. in pt.	Relief of Archbishops and Bishops when incapacitated by infirmity.
,, c. 112. s. 6. in pt.	Adulteration of Seeds.
,, c. 114. s. 10. -	Abandonment of Railways and Dissolution of Railway Companies.
,, c. 116. in pt.	Titles to Land Consolidation (Scotland) Act, 1868, Amendment.
,, c. 117. in pt.	Pharmacy Act, 1868, Amendment.
33 & 34 Vict. c. 3. s. 4. -	Laws and Regulations for certain parts of India.
,, c. 5. - -	Consolidated Fund.
,, c. 7. - -	Mutiny.
,, c. 8. - -	Marine Mutiny.
,, c. 9. - -	Peace Preservation (Ireland) Act, 1856, Amendment.
,, c. 13. in pt. -	Surveys of Great Britain, Ireland, and the Isle of Man.
,, c. 14. in pt. -	Legal Condition of Aliens and British Subjects.
,, c. 15. in pt. -	Buildings and Property of County Courts (England).
,, c. 16. in pt. -	Boundary between Counties of Inverness and Elgin or Moray.
,, c. 19. in pt. -	Railway Companies Powers and Railway Construction Facilities.
,, c. 20. s. 3. -	Mortgage Debenture Act, 1865, Amendment.
,, c. 23. s. 31 -	Abolishing Forfeitures for Treason and Felony.
,, c. 24. s. 2. -	Borrowing of Money by Metropolitan Board of Works.
,, c. 27. s. 4. in pt.	Protection of Inventions exhibited at International Exhibitions in United Kinghom.
,, c. 29. in pt. -	Wine and Beerhouse Act, 1869, Amendment.
,, c. 31. -	Consolidated Fund.
,, c. 32. in pt. -	Duties of Customs and Inland Revenue.
,, c. 41. -	Exchequer Bonds.
,, c. 44. -	Stamp Duty on certain Leases.
,, c. 45. -	Liverpool Admiralty District Registrar.
,, c. 46. in pt. -	Occupation and Ownership of Land (Ireland).
,, c. 50. -	Shipping Dues Exemption.
,, c. 51. -	Notices for holding of Vestries, &c. (Isle of Man).
,, c. 52. s. 27. in pt.	Extradition of Criminals.
,, c. 53. ss. 3., 4.	Sanitary and Sewage Utilization Acts Amendment.
,, c. 59. s. 1. -	Contracts informally executed in India.
,, c. 60. ss. 3., 4.	Brokers of City of London.
,, c. 61. in pt. -	Life Assurance Companies.
,, c. 65. s. 4. -	Advertisements respecting Stolen Goods.
,, c. 71. in pt. -	National Debt.
,, c. 73. in pt. -	Turnpike Acts Continuance.
,, c. 77. s. 7. in pt.	Qualifications, &c. of Special and Common Juries.
,, c. 79. in pt. -	Regulation of Duties of Postage, &c
,, c. 80. -	Census (Ireland).

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
33 & 34 Vict. c. 83. in pt. -	Londonderry Police Force and Royal Irish Constabulary Force.
,, c. 84. -	Public Schools.
,, c. 86. in pt. -	Sheriffs and Sheriffs Substitute (Scotland).
,, c. 90. s. 31. -	Foreign Enlistment.
,, c. 96. in pt. -	Consolidated Fund.
,, c. 97. in pt. -	Stamp Duties.
,, c. 98. in pt. -	Management of Stamp Duties.
,, c. 103. -	Expiring Laws Continuance.
,, c. 105. -	Truck Commission.
,, c. 107. -	Census (England).
,, c. 108. -	Census (Scotland).
,, c. 109. s. 4. in pt.	Common Law Procedure Amendment (Ireland).
,, c. 110. in pt.	Matrimonial Causes and Marriage Law (Ireland) Amendment.
,, c. 111. s. 1. in pt.	Beerhouses.
,, c. 112. in pt.	Glebe Loans (Ireland).
34 & 35 Vict. c. 3. s. 1. -	Committees on Provisional Order Bills.
,, c. 5. - -	Assessment of Income Tax.
,, c. 6. - -	Consolidated Fund.
,, c. 7. - -	Consolidated Fund.
,, c. 9. - -	Mutiny.
,, c. 10. -	Marine Mutiny.
,, c. 18. s. 1. in pt.	County Justices Qualification Amendment.
,, c. 20. -	Consolidated Fund.
,, c. 21. -	Duties of Customs and Income Tax.
,, c. 22. in pt. -	Lunacy Regulation (Ireland).
,, c. 25. -	Protection of Life and Property in parts of Ireland.
,, c. 26. in pt. -	University Tests.
,, c. 29. in pt. -	Payment of Dividends on India Stocks.
,, c. 30. in pt. -	Further Regulation of the Duties on Postage.
,, c. 31. s. 24. -	Trades Unions.
,, c. 33. s. 1. in pt.	Burial Law Amendment.
,, c. 35. in pt. -	Buildings and Property of Police Courts of Metropolis.
,, c. 36. in pt. -	Pensions Commutation.
,, c. 37. s. 2. in pt.	Tables of Lessons and Psalter in Prayer Book.
,, c. 38. s. 1. in pt.	Public Health (Scotland).
,, c. 46. -	Appointment of Gaoler, Chaplain, and Matron of Bath City Prison.
,, c. 47. in pt. -	Borrowing of Money by Metropolitan Board of Works.
,, c. 48. in pt. -	Oaths and Declarations.
,, c. 49. ss. 4., 17	Matrimonial Causes and Marriage Law (Ireland) Amendment.
,, c. 51. -	Consolidated Fund.
,, c. 52. -	Exchequer Bonds.
,, c. 58. s. 1. -	Life Assurance Companies Act, 1870, Amendment.
,, c. 59. s. 1. -	Public Libraries (Scotland).
,, c. 60. in pt. -	Public Schools.
,, c. 62. in pt. -	East India (Bishops Leave of Absence).
,, c. 65. in pt. -	Juries (Ireland).
,, c. 68. ss. 2–4.	Glasgow Boundary.
,, c. 69. -	Suspension of certain provisions of Tramways Act, 1870, as to certain Provisional Orders.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
34 & 35 Vict. c. 72. in pt. -	Protection of Purchasers against Crown Debts, and Office of Registrar of Judgments, &c. of Court of Chancery, Ireland.
,, c. 73. in pt. -	Clerk of the Peace for County Palatine of Lancaster.
,, c. 76. in pt. -	Recovery of Small Debts, and Summary Jurisdiction (Ireland).
,, c. 78. in pt. -	Inspection and Rugulation of Railways.
,, c. 81. -	Reductions ex capite lecti (Scotland) Abolition.
,, c. 82. -	Church Building Acts Amendment Act, 1871.
,, c. 83. s. 2. -	House of Commons (Oaths to Witnesses).
,, c. 84. s. 2. -	Limited Owners Residences Act, 1870.
,, c. 86. s. 2. -	Army Regulation.
,, c. 89. -	Consolidated Fund.
,, c. 91. in pt. -	Despatch of Business by Judicial Committee of Privy Council.
,, c. 94. -	Elementary Education Act, 1870, Amendment.
,, c. 95. -	Expiring Laws Continuance.
,, c. 96. in pt. -	Pedlars' Certificates.
,, c. 97. -	Military Manœuvres.
,, c. 98. in pt. -	Vaccination Act, 1867, Amendment.
,, c. 99. s. 8. -	Civil Bill Courts Procedure (Ireland).
,, c. 100. s. 14. -	Glebe Loan (Ireland) Act, 1870, Amendment.
,, c. 101. in pt. -	Chain Cables and Anchors.
,, c. 102. in pt. -	Charitable Donations and Bequests (Ireland).
,, c. 103. in pt. -	Customs and Inland Revenue.
,, c. 105. in pt. -	Petroleum, &c.
,, c. 109. s. 26. -	Local Government (Ireland).
,, c. 110. s. 12. -	Merchant Shipping Acts Amendment.
,, c. 111. in pt. -	Beerhouses (Ireland).
,, c. 112. s. 21. -	Prevention of Crime.
,, c. 113. in pt. -	Metropolis Water.
,, c. 115. in pt. -	Turnpike Acts Continuance.
35 & 36 Vict. c. 1. - -	Consolidated Fund.
,, c. 2. s. 3. -	Poor Law Loans.
,, c. 3. - -	Mutiny.
,, c. 4. - -	Marine Mutiny.
,, c. 5. s. 7. -	Bank of Ireland Charter Amendment.
,, c. 9. s. 3. -	Sale of Incumbered Estates (West Indies).
,, c. 11. -	Consolidated Fund.
,, c. 14. s. 1. -	Alteration of Boundaries of Dioceses.
,, c. 20. in pt. -	Duties of Customs and Inland Revenue.
,, c. 22. -	Party Processions (Ireland).
,, c. 23. in pt. -	Harbours and Coasts of Isle of Man.
,, c. 25. in pt. -	Juries Act (Ireland) 1871, Amendment.
,, c. 30. s. 1. in pt.	Chain Cables and Anchors Act, 1871, Suspension.
,, c. 37. -	Consolidated Fund.
,, c. 40. -	Bishops Resignation Act, 1869, Continuance.
,, c. 43. -	Suspension of certain provisions of Tramways Act, 1870, as to certain Provisional Orders.
,, c. 44. in pt. -	Abolition of Office of Accountant General of High Court of Chancery, &c.
,, c. 47. s. 2. -	Galashiels Jurisdiction Act Amendment.
,, c. 54. -	Public Schools.
,, c. 55. s. 8. -	Basses Lights (Ceylon).
,, c. 57. in pt. -	Abolition of Imprisonment for Debt (Ireland).
,, c. 58. in pt. -	Bankruptcy Law Amendment (Ireland).
,, c. 59. -	Elementary Education Act, 1870, Amendment.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
35 & 36 Vict. c. 60. in pt. -	Corrupt Practices at Municipal Elections.
,, c. 62. in pt. -	Education (Scotland).
,, c. 64. -	Military Manœuvres.
,, c. 65. in pt. -	Bastardy Laws Amendment.
,, c. 69. in pt. -	Local Government Board (Ireland).
,, c. 70. s. 2. in pt.	Fees of Law Officers of the Crown (England).
,, c. 73. in pt. -	Merchant Shipping Acts and Passengers Acts Amendment.
,, c. 76. in pt. -	Coal, &c. Mines Regulation.
,, c. 77. in pt. -	Metalliferous Mines Regulation.
,, c. 79. in pt. -	Public Health.
,, c. 80. -	Kensington Station and North and South London Junction Railway.
,, c. 83. -	Pensions Commutation Act, 1871, Extension.
,, c. 85. in pt. -	Turnpike Acts Continuance.
,, c. 87. -	Consolidated Fund.
,, c. 88. -	Expiring Laws Continuance.
,, c. 91. s. 9. -	Municipal Corporations (Borough Funds).
,, c. 92. in pt. -	Parish Constables.
,, c. 93. in pt. -	Pawnbrokers (Great Britain).
,, c. 94. in pt. -	Sale of Intoxicating Liquors.
36 & 37 Vict. c. 2. in pt. -	Polling Districts (Ireland).
,, c. 3. - -	Consolidated Fund.
,, c. 7. - -	Endowed Schools (Time of Address).
,, c. 8. - -	Income Tax Assessment.
,, c. 9. in pt. -	Bastardy Laws Amendment.
,, c. 10. -	Mutiny.
,, c. 11. -	Marine Mutiny.
,, c. 12. s. 3. -	Custody of Infants.
,, c. 13. -	Special Commissioners of Salmon Fisheries (England).
,, c. 14. in pt. -	Portpatrick Harbour.
,, c. 17. in pt. -	East India Stock Dividend Redemption, and Dissolution of East India Company.
,, c. 18. in pt. -	Duties of Customs and Inland Revenue.
,, c. 19. s. 10. -	Poor Allotments Management.
,, c. 21. in pt. -	Abolition of Tests in Trinity College and University of Dublin.
,, c. 23. -	Superannuation Act Amendment.
,, c. 24. -	Peace Preservation (Ireland) Acts Continuance.
,, c. 26. -	Consolidated Fund.
,, c. 27. -	Juries (Ireland).
,, c. 30. in pt. -	Registration of Voters (Ireland).
,, c. 32. s. 1. in pt.	East India Loan.
,, c. 37. s. 5. -	Fairs (England and Wales).
,, c. 38. s. 5. -	Vagrant Law Amendment.
,, c. 41. in pt. -	Public Schools (Shrewsbury and Harrow Schools Property).
,, c. 42. s. 2. -	Tithe Commutation Acts Amendment (as to Market Gardens).
,, c. 45. s. 9. -	Canada (Public Works) Loan.
,, c. 47. -	Blackwater Bridge (Composition of Debt).
,, c. 48. s. 33. -	Regulation of Railways.
,, c. 51. in pt. -	Superannuation of Prison Officers (Ireland).
,, c. 53. in pt. -	Highland Schools.
,, c. 54. -	Exchequer Bonds.
,, c. 58. -	Military Manœuvres.
,, c. 59. in pt. -	Slave Trade (East African Courts).

Table B —Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
36 & 37 Vict. c. 62. in pt. -	Public Schools (Eton College Property).
,, c. 63. in pt. -	Law Agents (Scotland).
,, c. 66. in pt. -	Supreme Court of Judicature.
,, c. 70. in pt. -	Revising Barristers.
,, c. 71. in pt. -	Salmon Fisheries (England and Wales).
,, c. 73. -	Public Health Act, 1872, Amendment (Cambridge Commissioners).
,, c. 74. -	Pay of the Royal Irish Constabulary.
,, c. 75. -	Expiring Laws Continuance.
,, c. 79. -	Consolidated Fund.
,, c. 81. s. 6. -	Langbaurgh Coroners.
,, c. 85. s. 33. -	Merchant Shipping Acts Amendment.
,, c. 86. in pt. -	Elementary Education Act (1870) Amendment.
,, c. 87. in pt. -	Endowed Schools.
,, c. 88. in pt. -	Slave Trade.
,, c. 89. in pt. -	Gas and Water Works Facilities Act, 1870, Amendment.
,, c. 90. in pt. -	Turnpike Acts Continuance.
37 & 38 Vict. c. 1. - -	Consolidated Fund.
,, c. 2. - -	Consolidated Fund.
,, c. 3. in pt. -	East India Loan.
,, c. 4. - -	Mutiny.
,, c. 5. - -	Marine Mutiny.
,, c. 7. in pt. -	Middlesex Sessions.
,, c. 9. - -	Public Works Loans (School Boards).
,, c. 10. -	Consolidated Fund.
,, c. 13. -	Bishop of Calcutta (Leave of Absence).
,, c. 15. s. 4. in pt.	Suppression of Betting Houses.
,, c. 16. -	Duties of Customs and Inland Revenue.
,, c. 21. in pt. -	Four Courts Marshalsea (Dublin) Discontinuance.
,, c. 22. -	Revenue Officers Electoral Disabilities.
,, c. 23. in pt. -	Resident Magistrates (Ireland) and Commissioners of Dublin Police Salaries.
,, c. 24. s. 6. -	Harbour of Colombo (Loan).
,, c. 25. s. 1. in pt.	Herring Fishery Barrels.
,, c. 28. -	Juries (Ireland).
,, c. 34. s. 2. -	Apothecaries Act Amendment.
,, c. 40. s. 5. -	Board of Trade Arbitrations, &c.
,, c. 42. in pt. -	Building Societies.
,, c. 45. in pt. -	County of Hertford and Liberty of St. Alban.
,, c. 46. in pt. -	Customs (Isle of Man) Tariff.
,, c. 49. in pt. -	Sale and Consumption of Intoxicating Liquors.
,, c. 51. in pt. -	Proving and Sale of Chain Cables and Anchors.
,, c. 53. in pt. -	Payment of Revising Barristers.
,, c. 54. s. 14. -	Rating.
,, c. 56. -	Consolidated Fund.
,, c. 57. s. 9. in pt.	Real Property Limitation.
,, c. 58. -	Police Expenses.
,, c. 60. -	Navigation of River Shannon.
,, c. 61. ss. 3. to 5.	Royal (late Indian) Ordnance Corps Compensation.
,, c. 64. s. 1. -	Evidence Further Amendment (Scotland).
,, c. 67. ss. 11, 14.	Slaughterhouses, &c. (Metropolis).

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
37 & 38 Vict. c. 69. in pt. -	Sale and Consumption of Intoxicating Liquors (Ireland).
,, c. 70. s. 4. -	Valuation of Rateable Property (Ireland).
,, c. 72. s. 3. -	Fines Act (Ireland), 1851, Amendment.
,, c. 73. s. 3. in pt.	Post Office Savings Bank.
,, c. 74. in pt. -	Private Lunatic Asylums (Ireland).
,, c. 76. -	Expiring Laws Continuance.
,, c. 77. in pt. -	Colonial and certain other Clergy.
,, c. 80. in pt. -	Royal Irish Constabulary.
,, c. 81. in pt. -	Great Seal Offices, and Clerk of the Crown in Chancery.
,, c. 82. in pt. -	Appointment of Ministers to Parishes in Scotland.
,, c. 83. s. 1. -	Supreme Court of Judicature Act, 1873, Suspension.
,, c. 86. ss. 6, 8.	Irish Reproductive Loan Fund.
,, c. 87. in pt. -	Endowed Schools Acts Amendment.
,, c. 88. in pt. -	Registration of Births and Deaths.
,, c. 89. in pt. -	Sanitary Laws Amendment.
,, c. 92. s. 4. -	Alderney Harbour Transfer.
,, c. 94. in pt. -	Land Rights and Conveyancing (Scotland).
,, c. 95. in pt. -	Turnpike Acts Continuance.
38 & 39 Vict. c. 1. - -	Consolidated Fund.
,, c. 2. - -	Consolidated Fund.
,, c. 3. in pt. -	Metropolitan Police Magistrates' Salaries.
,, c. 5. s. 1. in pt.	Registry of Deeds Office (Ireland).
,, c. 7. - -	Mutiny.
,, c. 8. - -	Marine Mutiny.
,, c. 9. s. 1. -	Building Societies.
,, c. 10. -	Consolidated Fund.
,, c. 13. s. 3. in pt.	Bank Holidays Act, 1871, Extension.
,, c. 14. -	Peace Preservation (Ireland).
,, c. 15. s. 1. in pt.	Sea Fisheries.
,, c. 17. in pt. -	Explosive Substances.
,, c. 19. -	Making perpetual the Bishops Resignation Act, 1869.
,, c. 21. s. 2. in pt.	Public Entertainments (London and Westminster).
,, c. 23. in pt. -	Duties of Customs and Inland Revenue.
,, c. 25. in pt. -	Protection of Public Stores.
,, c. 26. s. 2. -	Bankruptcy Law Amendment (Scotland).
,, c. 28. s. 4. -	Metropolitan Police Staff Superannuation.
,, c. 30. -	Glebe Loans (Ireland).
,, c. 31. -	Railway Companies.
,, c. 34. s. 7. in pt.	Bishopric of Saint Albans.
,, c. 35. s. 3. in pt.	Turnpike Roads (South Wales).
,, c. 37. -	Juries (Ireland).
,, c. 39. s. 4. -	Metalliferous Mines Regulation.
,, c. 40. in pt. -	Municipal Elections.
,, c. 44. -	Royal Irish Constabulary.
,, c. 45. s. 6.	National Debt (Sinking Fund).
,, c. 50. in pt. -	County Courts.
,, c. 51. s. 11. -	Pacific Islanders Protection.
,, c. 55. in pt. -	Public Health (England).

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
38 & 39 Vict. c. 57. in pt. -	Pharmacy (Ireland).
,, c. 58. ss. 2, 3.	Public Works Loans (Money).
,, c. 60. in pt. -	Friendly and other Societies.
,, c. 61. in pt. -	Entail (Scotland).
,, c. 63. s. 1. -	Sale of Food and Drugs.
,, c. 64. s. 1. -	Government Officers' Security.
,, c. 65. in pt. -	Metropolitan Board of Works (Money).
,, c. 67. s. 15. -	Private and District Lunatic Asylums (Ireland).
,, c. 72. -	Expiring Laws Continuance.
,, c. 73. -	East India Home Government (Appointments).
,, c. 74. s. 3. in pt.	Public Health (Scotland) (Loans for Sanitary Purposes).
,, c. 76. s. 6. -	Ecclesiastical Fees.
,, c. 77. in pt. -	Supreme Court of Judicature Act, 1873, Amendment.
,, c. 78. -	Consolidated Fund.
,, c. 79. in pt. -	Legal Practitioners.
,, c. 83. s. 35. -	Securities for Loans contracted by Local Authorities.
,, c. 86. s. 17. in pt.	Conspiracy, and Protection of Property.
,, c. 87. ss. 113, 129.	Land Titles and Transfer.
,, c. 89. in pt. -	Loans for Public Works.
,, c. 94. s. 2. -	Offences against the Person.
,, c. 96. s. 7. in pt.	Payments to Teachers of National Schools (Ireland).
39 & 40 Vict. c. 2. - -	Consolidated Fund.
,, c. 4. - -	Consolidated Fund.
,, c. 8. - -	Mutiny.
,, c. 9. - -	Marine Mutiny.
,, c. 15. -	Consolidated Fund.
,, c. 16. in pt. -	Duties of Customs and Inland Revenue.
,, c. 18. in pt. -	Treasury Solicitor, &c.
,, c. 20. in pt. -	Statute Law Revision.
,, c. 22. s. 16. in pt.	Trade Union Act, 1871.
,, c. 28. s. 7. in pt.	Admiralty Jurisdiction (Ireland).
,, c. 31. ss. 3., 8.	Public Works Loans.
,, c. 33. s. 1. in pt.	Trade Marks Registration.
,, c. 34. s. 1. -	Elver Fishing.
,, c. 35. in pt. -	Customs Duties Consolidation.
,, c. 36. in pt. -	Customs Laws Consolidation.
,, c. 37. s. 4. -	Quieting Possessions and Titles against the Crown.
,, c. 38. s. 1. -	Orphan and deserted pauper Children (Ireland).
,, c. 39. in pt. -	Turnpike Acts Continuance.
,, c. 40. in pt. -	Medical Practitioners.
,, c. 42. s. 3. -	Convict Prisons.
,, c. 44. in pt. -	Legal Practitioners (Ireland).
,, c. 45. in pt. -	Industrial and Provident Societies.
,, c. 50. s. 3. in pt.	Relief of the Poor (Ireland).
,, c. 52. s. 3. in pt.	Savings Banks Rules.
,, c. 53. s. 6. -	Civil Servants' Superannuation.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
39 & 40 Vict. c. 54. s. 5. in pt.	Exeter Diocese.
,, c. 55. in pt. -	Metropolitan Board of Works (Money).
,, c. 56. s. 34. in pt.	Commons Regulation, &c.
,, c. 59. in pt. -	Appellate Jurisdiction of House of Lords.
,, c. 60. -	Consolidated Fund.
,, c. 61. in pt. -	Divided Parishes, &c.
,, c. 63. in pt. -	Notices to Quit (Ireland).
,, c. 64. -	Police Expenses.
,, c. 65. in pt. -	Tramways (Ireland).
,, c. 68. -	Superannuation, &c. (War Department and Post Office).
,, c. 69. -	Expiring Laws Continuance.
,, c. 70. in pt. -	Sheriff Courts (Scotland).
,, c. 72. -	Norwich and Boston Corrupt Voters.
,, c. 73. s. 3. -	Pensions Commutation Act, 1871, Amendment.
,, c. 74. in pt. -	Agricultural Holdings (England) Act, 1875, Amendment.
,, c. 75. s. 13. in pt.	Pollution of Rivers.
,, c. 76. in pt. -	Municipal Corporations (Ireland).
,, c. 78. in pt. -	Trial by Jury (Ireland).
,, c. 79. in pt. -	Elementary Education.
,, c. 80. in pt. -	Merchant Shipping Acts Amendment.
40 & 41 Vict. c. 1. - -	Consolidated Fund.
,, c. 2. s. 6. in pt.	Treasury Bills and Exchequer Bills.
,, c. 3. in pt. -	Publicans' Certificates (Scotland) Act, 1876, Amendment.
,, c. 5. - -	Exchequer Bills, &c.
,, c. 6. - -	Consolidated Fund.
,, c. 7. - -	Mutiny.
,, c. 8. - -	Marine Mutiny.
,, c. 9. in pt. -	Supreme Court of Judicature Acts, 1873 and 1875, Amendment.
,, c. 11. s. 2. -	Judicial Proceedings (Rating).
,, c. 12. -	Consolidated Fund.
,, c. 13. in pt. -	Customs, Inland Revenue, and Savings Banks.
,, c. 18. in pt. -	Leases and Sales of Settled Estates.
,, c. 19. -	Public Works Loans.
,, c. 20. s. 1. -	Royal Irish Constabulary.
,, c. 21. in pt. -	Prisons (England).
,, c. 24. -	Consolidated Fund.
,, c. 25. in pt. -	Solicitors.
,, c. 27. in pt. -	Public Works Loans (Ireland).
,, c. 32. in pt. -	Public Works Loan.
,, c. 37. -	Registration of Trade Marks.
,, c. 38. -	Board of Education (Scotland).
,, c. 42. s. 16. -	Oyster, Crab, and Lobster Fisheries, &c.
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,, c. 49. in pt. -	Prisons (Ireland).
,, c. 50. in pt. -	Sheriff Courts (Scotland).
,, c. 51. s. 19. -	Government of India (Money).
,, c. 52. in pt. -	Metropolitan Board of Works (Money).
,, c. 53. in pt. -	Prisons (Scotland).
,, c. 56. in pt. -	County Courts and Officers (Ireland).
,, c. 57. in pt. -	Supreme Court of Judicature (Ireland).
,, c. 58. -	Police Expenses.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 39.	Subject-matter of Act repealed.
40 & 41 Vict. c. 61. -	Consolidated Fund.
,, c. 63. s. 3. -	Building Societies Act, 1874, Amendment.
,, c. 64. in pt. -	Turnpike Acts Continuance.
,, c. 66. s. 4. in pt.	Local Taxation Returns (England).
,, c. 67.	Expiring Laws Continuance.
41 & 42 Vict. c. 1. - -	Consolidated Fund.
,, c. 2. - -	Exchequer Bonds, &c.
,, c. 6. - -	Glebe Loan (Ireland) Amendment Act, 1875, Amendment.
,, c. 7. - -	Exchequer Bonds.
,, c. 9. - -	Consolidated Fund.
,, c. 10. -	Mutiny.
,, c. 15. in pt. -	Duties of Customs and Inland Revenue.
,, c. 16. in pt. -	Factories and Workshops Law Consolidation.
,, c. 18. in. pt. -	Public Works Loans.
,, c. 21. -	Consolidated Fund.
,, c. 22. -	Exchequer Bonds.
,, c. 26. s. 42. -	Parliamentary and Municipal Registration Act, 1878.
,, c. 30. in pt. -	Election of Commissioners under General Police and Improvement (Scotland) Act, 1862.
,, c. 35. -	Supreme Court of Judicature Act, 1875, Extension.
,, c. 36. -	Police Expenses.
,, c. 37. in pt. -	Metropolitan Board of Works (Money).
,, c. 39. s. 13. -	Protection of Freshwater Fish.
,, c. 45. -	Consolidated Fund.
,, c. 47. s. 1. -	Elders Widows' Fund.
,, c. 48. -	Endowed Schools, &c. (Scotland).
,, c. 49. s. 86. in pt.	Weights and Measures.
,, c. 50. ss. 2, 6.	County of Hertford and Liberty of St. Alban Act, 1874, Amendment.
,, c. 51. in pt. -	Roads and Bridges (Scotland).
,, c. 52. in pt. -	Public Health (Ireland).
,, c. 53. in pt. -	Admiralty and War Office Regulation.
,, c. 62. in pt. -	Turnpike Acts Continuance.
,, c. 64. -	Exchequer Bonds, &c.
,, c. 65. -	Consolidated Fund.
,, c. 66. in pt. -	Intermediate Education (Ireland).
,, c. 67. in pt. -	Foreign Jurisdiction Acts Amendment.
,, c. 69. in pt. -	Clerk of Petty Sessions, &c. (Ireland).
,, c. 70. -	Expiring Laws Continuance.
,, c. 72. s. 4. in pt.	Sale of Intoxicating Liquors on Sunday (Ireland).
,, c. 74. in pt. -	Contagious Diseases (Animals).
,, c. 77. in pt. -	Highways and Locomotives.
,, c. 78. s. 14. -	Education (Scotland).

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 46 & 47 Vict. c. 49.*	Subject-matter of Act repealed.
Repeals effected by the Statute Law Revision and Civil Procedure Act, 46 & 47 Vict. c. 49.	
11 Hen. 7. c. 12. - -	Formâ pauperis.
23 Hen. 8. c. 15. - -	Costs: Formâ pauperis.
9 Anne, c. 25. in pt. -	Municipal Boroughs, &c.
1 Will. 4. c. 21. - -	Proceedings in prohibition and on writs of mandamus.
1 Will. 4. c. 22. in pt. -	Examination of witnesses upon interrogatories and otherwise.
1 & 2 Will. 4. c. 58. -	Relief against adverse claims.
5 & 6 Vict. c. 69. - -	Perpetuating testimony in certain cases.
6 & 7 Vict. c. 67. - -	Prosecuting writs of error upon proceedings on writs of mandamus.
13 & 14 Vict. c. 35. -	Delay and expense of proceedings in High Court of Chancery.
15 & 16 Vict. c. 76. in pt. -	Common Law Procedure Act, 1852.
,, c. 80. in pt. -	Abolishing Office of Master in Ordinary of High Court of Chancery, &c.
,, c. 86. in pt. -	Practice, &c. in High Court of Chancery.
17 & 18 Vict. c. 125. in pt.	Common Law Procedure Act, 1854.
18 & 19 Vict. c. 67. -	Summary Procedure on Bills of Exchange Act, 1855.
21 & 22 Vict. c. 27. -	Chancery Amendment Act, 1858.
23 & 24 Vict. c. 38. in pt. -	Law of Property.
,, c. 126. in pt.	Common Law Procedure Act, 1860.
25 & 26 Vict. c. 42. -	Chancery Regulation Act, 1862.
30 & 31 Vict. c. 64. -	Despatch of business in Court of Appeal in Chancery.

Also enactments in Part. II. of Schedule to 42 & 43 Vict. c. 59., Civil Procedure Acts Repeal Act, 1879.

* *See* Note prefixed to Schedule to the Act.

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