

construction of a railway, shall be retained or modified." Committee nominated of—Mr. Baxter, Mr. H. R. Brand, Mr. Shaw, Mr. Salt, Colonel Walrond. *Ordered*, "That the Committee have power to send for persons, papers, and records; and that three be the quorum of the Committee."

THE Select Committee appointed to consider and report whether Standing Order 167, prohibiting the payment of interest or dividend on calls during the construction of a railway, shall be retained or modified, have agreed to the following report:—

Standing Order 167, which prohibits the payment of interest out of capital in the case of railway companies, was passed with a view of preventing the evils which had resulted from the extravagant development of railway enterprise during the few years preceding the railway panic of 1845. By "The Companies Act, 1862," it is provided in Table A that no dividends shall be paid except out of profits earned. But this regulation is not compulsory on the companies registered under this Act, for they are empowered by section 14 to make rules of association excluding the regulations in Table A, and are thus practically enabled to make what regulations seem best to the shareholders. A curious anomaly arises out of this conflict between the Standing Order and the Companies Act of 1862. If a tramway company, for instance, applies to Parliament for a private Bill, it is subject to the regulation of Standing Order 167, prohibiting the payment of dividends out of capital account. But the company may proceed in another way. It may avoid any application for a private Bill, and register itself under "The Companies Act, 1862," making a regulation for payment of interest out of capital, and applying to the Board of Trade for a provisional order. If this application is granted, the order has subsequently to be confirmed by Parliament, and a parliamentary sanction is thus given to a course of proceeding which would not be permitted on a private Bill.

The restriction imposed by the Standing Order has led to evasion of the law. Promoters of new railway undertakings, finding a difficulty in obtaining subscriptions from the public, who look to the receipt of dividends upon their capital, have had recourse to objectionable expedients with the view of evading the Standing Order. There are a variety of ways by which this evasion has been accomplished, the most common of which consists in obtaining the services of a wealthy contractor, who finances the undertaking, and engages to pay interest on capital pending the construction of the railway. It is needless to say that he obtains a handsome remuneration for these services. Another plan is sometimes adopted, by which arrangements are made with one of the larger companies, who undertake to work the line after construction, taking a heavy percentage upon the actual outlay, which is held to include the interest on capital pending construction, as well as the moneys actually spent in making the railway. In either case this system of evasion tends to an increased cost of construction, and a consequent loss to the shareholders.

The employment of one of these expedients by the Hull and Barnsley Railway Company led to an action before the Master of the Rolls, and an injunction was issued at the suit of a shareholder of the company restraining the directors from paying interest out of capital, in accordance with the terms of a prospectus issued by them.

This decision led that company and others to insert a clause in new Bills permitting payment of interest out of capital during construction, and in these circumstances it was thought desirable to refer the matter to a Select Committee.

Your Committee have gone carefully into the question referred to them, and find that there is much difference of opinion among persons competent to judge regarding the wisdom and utility of Standing Order No. 167. There is much to be said in favour of maintaining the principle of this Standing Order; but, on the other hand, there is strong evidence in favour of certain modifications which have the sanction of high authorities connected with both Houses of Parliament and the Board of Trade.

Your Committee consider that the prohibition of the payment of interest out of capital which is contained in Standing Order 167, in "The Companies Act, 1862," and in other statutes affecting public companies, is in accordance with sound financial principle, and acts as a protection to the public.

In special cases, however, your Committee recommend that it may be permitted to pay interest upon capital during the construction of railways or tramways, subject to the following conditions: (1.) A clause defining the amount of interest, and the term for which it is payable, to be inserted in every Bill, and to be specially reported on by the Board of Trade before being submitted to the Committee. (2.) Such interest to be an addition to the authorized capital of the undertaking. (3.) Power of issuing debentures to be reckoned on the capital exclusive of such addition for interest. (4.) Payment of such interest to continue only during construction of the works, or for such less period as the Committee may think fit to authorize, according to the circumstances of the case. (5.) The rate of interest to be fixed by the Committee, but in no case to exceed 5 per cent. (6.) The prospectus and share certificates to contain on the face of them an intimation that interest is payable out of capital during construction only.

Considering, however, the bearing of these proposed changes upon the existing law, and the desirability of obtaining uniformity in legislation, your Committee are of opinion that it would be better to proceed by a general public Bill, instead of a mere modification of Standing Order No. 167.

The attention of the Committee has been called to the existing system of making deposits of a portion of the capital of a railway undertaking; to the desirability of allowing new companies as well as old to issue shares at a discount; to the charging of expenses of management, &c., during construction to capital; and to some other points which seem deserving of consideration at a future time: but they do not appear to come within the limits of the present inquiry.

19th May, 1882.