

inserted. It is not necessary; for the payment of dividends out of capital is in effect an illegal reduction of capital unless effected under the Companies Acts, 1867 and 1877"—those are two amending Acts bearing on the Companies Act of 1862;—"but it is useful as a reminder." That is the practical condition of the matter as regards companies under that Act. I may add that the memorandum of association of a limited-liability company, being equivalent to the charter of a company, is absolutely unalterable, except in a few specified points, by the company. One of those points is that there is power to increase the capital, but there is no power to reduce it. Then, by subsequent Acts powers of reduction are given, with stringent provisions for the protection of creditors. And that leads me to say that the great object of the Companies Act of 1862, and the Acts amending it, as far as regards capital, is to secure to creditors the proper capital that is stipulated for in case of liquidation. The Legislature does not interfere with the undertaking itself; it merely seeks to secure creditors in case of the company failing and coming into liquidation. Then, the position of things as regards a railway company, incorporated by special Act, incorporating or embodying "The Companies Clauses Consolidation Act, 1845," is different. That is seen at once when you look at the title of that Act, which is "An Act for consolidating into one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a Public Nature." The companies now in question are companies which are incorporated for carrying on undertakings of a public nature, in which the Legislature sees that the public is interested, and as to which the Legislature takes care of those public interests. The special Act of a railway company seeks to secure that the undertaking shall be carried into effect, and for that purpose not only is the capital specified and minutely regulated by the Act, but, further, the Act of 1845 contains a provision to which I do not think the attention of the Committee has been called, appropriating the capital: that is section 65: "That all the moneys raised by the company, whether by subscriptions of the shareholders or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special Act and all expenses incident thereto, and, secondly, in carrying the purposes of the company into execution." That is an affirmative provision, but necessarily it means that they are not to apply capital in any other way. Therefore that section shows what is the intention of the Legislature in fixing the capital. Then, there is a further provision which bears indirectly, though not directly, on the subject: that is section 121, which provides that "The company shall not make any dividend whereby their capital stock will be in any degree reduced." This is, as I have said before, a question not so much of dividend as of interest. Still, a company would, I think, find themselves controlled if they attempted to pay interest in the way now in question, by section 121, in some degree. I do not know whether an observation on the policy of the matter would be in any degree becoming on my part, but I might be allowed to observe that section 24, which allows the company to pay interest on money paid in advance of calls, is a recognition of the principle that interest may not improperly be paid by a company who are earning nothing. And so again with regard to the ordinary authorized mortgage on loan capital. Interest in that case must be paid as soon as the money is raised; it cannot be provided for out of profits of the company; it must ordinarily come out of capital.

393. *Mr. Salt.*] Your view is that there is no real question of principle in it at all?—My view is that it is simply a question of legislative expediency.

394. *The Chairman.*] And that there is nothing in the law to prevent the Committee taking any action in the matter they please?—I think not. At the same time allow me to say, as I said before in effect, that I do not think matters would be at all in a satisfactory condition if you merely repealed this Standing Order and left the matter barely on the incorporation of the Companies Clauses Act; because there are at least those three sections which I have adverted to, which I think would more or less put a company in a difficulty if they had an Act not expressly saying that they might pay interest, but merely incorporating the Companies Clauses Act. First of all, there is the express provision that they shall use their capital, after paying the costs of getting the Act, in carrying the purposes of the company into execution; then there is the provision that they shall not reduce their capital by dividend; and, thirdly, there is the section authorizing them to pay interest on money in advance of calls, which would furnish a strong inference, I think, that they were not to pay interest in any other case on share capital.

395. That argument, though it applies to a repeal of the Standing Order 167, would not apply to its modification or amendment?—No.

396. *Mr. Shaw.*] Your idea is that those clauses would render it illegal, independently of the Standing Order, to some extent?—They would make it an extremely dangerous transaction for a company. I think the company would run the risk of being restrained by injunction, just as the Hull and Barnsley Company were.

397. *Mr. Salt.*] I understand, from what you have said, that the strength of this Standing Order, as a matter of law, is founded, not upon any general law, but merely upon the clause in the particular Act of each company founded upon the Standing Order?—That is my opinion, distinctly, subject always to what I have said on sections 24, 65, and 121 of the Act of 1845.

398. Then, if you abolished Standing Order 167 altogether, the companies would then be at liberty to insert in their Bills whatever proposal they chose?—Yes.

399. *The Chairman.*] Would you kindly hand in to the Committee, in writing, any suggestions that you would desire to make in the event of the Committee agreeing to an alteration of the Standing Order?—I will do so. I observe reference made in several questions and answers to the practice in foreign countries. I do not know whether the Committee would take notice of this: that in the case of the company for executing a very celebrated public work, the Suez Canal, there is an express provision in their statutes—corresponding to a special Act of Parliament—for the payment of 5 per cent. during construction.