

The same principle has been recognized and adopted by the Legislature, as to parliamentary companies, in "The Companies Clauses Consolidation Act, 1845," section 121, and, as to limited companies, in "The Companies Act, 1862," Schedule Table A., Art. 73.

It is quite clear that the omission of the Standing Order clause from the special Acts of a Parliamentary company would not enable the company legally to pay dividends out of capital. If this is to be done, Parliament must go further and expressly legalise such payment; that is, Parliament must enact that a particular company may do that which is by the general law of the land illegal. Is there adequate reason for such a change, either generally or in particular cases?

The only instance since the Standing Order has been in force, about thirty-eight years, in which payment of interest out of capital has been authorized, is "The Regent's Canal, City, and Docks Railway Bill, 1885." In the session of 1883 the House of Commons, by a majority of 131 to 123, altered their Standing Order, and allowed the Committee on the Bill to authorize payment of interest out of capital if they thought fit on certain conditions. As uniformity in the Standing Orders of the two Houses is very desirable, the Chairman of Committees, though not himself in favour of the change, considered it his duty to propose a similar alteration, in order to take the opinion of the House on the question, and the House, after debate, and without dividing, maintained their Order. Towards the end of the session of 1885 the case of the Regent's Canal Bill came up for discussion, and the importance of providing work for the unemployed of London was strongly urged. The House, by a majority of 46 to 37, suspended the Standing Order, as it was said, "on eleemosynary grounds," "to avoid the inconvenience of stopping the expenditure of money in support of labour at a time of extreme and almost unprecedented calamity," and allowed the insertion of a clause to authorize the payment of interest out of capital. In spite of this, but little capital has been subscribed up to the present time, and no work of any kind has been begun.

The general arguments in favour of a change are: (1.) That investors will not take shares in new undertakings unless some return in the nature of interest is secured to them during the unremunerative period required for construction. It is admitted that to put £100 into a new undertaking and receive back £20 of it by way of interest at 4 per cent. for five years is much the same thing as to put £30 into the undertaking and keep the remaining £20 at a banker's, and draw out £4 a year for five years. But it is urged that in practice men will not trust themselves to spread the enjoyment of the £20 over the five years, and, therefore, will not subscribe to new parliamentary undertakings unless Parliament provides protection for them against themselves. Besides this, the capital of a parliamentary undertaking is not called up at once. Calls are made as money is wanted for the purchase of land and construction of works, and if a shareholder is to receive interest on the call he has paid, that very call must be made larger than it would otherwise have been in order to provide the interest. Thus, if payment of interest out of capital were sanctioned, the shareholders would, in the actual working of the system, simply give with one hand in order to receive with the other. It will be noticed that a shareholder is entitled, under "The Companies Clauses Consolidation Act, 1845," section 24, and the Standing Order, to interest on money advanced by him beyond the amount of calls actually made.

(2.) Another argument is that under the existing system a guarantee by the contractor of interest during construction is, in fact, frequently resorted to as the readiest and, perhaps, only means of getting the capital subscribed, and that this guarantee is taken into account in the tenders for the contract; from which it follows that, though the whole capital is ostensibly employed in construction, a certain part of it is really applied in paying interest.

In reply to this it will probably be conceded that the principle of the Standing Order is not bad simply because it may be in some cases illegally evaded; and evasion is, no doubt, less easy and more dangerous now than it was formerly.

It may be fairly surmised that the real though not the ostensible reason for the change is that the promise of the payment of interest during construction offers a tempting bait to small capitalists. If Parliament expressly sanctions such payment this can be represented as a strong proof of confidence in the success of the undertaking. The prospectus, of course, would speak of interest only; it would not tell the intending investor that he will simply receive back part of the capital which he has subscribed. To him the great fact would be that if he subscribed £100 for £100 capital in the company, his investment would bear fruit at once; he would receive interest at a given rate for a given period, and at the end of the period would be just as well off as before; he would still have his £100 capital in the concern, and the interest he had received would be so much pure gain.

It would be waste of time to point out the reasons which should prevent Parliament giving a deliberate sanction to a system capable of being worked as a means of deception. The system stands condemned in the words of Lord Justice Lindley, already quoted, as one which "can hardly be used for any honest purpose." But it is material to add that the parliamentary sanction of the payment by companies of interest out of capital is almost equivalent to an admission of the claims of investors to some return by way of interest on their investments until the concern becomes remunerative. This will give rise to many difficulties. If the payment of interest out of capital is limited by the Act of incorporation of the company to five years, and the time for completion, as very often happens, has afterwards to be extended, must not the payment of interest be extended also? Difficulty also may arise if the company needs additional capital. It is often hard enough, under the present system, to place additional capital, except at a discount: it will be still harder if a man is asked to pay £100 for that amount of additional capital, while an original subscriber holds the same amount of capital, but has had perhaps £20 out of his £100 returned into his pocket under the name of interest.

If the promoters of the change are right in the only serious argument which they advance—namely, that investors will not take shares in new undertakings unless some return is secured to them during the unremunerative period required for construction, this difficulty can be partially met, as the law now stands, by the directors inviting such shareholders as wish to do so to pay up their shares in full on allotment, and thus entitle themselves to interest on their payments in advance of calls. If this is considered inadequate, the Committee on the Bill might be empowered either (A) to insert a clause requiring the company to receive from any shareholder who makes the tender a sum of money on deposit, to be returned to him by equal instalments during a given period, such deposit to be in addition to and independent of the shares, and not to pass by a transfer of the shares unless expressly assigned, or (B) to authorize the company, in addition to the permanent capital, to issue a proportionate amount of temporary capital, to be returned to the shareholders by instalments during a given period, such temporary capital to be employed only for the purpose for which it is subscribed, and not to be entitled to dividend. There is no serious difficulty in working out either of these methods in such a way that the real nature of the transaction cannot be mistaken, and that no principle of law or parliamentary practice is infringed. A clause to the effect of (B) was at one time actually inserted in the Manchester Ship Canal Bill of last session. But will the public be tempted by the promise of interest during construction if they clearly understand that it is simply so much of their own capital returned to them?

Suggested Forms of Standing Order.

(A.)

No interest out of capital to be paid on calls under Railway Bills.

128. A clause shall be inserted in every Railway Bill prohibiting the payment of any interest or dividend out of any capital which the company have been or may be authorized to raise, either by means of calls, or of any power of borrowing, to any shareholder on the amount of the calls made in respect of the shares held by him, except such interest on money advanced by any shareholder beyond the amount of the calls actually made as is in conformity with "The Companies Clauses Consolidation Act, 1845," or "The Companies Clauses Consolidation (Scotland) Act, 1845," as the case may be; provided that the Committee on the Bill may, if they think fit, insert a clause requiring the company to receive on deposit from any shareholder who makes the tender a sum of money not exceeding an