

1886.
NEW ZEALAND.

CHARGING INTEREST TO CAPITAL DURING CONSTRUCTION OF PUBLIC WORKS

(PAPERS RELATING TO).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

The COLONIAL TREASURER to the AGENT-GENERAL.

SIR,—

The Treasury, Wellington, 26th September, 1885.

I have the honour to ask you to ascertain quietly and without undue publicity what would be the opinion of leading financial and political men as to the propriety, expediency, and justification of charging interest on the cost of large and special works, during the period of their construction, to the capital cost instead of defraying it out of the consolidated revenue. The works I refer to are railways which, when constructed, will yield a revenue, but which, during construction, are necessarily unproductive.

I may say that the Government have not even considered the expediency of adopting the principle, but the question has from time to time cropped up in Parliament, and in view of its possible consideration at a future time I should like to be able to show the opinion good authorities hold upon the subject.

You are probably aware that, as regards private companies, the question has been more than once discussed in both Houses of Parliament in England. It may, however, be considered to have some distinct features as regards its operation upon railways constructed by the Government. The point seems to narrow itself down to this: Is there any reason of a commercial or political economical nature that should make it necessary for a Government, which borrows money for special great productive works, to burden the people with interest upon their cost before they are finished and able to yield any return in the shape of revenue? On the other hand, are there any objections, in the case of such works, to the interest on their cost during construction being added to the capital charge, and thus relieve the people of the burden of that interest until the completion of the works?

I would suggest that you should take the opinion of the Bank of England authorities upon the subject, also that of the brokers of the Government; and, lastly, the opinions, if you could obtain them, of two such eminent Chancellors of the Exchequer as Mr. Gladstone and Lord Iddesleigh. I am sure the latter, if you mention my name, will be kind enough to give you his view upon the subject. I think also Mr. Gladstone, who has always shown himself willing to give his advice when asked by colonial communities, will not object to do so in this case.

I should remark that I am not asking you to make these inquiries with any idea that such a practice would be adopted generally with respect to small works; but there may be certain cases, such as extensive railways, in which the course might be considered expedient. I should add also that it must not be supposed I am referring to capitalizing the interest with the view merely of postponing its payment; but I am speaking in reference to works from which there would be every right to expect a considerable and constantly progressive return after their construction was completed.

I may observe that, according to the late official returns, the profits upon the New Zealand railways now working amounted, for the year ending 31st March, 1885, to over 3 per cent. on the cost of construction.

I shall be greatly gratified also if you will, when enclosing the opinions of other eminent authorities, favour me with your own views upon this matter. You will, I am sure, agree with me that these are questions upon which the colony, besides forming an opinion of its own, may justly be anxious to know the opinion of those who, so to speak, have a collateral interest in the subject.

I have, &c.,

The Agent-General for New Zealand, London.

JULIUS VOGEL.

P.S.—Although I have marked this “Confidential,” I wish it to be understood that the Government are to exercise their own discretion with regard to using it and your replies.

No. 2.

THE AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 20th November, 1885.

I have to acknowledge the receipt of your letter of the 26th September on the subject of charging interest to capital during construction of public works of a reproductive character.

I shall do what I can to carry out your instructions, but you are not perhaps aware that the subject has already engaged very serious attention in the Imperial Parliament. A Standing Order prohibiting the payment of interest out of capital, in the case of railway companies in the United Kingdom, had been passed by both Houses of the Imperial Parliament, with the view of preventing evils which had been found inseparable from the great development of railway speculation, ending in the commercial panic of 1845. Attempts had, however, been made to evade the Standing Order, and in 1882 a Select Committee of the House of Commons took a good deal of evidence, and made a report, with the result that the Order was amended, permitting interest to be charged to capital in certain special cases. The question was debated in both Houses more than once, and a number of papers were published, which I am collecting for you, when I shall have the honour of writing to you again.

As regards your desire to obtain the opinions of Lord Iddesleigh and Mr. Gladstone, it would not only be out of the question to take any step for that purpose during the general election, but I do not think there would be any chance of my being able to approach either of those statesmen on such a subject during the political excitement that is sure to attend the opening of the new Parliament.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

No. 3.

THE AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 30th December, 1885.

I now beg leave to resume the subject of charging interest to capital during construction of reproductive public works.

I was very sorry to find, after sending off my letter of the 20th November, that I had used expressions implying that you were not yourself familiar with the discussions which had taken place upon the subject in the Imperial Parliament; for your own letter of the 26th September had, in fact, expressly referred to these, and had directed my attention to the special point of whether there might not be peculiar features to differentiate the case of undertakings by private companies from the case of public works constructed by a Government.

I am still engaged in making the inquiries you desired, but in the meantime I transmit to you the following papers: (1.) Standing Orders of the Lords (No. 128), and Commons (No. 167). (2.) Report of Select Committee of House of Commons in May, 1882. (3.) Debate in the House of Commons, 7th June, 1883, on Standing Order (No. 167), with leader from *Times* thereon. (4.) Debate in the House of Lords, 27th June, 1883, on proposed alteration of Standing Order (No. 128). (5.) Debate in the House of Commons, 2nd May, 1885, on the Regent's Canal Dock and Railway Bill. (6.) Division-list on the second reading in the House of Commons. (7.) Debate in the House of Lords, 8th July, 1885, on the same Bill. (8.) Clause 12 in the Bill as passed. (9.) Speeches and pamphlets.

These papers will serve to place clearly before you the circumstances under which the principle of charging interest to capital in certain cases has been recognized for private companies; and I beg permission to accompany them with some explanatory remarks, which may perhaps be found convenient for reference as a summary of what has been done in this country.

Before the passing of the Companies Clauses Act of 1845, payment of interest out of capital could only be made if specially allowed by the Act itself which sanctioned the undertaking. In 1837 there had been three such Acts, seven in 1844, twenty-six in 1845, and ninety-two in 1846. In 1847, new Standing Orders were passed by both Houses prohibiting the practice altogether owing to the calamities that had followed upon the railway mania of that time; and the Companies Act of 1882 provided that no dividends should be paid except out of profits actually earned.

In the session of 1882, however, the House of Commons appointed a Select Committee to consider and report whether Standing Order 167, which contained the prohibition in that House, might not be modified; and on the 19th May the Committee made their report, together with the evidence they had taken.

The Standing Order had practically been evaded by various contrivances, one of them originating in a conflict between the Standing Order and the Companies Acts. If a company went to Parliament for a private Bill, they were met by the prohibition of the Standing Order; but if they registered themselves under the Companies Acts they could make a "regulation" for paying interest out of capital, and then go to the Board of Trade for a provisional order confirming it. This provisional order had to be itself confirmed; but, if it was confirmed, parliamentary sanction was indirectly given to what could not be done directly by private Bill. A variety of other expedients had been resorted to for evading the prohibition, the commonest, perhaps, being that of getting a contractor to finance the undertaking, under an engagement to pay interest on capital during construction; but one of these expedients, in a railway case, led to an action before the Master of the Rolls, which resulted in an injunction prohibiting the payment, whereupon special clauses had to be inserted in new Bills.

The Select Committee said they had found a good deal of difference of opinion on the subject among people best qualified to judge: but, on the whole, while allowing that much might be said in favour of maintaining the old Standing Order, they recommended its relaxation on the following

conditions: (1) The Board of Trade to report specially in each case; (2) interest to be added to the capital of the undertaking; (3) but the power of issuing debentures to be only reckoned on the capital exclusive of this addition; (4) payment of interest only to be made during construction, or for such less time as might be authorized; (5) interest not to exceed 5 per cent.; (6) prospectuses to notify the intention of paying interest out of capital. Further, the Committee, having regard to the bearing of these proposed changes on the existing law, thought the best way to proceed would be by a general Act rather than by a mere change in the Standing Order; but such an Act was not brought in.

In the session of 1883 debates took place in both Houses upon the proposed relaxation of the Standing Orders. In the Commons (6th June, 1883) a scheme was introduced by Sir Arthur Otway, Chairman of Ways and Means, differing in some respects from the Select Committee's of the preceding year as follows: (1) Interest was not to exceed 4 per cent.; (2) it was only to be paid during construction; (3) none was to be paid till two-thirds of the share capital was issued; (4) nor on calls in arrear; (5) the interest was to be stated in the Bill; (5) and to appear in the prospectus; (7) the half-yearly accounts were to declare the sum paid in interest; (8) penalties were to be imposed for any unlawful payment.

Sir Arthur Otway, in support of the relaxation of the Standing Order, showed that the Great Northern Railway had been allowed to pay 5 per cent. interest on capital for seven years, without which the line could not have been made. The debate that followed is interesting, bringing out as it does in relief the salient points for and against the relaxation. The opposition to it was said to be instigated by the three greatest railway companies—London and North-Western, Midland, and Great Western. Mr. Chamberlain, President of the Board of Trade, strongly supported the relaxation—not formally on the part of the Government, but as expressing the opinion of most of his colleagues as well as his own, and especially that of the Prime Minister, Mr. Gladstone. The House divided, there being 131 for Sir Arthur Otway's resolution and 123 against, thus carrying the proposal by a majority of eight. The Standing Order was consequently amended, and I annex the new Order (167) in the shape in which it was passed and is now in force.

The *Times*, reviewing the debate, supported the relaxation on the ground that the Standing Order had been passed at a time of the wild railway speculation, a recurrence of which need not be feared, as things had changed since then, £800,000,000 being actually invested in railways, and the railway system having become all but complete.

The subject was then taken up in the House of Lords, when Lord Redesdale, Chairman of Committees, invited an expression of opinion upon a resolution in favour of amending their own Standing Order in the same direction as the Commons. Lord Auckland objected to any alteration until a general Bill was passed to amend the Companies Acts. Lord Cairns advised that the matter should not be finally decided then, but be dealt with in the next session by a Joint Committee of the two Houses; and the Lord Chancellor (Selborne) opposed the relaxation; but Lord Salisbury supported it on the whole as a device for "enabling investors to practise upon themselves a wholly innocent self-deceit, in order to take back, in the shape of interest, what was really a little of their own capital." In the end Lord Redesdale's motion was negatived, and the Lords retained their prohibition.

The Standing Orders of the two Houses were thus placed in conflict, and nothing definite seems to have been done about the principle of the Commons' alteration until it cropped up again in the case of the Regent's Canal City and Docks Railway Bill during the session of 1885. This Bill was one to connect all the docks at the east end of London with the great railways, and contained a provision allowing interest, to the aggregate amount of £660,000, to be paid out of capital. A debate took place in the House of Commons on the second reading, when Sir Joseph Pease urged, as Lord Auckland had done, the expediency of waiting for a general Act. Mr. Chamberlain, President of the Board of Trade, again supported the relaxation, pointing out that the Indian railway companies had a guarantee from the Government which sanctioned payment of interest out of capital. Sir Richard Cross—now Home Secretary—opposed the scheme; but Mr. Ritchie—now Secretary to the Admiralty—supported it, as did Sir Arthur Otway; and the second reading was carried by 187 to 117, a majority of seventy.

Upon the Bill going up to the Lords, the Earl of Ravensworth proposed to suspend Standing Order 128; this was objected to by Lord Brabourne, Lord Selborne, and several other Lords, but was supported by Lord Salisbury and the Duke of Richmond. Lord Salisbury ridiculed the idea that Standing Orders were to be like laws of the Medes and Persians, never to be touched, no matter how much industry they arrested or how much misery they caused. No one could deny, he said, that it was in the House of Commons they must look for the men most conversant with trade and financial matters; and since that House, after much controversy, had removed the prohibition, the Lords ought now to do the same, for it was the fault of the Standing Orders of both Houses that they had bound up industry too tight, merely to protect careless and improvident investors. In the end, the second reading was carried by forty-six to thirty-seven, and the Bill passed containing the special clause as to payment of interest out of capital, which you will find among the papers I am now sending you. The company was authorized to pay 4 per cent. interest on capital until the completion of the works, but the aggregate amount not to exceed £660,000, and it was to be payable only if two-thirds of the share capital were issued and actually held by shareholders.

Having given this case of a private company, it will perhaps be convenient also to give an instance from the Indian railways referred to by Mr. Chamberlain, where interest on capital is allowed to be paid under Imperial guarantee, and I am now looking up the Acts relating to those railways for that purpose.

In the meantime, I may say that perhaps the best evidence you could have of the change in the drift of opinion here, since the railway panic of 1845, is to be found in the division-list on the

second reading of the Regent's Canal Bill in the House of Commons; because the real issue was directly taken on that occasion. The order of the day for the second reading was traversed by an amendment declaring that it was "not expedient to pass any railway Bill allowing the payment of interest out of capital during construction of works, pending the introduction of a public measure as recommended by the Select Committee in 1882; especially where such a Bill practically made the alteration of the Standing Orders of the House retrospective." No one could deny that the challenge on the question of principle contained in this amendment was complete. Now, there voted in the majority against the amendment Mr. Gladstone, Sir Nathaniel Rothschild, Mr. Shaw Lefevre, Sir John Lubbock, Mr. Childers, Sir Michael Hicks-Beach, and Mr. Leonard Courtney, all of whom are financiers of the highest authority, to say nothing of Mr. Chamberlain, Sir William Harcourt, Sir Charles Dilke, Sir Henry James, Sir Arthur Otway, Mr. Raikes, and others equally eminent as statesmen. The principle was expressly affirmed by Parliament, and it may be said that, so far as private enterprises are concerned, it is quite accepted in this country, as it certainly is in the city. I have not yet had an opportunity of consulting the Governors of the Bank, but I spoke to the Government brokers, Messrs. J. and A. Scrimgeour, and they have no doubt upon the subject.

You are pleased to say that you would like to have my own opinion, and I shall take an early opportunity of expressing it for what it may be worth; but I am confining this letter to the story of what has been done in the Imperial Parliament.

The Hon. the Colonial Treasurer, Wellington.

I have, &c.,

F. D. BELL.

Enclosure 1 in No. 3.

PAYMENT OF INTEREST OUT OF CAPITAL.

Copy of Standing Order No. 128 of the House of Lords.

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.

Enclosure 2 in No. 3.

PAYMENT OF INTEREST OUT OF CAPITAL.

Copy of Standing Order No. 167 of the House of Commons.

A CLAUSE shall be inserted in every Railway Bill prohibiting the payment of any interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him, except such interest or 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) Acts, 1845," as the case may be; and except such interest (if any) as the Committee on the Bill may, according to the circumstances of the case, think fit to allow, subject always to the following conditions: (1) That the rate of interest allowed by the Committee do not in any case exceed 4 per cent. per annum; (2) That interest be allowed to be paid in respect only of the time allowed by the Bill for the completion of the railway, or such less time as the Committee think fit; (3) that payment of interest be not allowed to begin until the railway company have obtained a certificate from the Board of Trade to the effect that two-thirds at least of the share capital authorized by the Bill in respect whereof interest be paid have been actually issued and accepted, and are held, by shareholders who, or whose executors, administrators, successors, or assigns, are legally liable for the same; (4) that interest do not accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear; (5) that the aggregate amount to be so paid for interest be estimated and stated in the Bill, and be not deemed capital within Standing Order 153; (6) that notice of the company having power so to pay interest be given in every prospectus, advertisement, or other document of the company inviting subscriptions for shares, and in every certificate of shares; and (7) that the half-yearly accounts of the company do show the amount on which, and the rate at which, interest has been paid; and the company shall be authorized by the Bill to pay interest accordingly, but not further or otherwise.

If in any case the Committee on the Bill do not think fit to allow any such interest, then there shall be inserted in the Bill provisions making liable to penalties, recoverable summarily, any director or officer of the company who shall, directly or indirectly, pay or procure to be paid any interest or dividend prohibited as aforesaid, and making illegal or void any contract entered into by the company, or the directors thereof or any of them, under which payment of any interest or dividend prohibited as aforesaid shall be directly or indirectly provided for.

The Bill shall not be reported by the Committee until there has been laid before them a report from the Board of Trade respecting any proposed payment of interest; and the Committee shall report specially to the House in what manner they have dealt with the recommendations or observations in the report of the Board of Trade.

Enclosure 3 in No. 3.

REPORT from the SELECT COMMITTEE of the HOUSE OF COMMONS on STANDING ORDER 167; together with the Minutes of Evidence, and Appendix.

ORDER OF REFERENCE.—Ordered [Tuesday, 4th April, 1882], "That a Select Committee be 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." 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.

MINUTES OF EVIDENCE.

TUESDAY, 25TH APRIL, 1882.

Present: Mr. Baxter (Chairman), Mr. H. R. Brand, Mr. Salt, Mr. Shaw, Colonel Walrond.

Sir EDWARD W. WATKIN, Bart. (a member of the House), examined.

1. *The Chairman.*] You have been connected with railways for some thirty or forty years, have you not?—I have.

2. And you have a recollection of the railway mania of 1844-45?—Yes; I remember the mania for making railways, the large premiums, and the excitement, followed of course by great reductions of price and very serious losses, and public calamity, in fact.

3. That collapse produced great loss and misery?—Very great.

4. In your opinion was that owing to the excessive making of railways?—Of course it was owing to the excessive making and the excessive projections combined; and that making was stimulated by the practice which existed at that time of paying dividends out of capital.

5. Dividend was not paid out of profit?—They paid dividends before they earned anything to divide. For example, take a railway of which for many years I have been chairman, the Manchester and Sheffield Railway. That was a very costly railway; it had a tunnel of three miles and a quarter, or something like that, in length; it took a long time to construct, and during construction they paid 5 per cent. out of capital to their shareholders. The effect of that was to assist in raising the price of the shares to £140, which is £40 premium; and on the great collapse that followed I think they were sold as low as £10, and a great many people were ruined.

6. The Government and Parliament feeling this at the time to be a great evil, it was felt necessary to provide a remedy, and that was the origin of this Standing Order 167, was it not?—Yes; I think Parliament saw that an artificial value had been given to the securities by this practice; that it had had the effect of stimulating all kinds of adventures. In point of fact it was simply allowing people to eat a joint of their own tail. I think it was in 1848—but of course the papers before the Committee will show that—that Parliament decided that in all future Railway Bills there should be a clause practically prohibiting that practice.

7. Then I understand you to be in favour of the Standing Order as it at present stands?—I know what objection can be made to it, but I think myself that it is a conservative measure which does not damage anybody. At the same time it no doubt prevents the prosecution of schemes that otherwise would be prosecuted. It may be said, of course, that everybody can take care of himself. The President of the Board of Trade told us the other day that people should practically take care of themselves. If you repeal the Statute of Frauds and put down the Public Prosecutor, I have no objection; but as a fact people cannot take care of themselves. When I say "people," I mean of course the class of small investors, who are generally persons of limited knowledge, and who are very easily deceived by a flaming prospectus. They ought to be protected, in my humble judgment.

8. And in your opinion has this Standing Order 167 been effectual in protecting persons from deception?—I think so. I think it has been a very useful measure. I said a moment ago that I could see where the objection to the Standing Order was; but of course we must look at it a little closely. Undoubtedly interest upon dead capital is part of the cost of the thing you make. If I build a mill costing £50,000, and it takes me two years to build it, clearly I must add to cost, say, 5 per cent. as the interest upon my dead capital; and therefore, as a matter of account between partner and partner, it is right enough to add to capital the interest upon the dead outlay. But that is a totally different thing from paying back to your butler or your housekeeper 5 per cent. upon the £50,000 during the time it is laid out, to pay butchers' bills and household expenses with. There is, in my opinion, a broad distinction between the two cases. I cannot deny that, as a matter of account, the interest on outlay during construction is an addition to the cost of the work you make.

9. Will you explain to the Committee why this distinction is imposed only in the case of railways and tramways?—I do not know; I suppose we never had a great gas panic or a great water panic, or anything of that kind; but I suppose the Standing Order was a remedy of a drastic character applied to meet a disease which had arisen for the first time, and which has not cropped up again.

10. Then we are told that this Standing Order, after it was passed, was systematically violated by parties concerned: is that so, in your opinion?—After the Standing Order was passed, there was a general impression that it only applied to any undertaking which had no net revenue; that it did not apply to an existing company with a net revenue; that that existing company could, as a matter of account, not pay back money to its shareholders out of capital, but add on in their accounts to the capital cost the amount of the dead interest. That was the impression, and that impression was entirely upset by several suits in the Courts of law. I recollect two or three. There was the case of *Bloxam v. Metropolitan Railway*, and *Salisbury v. Metropolitan Railway*, some fourteen or fifteen years ago. Then, more recently, there has been the well-known *Hull and Barnsley* case, *Fisher v. the Hull and Barnsley Company*. In all those cases the Courts have held that it is illegal to pay interest out of capital in any form. In answer to your question I may say that the forms of evasion adopted have been these: First of all, there has been an actual payment back to the proprietor, which, obviously, everybody can see is illegal. Then, there have been arrangements made with contractors, and they put on, say, £100,000, or whatever it was, to the sum of their contracts, and then handed cheques back again to the companies, which cheques were used to add on to dividend. Now, in the *Metropolitan* case, what was done was this: A contract was made originally with Messrs. Peto and Waring, subsequently with Messrs. Lucas; and they put on to their contracts a sufficient addition to pay interest for a certain number of years out of capital, and they handed back to the company cheques for those amounts, and then the company enlarged their dividend by using this part of practically their own capital; and the only thin dis-

guise was that it passed through the hands of the contractor instead of being paid direct. Now, the effect of that was to exaggerate the dividend of the Metropolitan Railway to 7 per cent., and to raise the price of the Metropolitan shares to 140 or 150; I forget which it was. When the Courts stopped that, and honest accounts were kept again, the price of the shares fell to 56; and it has been only by a process of hard work since I have had the trouble of dealing with it—for I came into it when it was in that difficulty in 1871 or 1872—that, beginning with a dividend of about 2 per cent., we gradually have worked it up to all that ought ever to have been paid—a maximum of 5 per cent. Now, a distinguished man, the present Prime Minister, invested, at the advice of the late Mr. Gilpin, in Metropolitan stock, not knowing at all the way in which the dividend had been exaggerated, and I am afraid he lost some money by that operation. I mention that simply to show that the wisest people may not take the trouble to investigate, and, unless the account is transparently honest, they may be deceived. At all events that was the effect: that this practice carried on in this way through a contractor had the result of making a great many people lose a great deal of money.

11. *Mr. Shaw.*] Was not that shown on the accounts?—It was shown, but in a way very difficult to trace.

12. *The Chairman.*] This was all done when the Standing Order of 1867 was in force?—Yes, it was in full force; but the moment this practice was submitted to the Courts they put an end to it.

13. Do you think that such practices, though they prevailed when the Standing Order was in force, will no longer prevail in consequence of the decisions of the Courts?—Quite so.

14. As I understand, your belief is that these evasions of the Standing Order arose from a misapprehension of the intentions of Parliament originally?—Partly so, and partly from an ingenious way of breaking the law: we have in London one or two very able solicitors who do the O'Connell process occasionally, of driving a coach-and-six through Acts of Parliament. But now we have the decision, in the Hull and Barnsley case, of the Master of the Rolls; it was only last year that that decision was given; the Committee will no doubt get that; there is the whole law on the subject stated in the clearest possible manner.

15. You think the effect of that decision will be to effectually put a stop to any such practices in future?—I think so; then of course will come the question whether the Standing Order is too severe or not; if a company with an existing revenue see fit, as a matter of account amongst themselves, to debit their capital with dead interest, I do not see any particular objection to that; I should not do it now myself, but I think there is a great deal to be said for it as a matter of abstract account-keeping; but beyond that I do not think that you should go; I do not think you should enable anybody to call that capital which is not capital; that is to say, if £10,000 is on the face of the accounts the capital, and £500 of that capital has been given back, reducing it practically to £9,500, I do not think that it should be called £10,000. On the other hand, I do not object to adding on the £500 where you have an established company with a distinct revenue, if the shareholders see fit to do it; I would myself rather not do it, and I think it would be better finance not to do it. I think all our experience shows that, seeing the ups and down of this class of property, the more you pursue a prudent course the better, because after all the great point is—and there the shareholders have a clear interest—to have such a system as is most likely to keep the price of the security in an equable state.

16. But you would favour, would you not, such a slight modification of the Standing Order as you have now indicated?—I should not object to it; but I should not go a single step to bring it about. I cannot say that interest on dead outlay is not an addition to cost; what I object to is to capital being returned, and therefore made an abstraction from capital. I will take another illustration from the Hull and Barnsley case: now, in the Hull and Barnsley case the inducement to the shareholder was that, during the construction of these works which I think was to take some three, four, or five years, he was to get 5 per cent. upon his capital, and this was to be paid through the contractors again—the same gentlemen, Messrs. Lucas, most respectable contractors; the effect of that was that stock, which would not have been floated but for that, was floated and went to some premium; the effect of that again was that, by a great amount of pressure and notices about the closing of the subscription list—one of which I will hand in to the Committee—a large number of the working-classes of Hull became shareholders in this undertaking. There was, I am told, quite a run upon the savings-banks for a few days. These men thought they were going to get 5 per cent. from the Hull and Barnsley; they were only getting £2 17s. 6d. per cent. in the savings-bank; they rushed to the savings-bank and took out their money; and what is the result? The Master of the Rolls decided that what the Hull and Barnsley Company were doing was entirely illegal, and although the contractors, as a matter of honour, have themselves so far paid this 5 per cent. out of their own pockets, I believe—believing that they were personally honourably committed; it was a very honourable thing of Messrs. Lucas to do—still, these shares with £2 paid have fallen to 12s., and the effect is that what these poor men gave £2 for on allotment is worth 12s. I mean to say that those men, ignorant men, were induced to apply for these shares on the faith of the 5 per cent. Then, the deception, if it deserves so harsh a name, was twofold: first of all, the payment was illegal, which is concealed from these poor people; and, secondly, the fact of the dividend of 5 per cent. being paid led them to believe that that was the minimum rate of interest; that, if they could get 5 per cent. before the line and dock was opened, in all probability they would get more than 5 per cent. after it was opened; in fact, the prospectus promised 8 per cent., so that they were in that unfortunate position. Then, in addition to that, the Corporation of Hull invested, under extraordinary powers in the Bill, a sum of, I think it was, £100,000: of course, that £100,000, which was borrowed on the security of the rates of Hull, is now at a considerable discount, and, if the Corporation had to realize, they would be serious losers by it. I think this is a fair illustration of the system which Parliament intended to prevent by Standing Order 167. Then I should ask

the Committee just to consider for a moment how this movement in favour of a change in the Standing Order has been initiated: we have been going on, I think, for thirty-four years under this Standing Order; for certainly fifteen or twenty years we know how the Courts have interpreted it; those of us who represent established railways want to know where the movement came from; I have been entirely unable to find out; no Chamber of Commerce has asked for the change; no public body has asked for it; certainly no existing established railway has asked for it; and we do not know where the demand for a change of any kind comes from; and we inquire where it comes from, because we respectfully submit to the Committee that changes of Standing Orders practically in this case mean a change in what we looked upon as the established policy of Parliament; because the Standing Order was not initiated by the railways, but was put upon the railways by Parliament, as Parliament thought, in the interest of the country at large; and we say that, if a parliamentary policy has lasted thirty-four years, it should not be departed from without certainly, in the first place, that inquiry which the House has ordered; and, secondly, that it should have some initiator. I fail to see who would benefit by the Standing Order being changed. It may be said that, to a certain extent, it is a restraint upon the making of railways. Well, you had better not make railways than make them in an unhealthy and dishonest manner—or a manner, rather, which will permit of dishonesty: but then comes the question of the alternative. In 1867, I think it was, I had the honour to preside over a Committee which amended the railway laws, and one of the provisions that we introduced into that Act of 1867 was a provision to permit what previously could not be done—namely, the issuing of shares at a discount.

17. Are you referring to a Committee of this House?—A Committee of this House. It is the Railway Amendment Act of 1867. There is a clause there which enables you to issue shares at a discount: before that you could not do it. The moving cause of that was not any reference whatever to this Standing Order; but a number of railways had overbuilt themselves, the Brighton Railway in particular, and it was felt that the best way of paying debt was by the issue of ordinary stock, and that, inasmuch as at that time you could not issue the ordinary stock at par, you ought to be allowed to issue it at a discount. Prior to that you could not issue stock at a discount; there was a distinct prohibition of that, and a provision that it must be issued at par. I say that, if gentlemen want to make railways and to issue capital, then they should have the alternative, and should be able, if they please, to issue their shares at a discount. But, bearing upon that, I may just mention that it is almost impossible to sever the proposed change in the Standing Order, so far as it would enable this repayment back to the shareholder of a part of his own money, from the system which has grown up of evading another Standing Order, which provides, where there is an existing company without a dividend, for the lodgment of, I think it is, 5 per cent. upon the cost of the work, as a gauge that the railway will be made. Now, the system that has sprung up in the same quarters has been to go to a banker, pay him a commission for lending so much money or so much Consols, and then take an engagement that the third reading of the Bill is not to be accepted until some security has been given for the deposit. Now, that is practically setting up men of straw, who come to Parliament, and who get from a Committee—on public grounds, of course—powers to make a railway; and then either the railway drops, or it is a nuisance, or a squeeze, and it is sold to some existing company. If that Standing Order is permitted to be evaded, and if a company, without any money at all, having nothing but a dead work, is to be permitted, also, to pay dividend by returning money, I think then you will have, perhaps, a very unhealthy state of things in railway-making, and difficulties, not as large as the difficulties that arose in 1845, but perhaps large enough to disturb finance; and, in fact, a system growing up that may lead to a future panic. I think that is all that I have to trouble the Committee with.

18. Do you know of your own knowledge of any *bona fide* good undertaking that has been nipped in the bud, as it were, by the operation of this Standing Order?—No, I do not recall to mind a single one.

19. Mr. Brand.] You stated that you were not aware where this movement for a change of the Standing Order originated?—Yes.

20. Did it not originate in the action of certain companies which proposed a new clause to set aside the Standing Order?—It may have done so; but when I was first with the President of the Board of Trade upon this subject he seemed to be unaware at that time of where it came from. But there is no doubt that two or three companies, employing, I think, in each case, the same solicitor and the same parliamentary agent, have deposited Bills to practically repeal the Standing Order; and it may have arisen from that attempt to get rid of what is practically the general law on private Bills. My great point was that, taking those who generally move Parliament in financial questions—Chambers of Commerce, and public bodies and existing investors—I do not know of any impulsion from them in the direction of demanding a change of this thirty-four-years-old system.

21. As I understand, the modification of the Standing Order which you favour, or, at least, which you suggested just now, would merely be favourable to the existing railway companies?—Yes.

22. But it would operate naturally as a restriction upon new undertakings, would it not?—I do not know that it would, except so far as this: that it would prevent a sort of hothouse growth of railways. To that extent I say it would, no doubt. It would prevent what I call an unhealthy construction of railways. I believe myself that an outlay of capital that has not a reasonable chance of paying a dividend ought not to be made. I look upon it that capital belongs to all of us more or less; it is practically the property of the nation. If you put it into the river Thames in bags of coal or grain, it is gone and wasted. I say that I see no way of restriction in which this would operate, except as a restriction upon the making of railways unfairly, and which would not pay. There are several cases I know. There is, for instance, a case called the Banbury and Cheltenham in which many people have lost, and some railways down in Dorset; many of these people have lost a great deal of money. Besides, a thing made on paper and under delusion generally comes to a bad end.

23. *Mr. Shaw.*] Is not this practically another way of the contractor getting his money quicker; otherwise he would have to wait for it till the contract was finished?—Not if there was the money to pay him.

24. But having money to pay him is not a very common state of things, is it?—The existing railways, as the honourable member knows, are obliged to pay cash; but, then, they have got a security; they have got a net revenue, which is liable.

25. Take poor countries who have not much capital: do you not think this system will aid in some measure in the construction of railways in them?—I think it has this effect: it appears to aid. You get a branch railway made by a contractor in this way; he puts 40 per cent. on for extra profit; he adds also this interest: there is no competition. This very Metropolitan District Railway cost 30 or 40 per cent. more than it ought to have done. Though it may give a little artificial stimulus, practically, when the thing breaks down, it operates as a great discouragement. But for this system of no competition, and of payment of interest by the contractors, in my opinion you would have had long since the Inner Circle completed. It was the awful damper put upon this underground enterprise, not on its merits, but because of the failure of the Metropolitan and the Metropolitan District, that prevented your getting that circle completed years ago.

26. *The Chairman.*] Did you believe that the decisions of the Courts will put an end to those things?—Certainly. It cannot be done now unless Parliament leaves it alone. If you read the judgment of the Master of the Rolls, it is a masterly summing-up of the case.

27. *Mr. Brand.*] Will you point out the clause in the Act of 1867 authorizing companies to issue capital at a discount, in the way you stated just now?—It is clause 27, under the heading "Share Capital," and it is as follows: "Section twenty-one of 'The Companies Clauses Act, 1863,' shall, with respect to any special Act of a company incorporating Part II. of that Act, whether passed or to be passed [this was *ex post facto*; it was really to meet the Brighton case; they paid their debts very honourably by issuing stock at a discount], be read and have effect as if the following words, that is to say, 'but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof,' had not been inserted in that section."

28. *Mr. Salt.*] I think you said that until lately it was the impression that an existing railway might raise a capital sum, say of £10,000, and pay interest during construction?—No; debit capital with it, not pay it to the shareholders. It is about thirteen or fourteen years since the case in which it was finally decided.

29. So that a capital of £10,000 would form a capital of £10,500?—It would.

30. Now, is there very much difference, except as a matter of bookkeeping, between making £10,000 into £10,500 and reducing £10,000 to £9,500?—I think so. I think it is all the difference between £10,000 and £9,500. The actual cash in the one case is intact, and in the other it is not.

31. When you say it was the general impression that that might be done by existing companies, do you mean that it was the general impression amongst the railway world or the legal world?—I think both; but, as sometimes the most obvious things are overlooked, perhaps it was more for want of strictly looking into the law.

32. Now, I have here a list of railway companies that have proposed clauses which would practically do away with the Standing Order 167. Would it be fair to ask you which of these Bills would come under your suggested possible exemption, that would illustrate your view?—I do not think that any would, except the Metropolitan District Bill. It is the only existing company, so far as I know, to which the remark would apply. I do not know what the Banff, Buckie, and Elgin Coast is, but the Metropolitan District Railway is a railway earning a net revenue; and supposing that the Metropolitan District shareholders wished, if they undertake a new work, to add to their capital account the interest upon the dead outlay, I for one should not think it would be the best thing, but I could not give anything but a mere conservative reason against that.

33. Then, to make it clear, you would not see any great objection in the case of the Metropolitan District, which stands No. 8 on this list, and which proposes to raise £1,250,000, adding to that sum a sum sufficient to pay a certain interest during construction?—No, I should see no objection to it, subject to what I have already said, as a matter of prudence: that is all.

34. Now, as a matter of detail, would you propose any particular plan of making it clear to investors that this was the process under which the investments would be made?—If the Standing Order should be altered—keeping to the case you have referred to—so as to enable the Metropolitan District Railway, which is a railway with a growing income, to charge, as apparently they wish to charge, interest upon the dead capital—this £1,250,000, which is wanted for their half of the completion of the inner circle—under the special circumstances of that case I think it should merely be shown fairly on the face of the accounts: that is all. I do not mean at all to say that there have not been cases where, by special enactment, some works have been expedited that perhaps otherwise would have been retarded. There just comes into my mind the case of the Great Eastern Railway, and I should have mentioned that in answer to the honourable member for Cork. The Great Eastern Company undertook immense liabilities to build a city terminus. They were in a very bad financial position at the time, and by conference with Lord Redesdale and with the Chairman of Committees, and with the sanction of Parliament, were permitted to charge half the interest upon this great outlay, until it was finished, to capital. There is no doubt that that was a relief to the Great Eastern Company, and I have no doubt that it might be a relief to the Metropolitan District Company if they, being, as the Great Eastern Company were, a dividend-earning or a net-profit-earning company, were permitted to do this as an act of grace. But I think it should be an act of grace: it should be distinctly shown upon the face of the Act of Parliament, and the operation should be distinctly traceable upon the face of the accounts.

35. For what length of time would you permit such interest to be charged?—I think there should be a limit of time. That would depend, of course, upon the time the work would be likely to take. Take this very case: I suppose it will be perhaps two years before the whole of this great,

costly work of the Inner Circle is finished. I do not think that the power to charge this interest should be for a period longer than the period of the construction of the works. And then I think that there should be a limit to that period also; so that if the works were not done by that time the parties who have received this act of grace might come to Parliament to show cause, if they could, for an extension of it. It should not be allowed to degenerate into the setting-up of a fund out of which dividends could be unhealthily augmented.

36. In fact, I am to understand that you would, as far as possible, absolutely limit the power of payment of interest in this particular way to the time of the construction of the works?—Yes, quite so; with a limit as to that time in order to prevent abuse.

37. You would, of course, have to put a limit in order to arrive at that?—If you were to say “till the works are finished,” dryly in those words, it would always be possible, if the directors wished to make *couleur de rose* dividends, that the work would take a very long time to complete.

38. I want to ask you a question on another point. The detail in this matter is very important. Is there any other point of detail which suggests itself to your mind with respect to the protection of the public as investors in the case of the capital being raised in that way?—I think you can do nothing to warn the public but by thorough publicity, and there is the danger that you cannot thoroughly enlighten everybody. I am speaking now not of an existing work which has to render not merely its capital account but also its revenue account, and in the statutory form, which is very easily followed as regards the revenue. I am speaking more of a new concern with no revenue, where everything is problematical.

39. Am I right in supposing that the reason why you draw such a strong difference between capital raised for entirely new undertakings and capital raised for an undertaking which is to be carried out by an existing company is this: that in the first case the investor may have his interest during construction for one or two or three years, and then arrive at no dividend whatever; but in the second case the probability is that, if the condition of the existing company is fairly good, the dividend will be more or less continued?—Yes, that is the line of thought generally.

40. There is a broad difference between the two cases in that respect?—Yes; in the one case, whether complete results or not, they are definite results; and a man says, for instance, “This is a railway of 100 miles, having a revenue of £100,000, or whatever it may be, its working expenses so much, and the net profits so much”—all shown in the uniform statutory account. In the other case he has a hope—that is all—that this hundred miles of railway may do as well as the other, or better.

41. In the one case it is a complete speculation, in the other case there is a tolerable amount of certainty?—There is a tolerable amount of certainty in the one and uncertainty in the other.

42. Do you attach great importance to what you have suggested to the Committee as to the necessity of protecting the investor in these cases?—I think so, so far as Parliament can. At all events, I think that Parliament should do nothing the tendency of which is that he may be deceived. There is a broad distinction between the two. If you had an Act of Parliament to say, “Nobody must be deceived,” it would not be worth very much; but if you have a Standing Order or an Act of Parliament which facilitates the getting-up of hopeless schemes, and which puts the shareholder for a certain number of years—three or four, or whatever the number may be—in a kind of fools’ paradise, from which he awakens when too late, Parliament becomes, it seems to me, a party to an unsound system.

43. Is there any reason why Parliament should exercise paternal care over investors in railways more than over investors in other enterprises?—No, I do not think there is. There are the two opposites. Parliament may do nothing positive; but Parliament should not facilitate a system which, as I contend, Parliament itself put an end to after the crash of 1845.

44. Now, is it not the fact that by some means or another it has been almost the universal custom to pay interest upon unproductive capital during the building of a railway?—No, I think not; I think it has been the exception. Of course there are two or three ways in which you may meet a dead outlay; at least you might have done so, and people did before the legal decisions. An existing company, for instance, charged the interest upon their dead outlay to the capital account. The effect of that was that until the new piece of railway was opened the whole net profit was attributable to the productive capital. Then, if the new work was an eminently productive one, by the time it was opened everything equalized itself; but, if the new outlay turned out to be a bad speculation, then clearly the dividends had been enlarged beyond the bounds of prudence. Then, there is another way in which it has been done, and very frequently done. It has been done by the Great Northern and by several other companies. When they have had a work of importance they have issued to their shareholders a stock the dividend on which would commence a year or two forward. It may be said to be adding interest to capital in that form: certainly it does *pro tanto* relieve the net revenue account. But I will take the case of the North-Western or the Midland Company. Those are companies always laying out a large amount of capital in new works. The North-Western Company at this moment must have four or five millions of unproductive capital—three or four millions, certainly. All that interest—every shilling of the dead interest—is charged against revenue. Take, again, the Manchester, Sheffield, and Lincolnshire Railway, for this last dozen years, certainly. They were also to some extent under the delusion that they were right in charging interest to capital as a matter of account. For that dozen years they would have generally one, two, or three millions of capital perfectly dead. Every shilling of the interest has gone against revenue. Take the case of the Metropolitan Railway Company. The Metropolitan Railway Company, by their own capital, are rapidly finishing the piece of the Inner Circle Railway which extends from High Street, Aldgate, to Tower Hill—Trinity Square as it is called. There is a dead outlay there of nearly half a million of money, less some amount of rents of those houses which have not been pulled down. All that has gone against revenue. Therefore I should

say that, except in the form of issuing the shares with dividends to come, as it were, dividends to accrue, and with the exception of any capital that has been provided by, say, companies like the Brighton Company years ago, by issuing shares at a discount, I think as a rule the interest has been charged against revenue.

45. Of course nobody can object to charging the interest upon unproductive capital against revenue, excepting shareholders themselves?—No, except so far as it may be sound or unsound. I mean that you may have a general public objection which the shareholders might not like. No doubt the shareholders are very fond of taking as much dividend as they can get. They have a considerable hunger for dividend—a dividend-hunger; but still the great bulk of the steady investors I think would prefer an equable price of their stock, which means an equable dividend, to the ups and downs which arise from practically manipulating the interest on capital account.

46. Then we come to this: that you may either pay the interest upon unproductive capital out of dividend, as in the case of very strong companies, or you may add, during the period of construction, the interest on unproductive capital, as in the case of weaker companies; but in all other cases you would absolutely prohibit the paying of interest?—I would prohibit paying back capital, certainly in all cases where there is no net revenue. I would prohibit paying back capital in all cases—an actual return of the money, which is practically a fictitious income, just in the same way as if a man bought an estate for £100,000 and began to improve it, and simply paid himself back so much money which he spent in household expenses. Obviously it is an unreal thing.

47. Now, assuming that plan to be carried out, not only in the theory of the Standing Order, but actually in fact and in commercial practice, would not the effect be to give the absolute control of the country to the great railway companies?—No; I do not think so. I think that, wherever the enterprise was really good, money would be found to carry out the enterprise.

48. You think that the effect would be that weak enterprise would be stopped, but that strong enterprise would not be hindered?—I think that the healthy enterprise would be helped, and not crippled by it; and that the only enterprise that would be fostered by paying interest out of capital would be unhealthy enterprise.

49. *Colonel Walrond.*] As far as I understand your evidence, you are in favour of keeping the Standing Order as it is, entirely?—Yes.

50. Supposing that the payment of interest out of capital should be authorized, is there any limit of percentage that you would recommend?—I think it should be the barest possible amount. If I wanted to minimize what I think would be the evil, I should make the interest one not exceeding 3 per cent.; but that would be rather in the tendency of minimizing what I should take to be an evil than anything else.

51. But you limit that payment of interest to the period of construction?—Yes; always assuming that, if it were done at all, I should certainly not allow an interest of more than 3 per cent.; and I should certainly limit that, and severely limit it, so that, if there was any attempt to prolong the period under the guise of non-completion of the works, Parliament and the shareholders would have an opportunity of checking it.

52. Would you limit it to any particular number of years?—The honourable member for Stafford laid down the basis—that is to say, the period of construction; but then, to prevent any playing with that, I should limit that period to a very short number of years indeed: about two years, I think, would be the limit. Of course a great deal would depend upon the nature of the work. For instance, supposing it was the Forth Bridge, if Parliament, in its wisdom, saw fit to permit the North British Company to charge any part of that interest to capital, that would be a case by itself, and would have to take a longer period of years, because it would take longer to construct. If it was a simple line in the country that might be made in twelve months, of course you would take that into account.

53. *Mr. Salt.*] What I understood you to tell me was this: that in each Act of Parliament, where it was necessary to insert such a clause, you would limit the time of payment upon unproductive capital to a fixed term, to cover, as nearly as possible, the period of construction?—Yes.

54. And that period might be two, three, four, or even five years, according to the nature of the work?—Yes; the shorter the better, and the less the amount of interest the better. I should certainly oppose any alteration of the Standing Order, but if anything is to be done it should fit each special case.

55. *Mr. Brand.*] From your experience, would there be any difficulty in the promoters of a new enterprise being able to get money, if they issued capital at a discount, as you suggested in your evidence?—I do not think there would be the smallest difficulty in their getting capital for an enterprise between points A and B, if they represented points of industry.

56. *Mr. Shaw.*] I suppose you are aware of the system in Ireland of guaranteed shares?—Yes; guaranteed by the barony.

57. Do you see any objection to interest being paid on those shares during construction by the barony?—Practically, it must be so. I think that is an entirely exceptional case. My own view about railways in a country like Ireland is, that that is a total exception, and they ought to be the property of the State. They ought to be made in the cheapest way, with the cheapest money, and, therefore, by the State.

58. At the present time they are made in the dearest way, with the dearest money, and by anybody who takes a fancy to make a railway?—By anybody who can scramble through with a railway.

59. And, if interest were payable during construction, the contractor would get money on much easier terms?—I have no doubt where money is lent by the baronies it becomes an exceptional case. I should say that it is quite impossible to treat the case of the extension of Irish railways as on the same four legs as the English or Scottish case; it is a totally different

thing. A railway there ought to be a pioneer of progress; it cannot well be the follower of progress.

60. *The Chairman.*] Your evidence, in fact, does not apply to Ireland at all?—No; I should say that the question is a totally different one there. I should myself be only too glad to vote for the acquisition of the present Irish railways by the State, and the extension of them by the State out of money raised at 3 per cent.

Mr. JOHN CHARLES REES examined.

61. *The Chairman.*] Will you inform the Committee how long you have been connected with railways?—Since the year 1855—twenty-seven years.

62. And in various capacities?—Yes.

63. As solicitor and parliamentary agent?—Yes, as solicitor to one of the large railway companies for many years; and since that as parliamentary agent.

64. Now, Sir Edward Watkin is at a loss to understand the origin of this inquiry. Probably you can clear that matter up to the Committee?—The inquiry may be said to have originated from the history of the Hull and Barnsley case, in which I was agent in the session of 1880. That Act of 1880 contained the clause required by this Standing Order 167, prohibiting the payment of interest out of capital during construction, or at any time; and I should remark, upon that, that the undertaking authorized by that Act was partly a railway undertaking and partly a dock undertaking, the estimate for the dock undertaking being, in round numbers, £1,000,000.

65. A dock at Hull, was it not?—A dock at Hull, now proposed to be called the Alexandra Dock. The Act, nevertheless, although the Standing Order Act applies only to railway cases, covered the whole capital, the dock capital as well as the railway capital. Then you have heard from Sir Edward Watkin that a prospectus was issued by the Hull and Barnsley Company, in which it was stated that the contractors covenanted to pay interest at 5 per cent. per annum half-yearly until the 31st December, 1884, on all amounts for the time being paid up. The 1st December, 1884, was the time limited by the contract for the completion of the works. Upon that prospectus the whole capital was subscribed; but, as Sir Edward Watkin has stated, an injunction suit was afterwards instituted.

66. By whom?—It was instituted by a gentleman of the name of Fisher, who had purchased recently in the market some scrip which had been issued by the company. He was a scrip-certificate holder. He instituted a suit nominally on behalf of himself and all the shareholders of the company for an injunction prohibiting the directors from paying money out of capital, and for other purposes. The Master of the Rolls granted that injunction.

67. In granting that injunction, did the Master of the Rolls express any opinion upon the general subject?—He did to a certain extent express an opinion upon it. I have the shorthand writer's notes of the discussion before the Master of the Rolls upon the motion for the injunction, and, with the permission of the Committee, I will read a short passage from the discussion. This is the passage: *The Master of the Rolls*: "I should think this case would lead to some improvement in the wording of this clause." That, of course, is the clause prohibiting the payment of interest out of capital. Then Mr. Chitty, who was counsel for the company, said: "It would be much better that the clause should be got rid of altogether." *The Master of the Rolls*: "That I do not know." *Mr. Chitty*: "The effect of this clause is to throw undertakings of this kind into the hands of mere contractors, who manipulate the shares and debentures of the company in any way they like. You have had many instances of railways made in that way, where not one-half of the actual money has been expended on the line. It is much better to allow fair interest during construction." *The Master of the Rolls*: "To be charged as part of the cost of construction?" *Mr. Chitty*: "Yes; I consider it is an antiquated view of the matter, ill adapted to the wants of mankind, and not likely to conduce to a good result." Then the Master of the Rolls says: "If a man lays out £1,000 in building a house, at the end of that time he reckons the house costs him not only the money laid out, but fair interest on the money laid out. Why the same doctrine should not apply to railways I do not understand." *Mr. Chitty*: "There is a pertinacity in some quarters, or rather, perhaps I should say, a persistence in holding to this clause, which I do not think is for the public good." *The Master of the Rolls*: "I am not suggesting that what you do is immoral or contrary to public policy,"—and so forth.

68. Do you concur with Sir Edward Watkin in believing that this decision of the Master of the Rolls, who held that the Standing Order had been distinctly evaded, will prevent all such evasions in the future?—I do not think so; and I think the proof of it is that prospectuses have since that decision been put forward offering exactly the same thing—the payment of interest during construction by the contractor, which means out of capital.

69. Will you pursue the history of the subject?—You asked me just now what was the origin of this inquiry. After the decision of the Master of the Rolls, to which the Hull and Barnsley Company submitted, the company proceeded to present a petition last session for leave to introduce a Bill after time to put the matter right, to legalize the payment of interest out of capital. The Standing Order Committee, however, of your honourable House reported that the Standing Orders should not be dispensed with; and the Bill consequently could not be introduced. But in the present session that company—the Hull and Barnsley Company—are promoting a Bill which has the object of legalizing in their case the payment of interest out of capital. That Bill I am the agent for. Of course it occurred naturally to me, as it would to any one, that it was extremely improbable that in that exact shape, at all events, Parliament would pass such a Bill in the direct face of the Standing Order 167; and I therefore devoted myself to endeavouring, principally in the interest of the Hull and Barnsley Company no doubt, to obtain some modification of the Standing Order, so that the Order might be in such a form that, consistently with the passing of it, the Bill of the Hull and Barnsley Company for legalizing what they had actually done should be possible.

Then, it so happens that I have a good many important Railway Bills in my charge for this session, involving very large sums of money indeed, one alone involving a capital of over £8,000,000, others £3,000,000, £2,000,000, and so forth; and I suggested to several of my clients that, as I was attempting to bring about some action with reference to this Standing Order, it was expedient for them to introduce into their Bills, tentatively, clauses authorizing payment of interest out of capital, as had been done in old sessions years ago. That accounts for your finding several Bills with my name upon the back as agent with this clause in them, and a Bill deposited by the Hull and Barnsley Company for directly legalizing payment of interest by themselves. I should like to be allowed to state, with reference to what has been said by Sir Edward Watkin and other gentlemen before the President of the Board of Trade, and also before the Chairman of Ways and Means, that the Bills to which I refer are Bills which are not, in any proper sense of the word, speculative Bills. I do not undertake myself—if I may be allowed to say so parenthetically—that sort of business. These Bills are all Bills promoted with the most perfect good-faith. I have a list of the names of the directors in each case. I will instance one, the Central Northumberland Railway Bill, which has passed already a Committee of this House, in which the promoters represent the whole of the landed gentry in the county. They are all men of a leading position in the county, with Sir Charles Trevelyan at the head; and in no way were they in any proper sense speculative promoters. I may add the same of the other Bills now pending to which my name is attached.

70. It has been stated that some of these undertakings were scarcely *bonâ fide*: are you prepared to furnish the Committee with the names of the promoters and directors, in order that our minds may be satisfied upon that point?—I am.

71. Perhaps you will put that in as a paper afterwards?—Yes. In the Central Northumberland Railway case the following gentlemen were named as first directors: Sir Charles Edward Trevelyan, Sir John Swinborne, Mr. Ralph Carr Ellison, Mr. Walter Charles Selby, the Honourable Frederick William Lambton, Mr. John Robinson, Mr. William Forster the younger, and Mr. Macartney Swarbrick.

72. Did that undertaking originate in the county itself?—Entirely. It originated from a public meeting of the farmers and those interested in the land of the district.

73. It is not the case, then, that any of these undertakings are what may be called railways got up by contractors and professional men?—Certainly not. With regard to some of them, I know personally, as a matter of fact, that the promoters not only were not supported by contractors, but had refused directly and positively to have anything to do with them; that they found the money entirely by themselves for promoting the Bill, and found the deposit by their own credit.

74. Continuing your history, did you communicate with the President of the Board of Trade and the Chairman of Committees of the House of Commons, and with Lord Redesdale?—In the first instance I communicated with Lord Redesdale's counsel, and wrote a letter to him, which I believe was sent afterwards to the Chairman of Ways and Means and to the President of the Board of Trade. I believe that is the origin of the inquiry.

75. Can you state to the Committee what opinion these authorities entertained about your proposal?—Unfortunately, from my engagements here, I was not able to attend either deputation at the Board of Trade. I was present when the deputation from the railway companies waited upon the Chairman of Ways and Means; but, in accordance with his usual practice, the Chairman abstained from expressing a direct opinion himself. I cannot therefore state, of my own knowledge, what the opinion of the various authorities may be.

76. Can you tell us anything about the history of this Standing Order?—The history of the Standing Order is simply this: In 1847, following upon the sessions of 1845 and 1846, in which a very large number of Railway Bills had been passed—I think nearly three hundred in 1846—there was an enormous number of applications for Railway Bills, I believe running close upon a thousand; a sort of collapse ensued in that year, and the great bulk of those Bills were by a special resolution of the House postponed to a subsequent session, that is, suspended with leave to the promoters to renew them in a subsequent session: most of them, however, fell to the ground in consequence of the railway panic that ensued; but in the course of that session a discussion took place in the House with reference to the enormous number of Railway Bills which had been so deposited; and in the result, on the 10th June, 1847, a Standing Order was passed prohibiting the payment of interest out of capital. That Order was peculiarly worded: it reads as if the prohibition extended only to capital which had been authorized in the past, but I fancy that that must be simply an error in the exact wording of the Order, because I find that in all the Railway Bills of 1847 passed after the date of that Order a clause very similar to that which is now introduced was inserted, applying to the capital authorized to be raised by the particular Bill. In 1875 the Standing Order was altered into its present form, making the form of the Order consistent with the form of the clause inserted since 1847 in Railway Bills.

77. Have you anything else to state to the Committee with regard to the history of private-Bill legislation in reference to the payment of interest out of capital?—I have been at the trouble of searching through the various Acts of Parliament that have been passed authorizing railways, and I find some results which it may be interesting, perhaps, to the Committee to hear. The first instance of the payment of interest out of capital being authorized that I can find—I will not pledge myself that there is none earlier—was in 1837, in the case of the Great Leinster and Munster Railway Company; then, in 1838, there is a blank; in 1839 two Railway Acts passed, both promoted by existing companies, authorizing the payment of interest, in one case 4 per cent. and in the other case 5 per cent., during construction; and one of those has rather a curious bearing upon the matter: it was the case of the South-Eastern Railway Company, of which Sir Edward Watkin is now Chairman. That company was incorporated in 1836, and obtained further powers in subsequent sessions; in 1839 they had a Bill which did not authorize the raising of further capital nor the construction of any further works, but they obtained special power retrospectively to pay

interest out of capital upon the whole of their previous capital during the construction of the works.

78. *Mr. Brand.]* Was that when they were earning revenue?—No; during the construction of the works. Their original Act was passed in 1837; they obtained deviations and so forth in 1837 and 1838; and in 1839, during construction, before the railway was opened, they obtained this power to which I have been referring.

79. *Mr. Salt.]* Sir Edward Watkin was not connected with the South-Eastern Company at that time?—No, he was not at that time. I do not quote these cases as being instances of anything which ought not to have been done: on the contrary, I highly approve of it. It shows only, practically, how existing companies have thought it necessary to obtain and to use the power in the first instance. Then, in 1840, there were three Acts passed; in 1841, none; in 1842, there were three; in 1843, there were two; then in 1844, there were seven; in 1845, there were twenty-six; and in 1846, the last year before the Standing Order was passed, there were ninety-two. In 1847, there were a few Acts, but only a few—I think four or five only—passed before the making of the Standing Order; and those contained the same power of paying interest out of capital. All those which were passed after the date of the Order prohibited the payment of interest out of capital. I have further traced the different lines authorized by the Acts containing this power of paying interest, in order to see in what hands they are now; and I find that every large railway company, I may say, in England and in Ireland and in Scotland, has become possessed, either by purchase or by lease in perpetuity, of several railways which were constructed under this power. The list shows that a very large proportion indeed of the existing railways of England held by the large companies have been constructed under this power. I may add that the Great Northern Railway Company, the North London Railway Company, the South-Eastern Railway Company, in the way that I have mentioned, and several other large railway companies, obtained the power in the first instance.

80. *The Chairman.]* Do you agree with Sir Edward Watkin that this prohibition arose out of the mania and panic of 1846?—The Bills deposited at the end of 1846 and promoted in the session of 1847. I think the debates in the House in 1847 show conclusively that it was so.

81. Are you of opinion that, although Parliament might have had a very good reason for making that enactment then, that reason no longer exists?—That reason, I think, no longer exists. Of course, in 1847 only a small portion, comparatively speaking, of the railway system was complete, and there were an enormous number of schemes, a great number of them speculative no doubt, before Parliament in that session. I do not think any one would say that there is any possibility that any such thing can again occur. The railway map of England is nearly filled up, and it is only small branches, and occasionally a few larger schemes, I think that can possibly be brought forward in future.

82. Are you of opinion that, so long as Parliament retains the system of requiring the money deposit to be made under the present conditions, no further security is required against the promotion of speculative railways?—That is my opinion. In 1847 there was nothing at all corresponding to the money deposit which is now required for a railway. Parliament then, and for many years afterwards, contented itself with requiring that a subscription contract for three-fourths of the capital to be authorized by the Bill should be deposited, so as apparently to show that the bulk of the capital had been actually raised. That, of course, we all know, turned out to be an egregious sham; fictitious contracts were put in; I myself have had to analyse more than one of them, and they were no security whatever. You had persons of no position whatever subscribing for sums which it would have been hopeless to think of their paying; clerks at £1 10s. a week subscribing for £60,000 or £80,000, and so forth. There may have been, therefore, then some need of a further security, but there was no money security whatever taken from the promoters. They were required in the first instance no doubt to deposit a percentage upon the estimate of the railways, but that money was always got out at the end of the session. During the last few years the Standing Orders have required that the money deposited should be actually impounded, and forfeited to the Consolidated Fund in the event of the works not being completed.

83. In your opinion that is an ample safeguard to the public against speculative undertakings?—I know that it does check very largely indeed the promotion of speculative schemes. It is a very serious matter. Sir Edward Watkin truly says that in many cases speculative promoters have to give an undertaking that the deposit which they have borrowed shall be repaid or replaced before the Bill reaches its last stage in the second House.

84. You believe with Sir Edward Watkin that it is the duty of Parliament to protect the public against these undertakings as far as that can be possibly done?—Yes, I am very strongly of that opinion.

85. You differ with regard to the means of carrying that object out?—Yes.

86. You believe that this deposit is a safeguard which cannot be evaded?—It cannot be evaded, and in my opinion it is necessary that there should be a safeguard in that or in some analogous form.

87. The safeguard of Standing Order 167, which you have, in a large number of cases has been evaded in practice?—Yes.

88. Do you believe that it will continue to be so after the decision of the Master of the Rolls?—Perhaps not to the same extent. Many men would hesitate to do that which has been so directly and pointedly held to be illegal, though there may be no moral wrong about it. Therefore I do not think it will be evaded to the same extent; but that it will be evaded in one form or another I have no doubt, because, as a rule, speculative schemes are promoted by somewhat unscrupulous persons.

89. Sir Edward Watkin has expressed a decided opinion that this Standing Order has not checked *bona fide* undertakings which were for the good of the country: that is not your opinion, I gather?—I think that Sir Edward Watkin has answered himself upon that point. I noticed that

in speaking of the Hull and Barnsley Company he stated this: that the stock of that company was floated by reason of their undertaking to pay money out of capital, and that it would not have been floated but for such payment.

90. And Sir Edward Watkin may be of opinion that the enterprise would not be of benefit to the public?—I do not suppose that any one, even Sir Edward Watkin, would say that the Hull and Barnsley undertaking is not a perfectly *bonâ fide* one. Every one who knows the history of that undertaking would admit, I think, candidly that it is probably the most *bonâ fide* undertaking ever brought before Parliament.

91. Can you furnish the Committee with a list of the undertakings that you believe have been stopped by this Standing Order?—No, I could not do that, for this simple reason: that when a Railway Act is passed my functions as parliamentary agent have ceased; I have nothing to do with further financial arrangements, and I hear nothing more of them till they come to Parliament again; and I can therefore only speak generally from what I have heard in the course of my practice, and rather incidentally. I believe that several such instances could be found.

92. Could you suggest any witnesses who could inform the Committee on such a point, because it is a very important one, Sir Edward Watkin having stated that the Standing Order has had no effect in stopping *bonâ fide* undertakings, and you being of a different opinion?—My opinion is not so much that *bonâ fide* undertakings have been stopped by it as that they have been seriously crippled. Even the most *bonâ fide* undertakings must resort to some means practically of paying interest out of capital if they want to get their capital at all from the public; and the practical result of that is well known to be that not only are the capitals unduly inflated, but perfectly *bonâ fide* undertakings have fallen into serious monetary difficulties. Those are greatly owing, I believe, to impossibility of raising capital for legitimate undertakings in the ordinary way in the face of the prohibition of paying interest out of capital. I believe that has led to great financial embarrassment in many cases.

93. So that the evil is not in preventing *bonâ fide* schemes going on, but in crippling them?—I think it is more in that direction. No doubt to some extent schemes are prevented from coming forward by reason of the financial difficulties arising partly from the money deposit required, and partly from the difficulty of floating capital in the absence of the power of paying interest out of it.

94. You heard what Sir Edward Watkin said about what he thought would be sufficient to meet the difficulty?—Sir Edward Watkin seemed to think that promoters of new undertakings did not require relief in the direction of the alteration of the Standing Order suggested, because they can obtain the same result in a different way by issuing shares at a discount. Sir Edward Watkin had forgotten that the power to issue shares at a discount does not apply to original capital. The Act of 1867, to which Sir Edward Watkin referred the Committee, you will find to be an amendment of the Companies Clauses Act of 1863; and, if you turn to the Companies Clauses Act of 1863, you will find that it applies only to additional capital and not to original capital.

95. *Mr. Shaw.*] That makes all the difference in the world?—It makes all the difference in the world.

96. *The Chairman.*] Therefore, in your opinion, Sir Edward's evidence on that point must fall to the ground?—It appeared to me that Sir Edward Watkin admitted the gravamen of the matter, and that his suggested remedy is one incapable of application.

97. Are you in favour of a repeal or of an alteration of the present Standing Order?—On the balance, I should say I should certainly not repeal it; I should amend it. In all cases where the interest of the public, as in the case of rates and tolls and so forth, depends upon the way in which capital is dealt with, and promoters have to come to Parliament to obtain powers to levy those rates, I think it reasonable that Parliament should see, in the interest of the public, that there should be some control exercised over the issue and application of capital.

98. Have you any suggestions to make to the Committee with regard to the question of what alterations ought to be made in the Standing Order? What is your opinion upon that point?—My opinion is this: that the payment of interest, which is practically inevitable, should be legalized, subject, as Sir Edward Watkin has suggested, to a reasonable period for the construction of the works, which period should not necessarily be a hard-and-fast one of five years. Five years, I think, should be, in the first instance, the maximum. I think that it is right and proper that the payment of interest should only be allowed for such a period as would enable the promoters, exercising reasonable diligence, to complete their undertaking.

99. Would you have the period to be fixed in each separate Bill dependent upon the time that the works would probably take to execute?—Quite so. Take the Hull and Barnsley case as an illustration: it would be impossible that the limit in such a case as that should be a shorter period than five years. Take the case of a small branch railway, two or three miles long, which could be easily completed by a good contractor in six months: it would be absurd, to my mind, that five years should be allowed for the payment of interest out of capital in the construction of such a line.

100. What interest would you allow?—I do not think there should be any hard-and-fast line as to interest. You will have witnesses more competent to speak on that point than myself; but I think common-sense would tell us that the rate of interest which will induce persons reasonably to subscribe varies according to circumstances. In some years 4 per cent. might do it; in other years $4\frac{1}{2}$ or 5 per cent. might be necessary. I think there should be a maximum fixed, and I think that maximum should be 5 per cent.

101. *Colonel Walrond.*] Sir Edward Watkin suggested 3 per cent.?—Yes. Of course the answer to that is obvious. Three per cent. would not induce persons to subscribe, and a Standing Order limiting the payment of dividend to 3 per cent. would be a relief in appearance only, and not in effect.

102. He may have had in his mind the case of the working-men at Hull?—You will have the chairman of the Hull and Barnsley Company before you, who will be able to tell you all about that. The depreciation of the Hull and Barnsley stock, I think, is by no means due to anything but the position into which the company has got by reason of these Chancery proceedings being instituted. It has been a slur, to a certain extent, upon the financial arrangements.

103. *The Chairman.*] Do you think that the operation of the present Standing Order is, to a certain extent, to discourage independent railway enterprise?—Yes.

104. And to keep the railway enterprise of the country in the hands of the large railway companies?—I think so, very much indeed. The large railway companies have, I think, an undue control over the promotion of large railway schemes, and they have that control in a way that lies below the surface somewhat. I suppose that fully one-third of the whole of England has been mapped out between the railway companies, and is the subject of what are called territorial agreements between them. Those territorial agreements mean that no one party to the agreement can in any way, financial or otherwise, assist an independent company to come and construct a line in the district without the consent of the other parties to the agreement.

105. Do you think that these agreements are not for the benefit of the public?—I know many cases where they are not for the benefit of the public.

106. Do you think that the alteration of this Standing Order would in that respect be beneficial to the public at large?—I think, to some extent, it would be a set-off against the power and the control exercised by the railway companies by virtue of these territorial agreements; and I certainly think that some relief is required in that direction.

107. There are men connected with the companies who take your view, are there not?—Yes.

108. The large railway companies are not absolutely unanimous in supporting the Order as it stands?—I do not know how far they are unanimous or not in that; I have had no communication with them upon the subject. They act through an association which, I take it, has been represented by Sir Edward Watkin to-day; and I suppose he speaks for the body at large.

109. Have you any additional statement to make to the Committee?—I should like to point out what I think is not unimportant; and I see, by looking at the shorthand notes, that it is a point which was mentioned by Mr. Farrer, of the Board of Trade, at the interview between the railway deputation and the President of the Board. It is this: that in 1847 Parliament exercised a control over, you may say, the capital of all public enterprises and restrained them within strict rules, but in 1862 the Companies Act, the general Act, passed under which companies of limited liability have been established; and there the principle was embodied of allowing shareholders to deal as they pleased with their own finances; there is no restriction whatever upon them. And that leads to a somewhat curious anomaly. Take the case, not of a railway, but of a tramway. A tramway company comes to Parliament with a private Bill; it might probably have this Order put upon it; at all events, it would be under the operation of the Companies Clauses Act, which prevents the application of share capital, if not of borrowed money, in payment of interest. Now, the tramway company, instead of coming for a private Bill, may, if it pleases, register itself under the Companies Act of 1862, and come to the Board of Trade for a provisional order. That provisional order must still be confirmed by Parliament, and therefore Parliament ultimately sanctions the undertaking in the one case as in the other; but in the case of a limited-liability company coming for a provisional order they can pay interest out of capital during construction, or do anything they choose; and yet a tramway company coming for a special Act of Parliament is put under special terms as to the mode in which the capital is issued. That appears to me to be an anomaly: I can see no reason why it should be allowed in the case of a company registered under the Act of 1862, and not in the case of a company having exactly the same powers, but obtained by a special Act. And the same thing applies theoretically, though perhaps not practically, in the case of railways; for in 1860 an Act was passed called the Railway Construction Facilities Act; it has not been of much practical use, because it involves previously purchasing all the land, and so forth—there have been one or two cases, I believe, under it; but, in that case, the company might register themselves under the Act of 1862, provide in their articles of association for the payment of interest out of capital during construction, come under the Railway Construction Facilities Act, and obtain a certificate of the Board of Trade, which does not require the confirmation of Parliament, but only to be laid on the table of the House for a certain time. Therefore in that case again payment of interest out of capital seems to be permissible to a railway company. Then, I must also point out that by the very passing of the Act of 1867, which in the case of additional capital authorizes the issue of shares at a discount, the principle virtually is conceded. Sir Edward Watkin said, and, I think, perfectly truly, that that is only another name for doing the same thing. It comes to the same thing whether you create a capital of £50,000, and make it up to £60,000 by additions of interest in the course of years; or whether you start with an original capital of £60,000, and issue it at a discount of £10,000 for £50,000. It is virtually the same thing. That is especially conceded by Parliament in the most pointed way; for, having forbidden it in 1863, they repealed the prohibition in express terms in 1867.

110. Of course the modification of the rule which has been suggested by Sir Edward Watkin does not meet your view at all?—I understood Sir Edward Watkin to suggest a limit of three years, and a limit of 3 per cent. I do not think that would be an effectual relief.

111. But is any modification of the Standing Order in favour of the existing companies practically in operation?—I do not of course agree in the slightest degree with Sir Edward Watkin in thinking it would be right to limit the operation of any new Standing Order to existing companies earning revenues: that would only increase the almost monopoly which they now have, and very much aggravate what is now a great evil.

112. You believe that that modification would rather aggravate matters?—Yes.

113. You would rather have the Standing Order still as it is, than have that modification of

it?—I do not think it would make much difference as far as the promotion of schemes is concerned. It would be extremely unjust, I think.

114. Have you anything else you wish to state to the Committee?—I think not.

115. *Mr. Salt.*] I understand that since the first passing of this Standing Order 167, in 1847, and notwithstanding this Standing Order, an immense amount of capital has been raised upon which, although it is unproductive capital, interest has been paid?—I take it that there is no question about that. I have a number of prospectuses here which would illustrate that.

116. I suppose you have no notion of how much capital has been so raised?—No.

117. But it would amount to millions?—Yes; several figures, I should think, before the million point.

118. Therefore, in spite of this stringent Standing Order of the House of Commons, trade has pursued its own course?—Not quite so, I think. Its own course would be, I think, to pay interest out of capital during construction, but not to make arrangements through the instrumentality of contractors and others, which lead to very undue inflation of the capital.

119. It has pursued its own course as far as it could, under the circumstances?—It has done the best it could under the restrictions which have been placed upon it.

120. I have here a list of eight Bills which have been introduced into Parliament, containing a clause which, in each case, practically evades the Standing Order 167. I presume that that clause was put in in consequence of the decision of the Courts a short time ago?—Most of those Bills, I think you will find, are promoted by myself as agent, I think with only one or two exceptions. I have already explained that, the matter having come so prominently before me in connection with the Hull and Barnsley Railway Bill, I advised any of my clients to point the matter by inserting those clauses in their Bills tentatively.

121. The decision of the Court was, in fact, the cause of your attention being called so much to the matter that you found it desirable to insert this clause?—Yes, it originated in that way.

122. You say that the rate of interest upon unproductive capital should be placed at 4 or 5 per cent., with a maximum of 5 per cent.?—Yes.

123. You object to the 3 per cent. suggested by Sir Edward Watkin; I presume your reason for that is that, if so low a figure as 3 per cent. were named, it would lead to some kind of evasion in discount or otherwise?—I do not believe that 3 per cent. would get the capital.

124. It would be necessary to evade the figure in some way, you think?—In some way, no doubt.

125. A railway undertaking has this peculiarity, as I understand: that it must of necessity, in the case of building a new railway, be two, three, or perhaps four or five years before anything at all is earned?—Yes.

126. And that is really the basis of the reason why interest should be paid during that period?—I think so; because, otherwise, persons will not lock up their money unproductively for so long a period.

127. You are distinctly of opinion that, if a course was pursued which would throw considerable power into the hands of the great companies, many smaller undertakings that would prove useful to the country would not be originated?—Would either not be originated, or, if originated, would be very much crippled and driven into embarrassment.

128. In the event of stock, and consequently certificates being issued for stock, for unproductive capital carrying interest, as you propose, would you suggest that the certificates so issued to the public should be specially marked?—I think it would be a very wise precaution. My original suggestion upon the matter was that the payment of interest out of capital should not be legal unless every shareholder had notice of what was intended to be done; and it might be done in that way. That is an *ex post facto* mode of giving the person notice, because I think, when a man gets a certificate of his share, he very often puts it into his strong-box without reading it; but it is the mode of precaution adopted where special certificates are issued under parliamentary sanction, and Lord Redesdale often requires that the special certificate shall be indorsed.

129. Is it not desirable, in some measure, to protect subsequent purchasers, as well as original shareholders?—No doubt any purchaser would take notice. Whether it would be necessary to protect any man buying in the open market I do not know. It would do no harm, of course.

130. *Mr. Shaw.*] What indorsement would you put on the certificate?—Something like this: "These shares bear interest at 5 per cent. during the construction of the works," limited to so many years.

131. "On these shares interest at 5 per cent. will be paid out of capital:" that should be put on it in order to be correct, should it; and would not that really hinder your object of getting capital more than anything else, because no one in his senses would think of buying such a stock?—Do you think not?

132. If you put the plain truth on it you defeat your own object?—That is a matter which I would rather not say anything about, but I have my own opinion about it, which does not agree with yours, I respectfully say. But I am not a financier, and you will have those before you who are financiers.

133. Would you not like to see the exact truth on the document?—I think, in the case of the Hull and Barnsley Railway, the Master of the Rolls said nothing could be more aboveboard than the way in which everything was done, and the notice given was perfect to the public; and yet that stock was subscribed three times over by the public.

134. *Mr. Brand.*] You think there should be some relief given: do you not think it would be a more legitimate mode of relief to give the promoters power to issue the original capital at a discount?—I do not like the notion of issuing capital at a discount. My own opinion is, that it is an objectionable mode of doing things.

135. Would it not have this advantage: it would be apparent on the face of the prospectus that this capital was issued at a discount because of the loss of interest during construction?—It might be so; but the very fact of putting out on the market shares at a discount tends to weaken the credit of the undertaking, I think. But again I would respectfully suggest that these questions bearing on finance should be addressed to those who know more about it than I do.

136. I address them to you because they bear so very distinctly upon the question of retaining the Standing Order or altering it. My question was, "Do you believe that it would be as efficacious a way of meeting the difficulty, and a more legitimate way, to give the promoters this power of issuing capital at a discount?"—My opinion is that it would not be so efficacious a way. I was only anxious for others to answer the question, because my opinion is founded necessarily on the opinions of others, who know more about financial matters than I do; and, though I can state what my opinion is, I can scarcely give all the reasons which ought to be given for such an opinion.

137. Still, you admit that such a proceeding would be an absolute protection, both to the subscriber of the original capital and to any subsequent purchaser in the open market of the capital during construction?—Yes, I believe it would.

138. *Mr. Shaw.*] You stated, did you not, that some tramways had evaded this Standing Order, or could evade it, by registering under the Companies Act?—I was pointing that out as an anomaly.

139. But they have done so practically, as I understand you?—There have been a great number of tramway companies started as limited companies.

140. And they have paid interest out of capital during construction: is that so?—That I would rather make inquiries about. I do not know how far that has been carried out.

141. Do you know of any other kind of company having done so?—No, I cannot call to mind any.

142. Water companies or gas companies?—No, I think not. I think they are, to a certain extent, controlled by the operation of "The Companies Clauses Act, 1845," which prohibits the payment of any dividend by which the capital stock should be reduced. That applies to capital, but not to borrowed money.

143. You are driven at present to get your money by contractors?—Yes.

143A. Do you not think you are just as well off as you would be if this change in the Standing Order were made?—No, I do not think so indeed. I think a great number of companies have got into very serious financial difficulties; the contractors fail, and all sorts of things happen.

144. The tendency now is this: that the contractors must deal for a large sum with intelligent financial operators; but if you get this change in the Standing Orders made you will be able to deal with the ignorant public for small sums, and they will come then under the temptation of this interest, and probably invest their money and lose it?—I think that is put much higher than it should be put. I do not believe very largely in that class of investors, to begin with. In every operation in life I think there is always a certain percentage of persons who will act indiscreetly. I do not see that they require more protection in such cases as these than in much more important affairs in life where you leave them to their own discretion.

145. Calls on railway shares are made by instalments?—Yes, as a rule.

146. You could make your calls towards the end of the work, and leave the contractor to do the work: would that meet your difficulty?—I take it that you would have then to pay a much higher price for the work, because the contractor would have to work during that time without any funds found by you; he must make his own arrangements with bankers and others to finance himself; and then the contractor in such cases not only recoups himself, but takes a heavy bonus.

147. You would rather finance with the public than through contractors?—I think a railway should be made at its fair cost; and the fair cost of a railway is what the actual cash contract amounts to with the interest—the fair interest—whilst the work is being made.

148. But you would give notice to the investing public, and that in writing?—Certainly.

149. *The Chairman.*] You object to these *sub rosa* arrangements with contractors, as I understand?—Yes; in every case they mean a very large bonus, which comes out of the pockets of the shareholders, and eventually, in the shape of increased rates, out of the public.

150. They have in many instances crippled and hampered undertakings?—All over the country there are undertakings crippled. We have constantly before Parliament financial Bills, and companies have to go to the Court of Chancery for schemes of arrangement; and in nine cases out of ten those arise from the mode in which the capital has been originally raised by the instrumentality of contractors, some of whom have failed.

151. Is the Standing Order evaded in any other manner than by getting the business done by contractors?—I do not quite understand the process which is followed in a number of cases.

152. But your long experience enables you to answer the question, perhaps?—Luckily, I have no experience in these matters. I never engage in any financial matters whatever; and therefore I have no experience of that sort. I never take any part in them, either during or after the passing of the Railway Act; but I am puzzled with some of them, which are carried out in a way which I confess I do not follow. It is this: There is a deposit of railway stock or Consols made in the names of trustees, sometimes directors of the company and sometimes not directors of the company. Where that money comes from, or how it gets into the hands of the trustees, I do not know. It does not appear to be paid by the contractor. Here is one instance—the Banbury and Cheltenham Direct Railway. The prospectus of that railway contains this paragraph: "Interest at the rate of 6 per cent. per annum will be secured for three years, to the 1st July, 1877, being one year after the date appointed for the completion of the line (thus allowing ample time for the development of the traffic), by investment of £100,000 in Great Western Railway stock, in the names of the trustees above mentioned." I do not know what sort of an arrangement it is which leads to a deposit of

that sort. Others show that the contractor himself has undertaken to pay the interest during construction; that is much the commoner form. There was one matter I intended to mention, which perhaps you will allow me to refer to now, and that is this: that it often happens that interest is paid out of capital in this way: A company obtains an Act of Parliament, such, for instance, as the Ely and Newmarket Railway Act of 1875. An arrangement is made during the progress of that Bill with one of the larger companies, by which the large company undertake to work the line after construction, upon certain terms, those terms being frequently a percentage upon the actual outlay, as it is called, upon the construction of the line. Then, that term, "actual outlay," is defined as meaning not only the moneys actually paid to the contractor, but interest upon those moneys up to the time of the line coming into the hands of the working company. In that way undoubtedly interest is virtually paid out of capital, and the Standing Order is evaded also: that is not at all an uncommon form.

153. *Mr. Shaw.*] Interest is added to the capital, and produces interest afterwards?—Yes.

154. *The Chairman.*] In the prospectus of the Hull and Barnsley Railway Company I find this: "Interest at the rate of 5 per cent. per annum will be paid half-yearly on the 1st January and 1st July until the 31st December, 1884, upon all amounts paid up:" would you have any objection to put in the words "out of capital"?—In that case it would have been scarcely correct to say "paid out of capital." It was not out of capital direct; it was a payment by the contractor, as appears by the prospectus itself.

155. I am putting the question hypothetically. Supposing the Standing Order were altered so as to enable you to do that, would you object?—You would not require such a means of evasion then.

156. I mean, as an intimation to the public, would you object to it?—You could state it directly to the public.

157. *Colonel Walrend.*] Do you not think it would have the effect of deterring the public from subscribing?—I am not a competent authority upon that point, but from what I hear I should say not. My opinion upon that point would be valueless, and I have no experience in the money-market at all; but you will have before you gentlemen of great experience in that respect. The honourable member for Stafford asked me just now whether I knew of any other case than that of a railway in which interest had been allowed to be paid during construction. This Act has been put into my hands this moment. It is the Lincoln Waterworks Act of 1846, in which interest is authorized in the same way.

158. *Mr. Shaw.*] Is that a corporation?—It is a company.

159. An independent company?—Yes.

160. It had no other funds to pay interest out of?—No; it was a new company.

161. *Mr. Salt.*] That again was a case in which the construction would take a considerable time?—No doubt.

162. Perhaps one, two, or three years might elapse before the capital could arrive at an earning point?—Well, I should judge not a very long period, from the amount of capital.

163. *Mr. Shaw.*] They had an ascertained business to begin with when they did begin absolutely?—It was an incorporation of a new company.

164. They had an area of business for supplying water; it was not a mere speculation?—That is so; and waterworks are known as being a much more safe and secure investment than railways.

Mr. CHARLES WARING examined.

165. *The Chairman.*] You have been present in the room to-day?—I was not present during the whole of the time Sir Edward Watkin was giving his evidence, but I heard a part of it, and I am acquainted with the substance of it.

166. You heard a part of Sir Edward Watkin's evidence and all Mr. Rees's evidence?—Yes.

167. What is the view that you take of this matter?—My opinion is very strongly in favour of the alteration of this Standing Order, to the effect that 5 per cent. should be permitted to be paid legitimately and directly out of the capital of the company by the companies themselves.

168. A maximum of 5 per cent., do you mean?—My opinion—I am venturing to give my opinion—is this: that 5 per cent. for the period of construction of a railway is quite necessary in order to induce the public to subscribe to that undertaking; and I found that opinion upon this circumstance: not only that I have never known of less than 5 per cent. being offered to the public during construction, by means of the expedients which are resorted to, and which have been described to the Committee already, but I have very frequently known much more than 5 per cent. offered, and very frequently 6 per cent. In the majority of cases in which I have examined prospectuses that have been issued within the last twelve years, more than 5 per cent., generally 6 per cent., has been offered to induce subscribers to invest their money, and therefore I do not think that less than 5 per cent. would be sufficient. And, moreover, these English enterprises have always to compete with foreign enterprises. All foreigners require and are constantly offering the English public inducements to subscribe to railways abroad and other undertakings; and, with regard to foreign Governments, or foreign companies, or an English company possessed of a concession for making a foreign railway, in no case have I known in my experience that capital has been attempted to be raised by them without, at least, 5 per cent. interest during the construction being allowed, and generally foreign Governments and foreign enterprises offer much more than 5 per cent. Indeed, I think it would be important that the Committee should know what means have been resorted to by foreign Governments and foreign railway companies for obtaining capital from this country. I can give an instance of the Russian Government. In 1866 the Russian Government found it quite impossible to get capital in this country for the construction of their railways, even although they permitted the concessionaries to offer indirectly interest upon capital during the construction; and they resorted to those means of inducing the public to subscribe. They agreed to pay interest directly out of the Treasury, entitling the subscriber to the capital of the undertaking

to come directly to the Treasury of the Government for his interest. The same course was adopted by the Roumanian Government when they commenced making railways in that country.

169. *Mr. Salt.*] For how many years was the interest guaranteed by the Governments respectively?—The interest was guaranteed not only during the time of construction, but for a very considerable period, fifty and sixty years afterwards; the capital itself was raised upon the guarantee of the Government. I only speak of the universal practice of foreign Governments and foreign companies to pay interest during the construction of their railways, and that, of course, forms a competition to those who are endeavouring to obtain subscriptions for home enterprises.

170. *The Chairman.*] Do you believe, as a contractor of long experience—the experience of a quarter of a century—that, if this Standing Order were altered in the sense advocated by Mr. Rees, a great many important railway enterprises would be started and carried out which otherwise would either not be brought forward at all, or be hampered and crippled from the beginning?—I am of that opinion. I am of opinion that, at present, the large existing railway companies have virtually a monopoly, and have got immense power for obstructing the construction of railways which are now wanted. And I think I am in a very good position to judge of that, because, as the Committee know well enough, very frequently new railways, for which Acts of Parliament are sought, are called contractors' railways. In fact, contractors do not invent railways at all; they do not themselves promote railways; but, owing to these obstructions and difficulties in the way of getting capital for new railways, the local promoters of railways are compelled to come to contractors who are able to what is called finance them: that is to say, the local people can very rarely find money enough to promote a Bill in Parliament, and therefore they ask a contractor to find the parliamentary deposit, and very often to take a great portion of the expenses of obtaining the Act of Parliament, and, of course, the contractor is largely paid for such services. There is an immense deal of risk about it, and, of course, there being a very large risk, the company are charged with a great profit if the enterprise succeeds. Now, these local bodies could undoubtedly much better dispense with the expensive services of a contractor if they could go directly to the public and pay them interest during construction.

171. Would not the same object be attained, as has been suggested by Sir Edward Watkin, by issuing the shares at a discount?—No. I heard the answer that Mr. Rees made to the same question which you addressed to him, and that, of course, I indorse—namely, that there is no power at present to do that with reference to original capital; but, even if there were power, then I would venture to say that that is an expedient which it would prove quite a failure to adopt, because it would be utterly delusive. The object is to make a railway; and, supposing that railway will cost £100 a share, if you are going to issue the share which is the representative of that £100 at a discount, shall we say, of 20 per cent., and to issue it at £80, it is quite clear that you must add 20 per cent. to the capital before you can issue it at £80, because you require £100 to make your railway; therefore, whatever you choose to call it, the face value of the paper is exactly the same. You give me a £100 share, which is the representative of a railway work which has cost £100; if I pay £100 for it and you call it £80, you depreciate the face value of it.

172. *Mr. Brand.*] If you pay for four years £5 per cent., and pay it out of capital to the shareholders, you still would only receive £80?—That is perfectly true, but you would call it £100. In fact, if you have paid five years' interest upon £100 you have paid at the end of the five years really £120; and by this process if you take away the £20 from the £100 you, in point of fact, make the shareholder pay £120 for his share, and you only give him a share which represents £100; you deduct from him the interest which he himself has paid, or, in other words, the interest of which he has been deprived for five years; so that at the present moment if I buy a share and pay £100 for it, and in addition to that for four years pay £5 per cent upon it, I shall have paid £120 upon the share, which upon its face only bears the value of £100.

173. *Mr. Shaw.*] You are not called on to do that at all; there is no such suggestion at all as that?—But under the present arrangement that would be the result.

174. You get your £100 share and you pay back £20?—But I have paid my £100 during four years. If I put down £100 now, and do not begin to get any return whatever for that, I am making a sacrifice of the interest for four years; and, if I reckon that at 5 per cent., that amounts to £20; consequently at the end of the four years I shall have paid not only the par value of this share, but in addition 20 per cent., which is represented by the interest during the four years; and therefore my share ought to bear upon the face of it £120 if I get no interest during construction. If, on the contrary, I get interest during the construction, the face value of my share is what I have paid for it.

175. *Mr. Brand.*] Surely in each case the shareholder has paid exactly the same sum; he has paid £80 of his own money?—Why should you make the face value only £80, when, in reality, by capital and interest inclusive, he has paid £100? You are, in fact, depreciating; you are taking from the man who has paid really £100, £20 by stamping his share with that depreciated value.

176. Does it follow that the share is only worth £20? At the end of five years the railway would have been constructed, and the capital, which was at a discount before it was constructed, may be worth £100, or even more?—I think it a great injustice to make the face value of my share, I being a subscriber, of a less nominal amount than I have paid for it, because you stamp it with £80, when I have paid £100 for it.

177. *Mr. Shaw.*] It is still a £100 share?—I am paying myself the discount. Whether the paper bears upon the face of it the value of £100, or upon the face of it £80, if the work done is the same the two pieces of paper are of exactly the same value; the only thing is that upon the face of them you have made a nominal difference in their value, but the share only represents the value of the work done. In fact, if it has cost £10, my share just represents £10, and no more, whatever you print upon the face of it, in the case of an original share. Of course there is great significance in issuing other shares at a discount: if already a large sum of money has been spent upon the

object which I am about to create by somebody other than myself, and then you ask me to contribute a further sum, it is of great importance to me if you give it me at a discount. What I mean is that in the case of original capital you cannot really make a man a present of the discount out of his own money; the work to be created costs so much money, and it is going to be represented by a piece of paper, the shares which you give him, and it does not matter what you print upon those shares; the value of the share is only exactly that which represents the amount of the work created, and, as he had paid the whole amount of the money to create the work, of course if you issue the paper at a discount you are issuing it at a discount at the expense of the man himself, and therefore it is utterly delusive.

178. *Mr. Salt.*] Do you think that the effect of the recent decision of the law-courts will be to prevent money being raised and interest being paid upon unproductive capital in spite of the Standing Order 167?—No; I do not think it will prevent it; it will still be raised by the expedients which have been explained.

179. As soon as the financing people have recovered the first shock of the decision, they will, you think, devise some scheme of raising the money as hitherto, even though the Standing Order were to stand as it is?—That is my opinion. Moreover, I know of one instance especially which has come under my notice of very great importance where interest was promised, by an expedient similar to some of those that have been explained, to be paid during construction, and the company became very much embarrassed, and ceased to pay the interest before the railway was finished; but the public subscriber had no legal means of recovering it; and notwithstanding that—this was a long time ago—the public have subscribed to these undertakings in the usual way by the deposit of Consols. Some other expedient is always adopted if one fails.

180. Do you think that, if 3 per cent. were allowed upon unproductive capital under the Standing Order, that rate of interest would be sufficient to induce the public to invest?—No, I think not; I think it would be ineffectual; and my opinion is that, if 3 per cent. were allowed, the expedients to make up the difference between 3 and 5 would still be adopted.

181. In other words, that the Standing Order would still be evaded?—It would be evaded to the extent of more than 2 or 3 per cent.

182. I understand, from the remarks you made just now about various systems of financing, which is a matter a little complicated, that the idea in your mind is this: that it is desirable to bring the nominal and the real capital of a company as nearly as possible to the same point?—Precisely.

183. *The Chairman.*] In the event of the Order being amended, would you advocate stating in the advertisements of these companies that the money was to be paid out of capital during construction, using those words?—No; I do not see the necessity for using the words. I think, if the company were authorized to do it, or not prohibited from doing it by Act of Parliament, it would naturally follow. I see no necessity for absolutely using the words, because, if they could pay, they might pay out of any source of revenue which the company might possess. For example, in the case of a metropolitan railway, they could pay interest during construction out of the sale of their surplus lands or any other revenue they might possess.

184. I am speaking of new undertakings, and I am speaking in the interest of the public, many of whom know little about these things, and many of whom would be startled by the use of the words suggested: do you think it would deter capital if they were used?—I think it would deter capital; and I think it would answer the purpose very much better if those words were left out.

FRIDAY, 28TH APRIL, 1882.

Present: Mr. Baxter (Chairman), Mr. H. R. Brand, Mr. Salt, Mr. Shaw, Colonel Walrond.

Mr. SAMUEL LAING, a member of the House, examined.

185. *The Chairman.*] As you have expressed a wish to be examined before this Committee, probably you will be good enough to make a short statement with regard to your views with respect to this Standing Order 167?—I think an alteration ought to be made in the existing Standing Order. The payment of interest out of capital is of course contrary to all principles of sound finance. It is a thing which in the Budget of any State would at once be condemned as bad finance; and with regard to public companies the principle is equally clearly laid down, that Parliament does not recognize payment of interest out of capital as being sound and legitimate. The object in view, of course, is to facilitate raising of capital for new schemes, mainly speculative schemes, which have not sufficient attractions on their own ultimate merits as paying concerns to induce the public to subscribe.

186. But the Standing Orders of Parliament only forbid it in the case of railway companies and tramway companies, as I understand?—Parliament only forbids it in their case by a Standing Order; but under the general Companies Clauses Consolidation Act you will find that the principle is equally laid down in the case of other companies. There is a table—Table A—in the Companies Act of 1862, I think it is, which lays down with equal clearness that interest is not to be paid except from the earnings of the company. That is subject, I should observe, to being varied by articles of association specially framed by the company; but, in point of fact, I believe that Courts of law hold that that payment of interest is not legitimate. There have been decisions quite recently in which it has been held that the payment of interest, otherwise than from the earnings, is not a legitimate payment.

187. In the case of all companies, you mean?—In the case of all companies.

188. Not only railways?—Not only railways; but I should observe that of course railways stand in a very distinct category from ordinary private undertakings. A railway is, to a considerable extent, a public undertaking. It is only sanctioned by Act of Parliament, to begin with; it is subject to all sorts of parliamentary restrictions in the matter of charging toll, and in the mode in

which it may raise its capital; and in various ways a railway company is always treated as a sort of *quasi-public* undertaking. Therefore I should hold that the general principles apply even with more force in the case of railways than they would in the case of other undertakings. But I wish myself to place the case mainly on this ground: Whether it is not in the long-run more for the public interest to leave, and whether you are not likely to get more miles of new railway made by leaving, the existing railway companies in a moderately prosperous condition, than you would be by giving this adventitious assistance to speculators to attack them by new schemes. Now, I should be glad to give a practical illustration of how I think that works. Take the case of the railway of which I am the chairman—the Brighton Railway. When I succeeded to the chairmanship, some fifteen years ago, the company was in a state of great distress—in fact, almost absolute bankruptcy; and it had been brought into that position very much by doing that which I am now arguing against—namely, payment of interest out of capital on new lines in course of construction. In that way a fictitious dividend of 6 per cent. had been maintained for several years, when, practically, the line had not been earning more than 2 or 3 per cent.

189. But it was illegal, was it not, to make such payments of capital?—I am not quite sure how that may have been at the time to which I refer. I am not sure whether we had that Standing Order at the time; it is fifteen years ago.

190. The date of the Standing Order is 1847; therefore it was done subsequently to the Standing Order being framed?—Anyhow that had been done. The consequence was that a great number of poor people had been induced to invest money on the faith of its being a steady 6 per cent. line; and, when the collapse came, for a whole year no dividend at all was paid, and for two or three years we had great difficulty in paying the preference obligations, and there was only 10s. or 15s. dividend, and for a considerable series of years the shares were at a heavy discount. The consequence was that the company was utterly unable to raise capital for any new works or extensions or improvements. Gradually we got over those difficulties; the traffic expanded, and we got up to paying 5 per cent. dividends or upwards; the shares got to a premium, and consequently we were able to issue capital on advantageous terms. Under the pressure of public opinion, and from the wish to preserve our position and other causes, we then began to spend money very freely indeed; and during the last five years I find we have spent very nearly four millions of money, partly in making new lines through districts not accommodated, partly in improving the stations, doubling the lines, improving the rolling-stock, and in introducing all the latest appliances for safety, such as the block system, interlocking points and signals, and the Westinghouse brake. Practically, I say, we have spent four millions, and we are going on spending more, and should spend more, no doubt, in the years to come. On the other hand, suppose that in that same period of speculation, five years ago, by the aid of a clause allowing payment of interest out of capital, some speculative contractors and professional men had succeeded in floating a competing line to Brighton, undoubtedly it would have kept us back in a position where we should have been quite unable to raise this capital to make this expenditure and to make these new lines; and very likely the end of it would have been that the new line would not have been able to raise all its capital, but would have got into difficulties, and perhaps that line would not have been made, or, if made, perhaps we should have had to amalgamate with it, take on that load of useless capital, and so far deprive ourselves of the means of accommodating the public. My experience in railway matters, which is a very long one now, leads me to the conclusion that when a railway once get into a tolerably prosperous condition, and its shares are at a premium, by hook or by crook the public always get the lion's share of the benefit. There is constant pressure on us to make lines to accommodate districts, to reduce fares, and increase accommodation, and one thing and another, and the result is that we do a very great deal for their benefit. On the other hand, when these speculative lines are got up, I say that certainly in nine cases out of ten they are got up not to make, but to sell: they are got up on the speculation that the persons who get them up will be able to frighten the existing company into some sort of capitulation to take over the new line, and that then the contractors and professional men who run the risk of promoting such lines will get the benefit of it by obliging the existing company to take over these new companies loaded with very onerous contracts, while they themselves will make a large profit. That is a very fair speculation on the part of contractors. I have not a word to say against my friend Mr. Waring—who, I believe, gave evidence the other day—doing it; it is his business: but I submit that it is not a business that is conducive, on the whole, to the public advantage. I do not think that any special facilities, such as relaxing a Standing Order which has existed for so many years, and going in the teeth of what is recognized as a sound principle of finance, should be given for the special purpose of encouraging enterprises of that sort. I speak in the public interest, because, of course, the Committee look at these things in the public interest. I confess that I, for one, do not attach so much importance to what may be called the clergymen and widows aspect of the case; I think clergymen and widows must look out for themselves; but I look at it in the broad view of the public interest. I do not think it is for the public interest that enterprises of that sort, which, in nine cases out of ten, are merely meant to be a tax on existing railways, and to burden them with useless capital, should get special encouragement in the way of such a relaxation of the Standing Orders as is now advocated.

191. You look upon this Standing Order 167 as a protection to the public against such enterprises?—Yes; there is no doubt that it does operate to a considerable extent in this way: When new lines of this sort are brought out I think it will be found that those who subscribe to them are generally more the speculating part of the public than the investing part; investors seldom come in until a line is completed, or well advanced towards completion; and the great inducement, no doubt, to a speculator to subscribe for a share in a speculative enterprise of this sort is the hope of being able to sell it again and get out of it. The payment of interest during construction no doubt facilitates that; it extends the period during which a man who has subscribed for his shares originally on speculation may hope to sell them in the market and get out of them. In that way, I fully

admit that the repeal of this Standing Order would give a certain amount of encouragement to speculative schemes of this description; and I put it upon the broad issue as to whether that is, on the whole, for the public advantage or not, or so clearly for the public advantage that you should depart from the usual rules of finance and alter the Standing Order which has existed so long, for the sake of encouraging that sort of speculation.

192. We are told, on very high authority, that this Standing Order has been, and is being, systematically violated: do you agree with that opinion?—No; certainly not.

193. But you told us yourself that it had been violated by your own company, because the Standing Order was passed in 1847, and therefore it is since the passing of the Standing Order that the Brighton Company paid interest out of capital?—That being so long ago, I must make a little inquiry as to how that matter stands in the case of our own company; I am speaking now of the state of things at the present moment, and within my experience for the last ten or fifteen years, and I do not think the Standing Order has been systematically violated. There have been several actions; recently there has been one in the case of the Hull and Barnsley Company, where the practice in question was stopped by injunction. There are several cases I have heard of, and I know of one where actions are pending against the directors personally for having paid interest during construction; and I may say that the very anxiety which promoters show to get rid of this Standing Order is a pretty sufficient proof that, as it stands, it does operate prejudicially to them.

194. Then your opinion is that, even supposing it has been violated to a large extent, the recent decisions of the Courts, and the fear of getting into difficulties, will prevent such violations in future?—I am sure I should be exceedingly sorry to put myself, and I think any man of business would be exceedingly sorry to put himself, in the position of trying to evade that clause; he would run a very great risk in doing so.

195. We have had it in evidence that the present Orders in regard to deposit are quite a sufficient safeguard as a guarantee to the public against such schemes as you have described: that is not your opinion, I suppose?—No; I think a mere description of how the deposit systematically works would be a sufficient refutation of any such statement. It is perfectly notorious and well known that the way in which deposits for schemes of that description are made is this: The promoters borrow from a bank or assurance company in stock or Consols the amount required to make the deposit, and an undertaking is given generally by the solicitor to the Bill that the final stage, the Royal assent, will not be taken unless provision has been made to replace that loan by a permanent deposit; the Bill then goes on, and, if it passes up to that stage, then either they try a public subscription, and if it succeeds they make the deposit, and if it does not they withdraw the Bill; or they see whether a syndicate of parties cannot be got together who will advance the required deposit, and, if not, that deposit is withdrawn. I submit that that is almost an abuse of the intention Parliament had in requiring the deposit, which no doubt was that if Parliament sanctioned the scheme there should be what is called a caution money in the case of foreign loans and enterprises, a substantial deposit to insure that the enterprise would be carried out. As it works now, there is nothing of the sort. Perhaps a Committee of five gentlemen of the House of Commons, and another Committee of the House of Lords, are kept for a week or ten days at very irksome and disagreeable labour; opponents to the scheme are put to heavy expense; possibly another line which could have been carried out is rejected in favour of this one; owners of property who have been served with notices in November and December that you mean to take their land, are kept in suspense till next July; and the end of it is that, because the money cannot be got together to replace the temporary deposit by a permanent one, the thing is withdrawn after having passed Committees of both Houses, and they get their deposit, and make their bow and go away. I believe that to be contrary to the intention of Parliament. I think the deposit ought to be such as to fix the parties who make it with a liability of going on if they succeed in passing the Bill through Committees of the two Houses.

196. I want your opinion upon one other point: do you think that new companies should be permitted to issue their shares at a discount as well as existing companies?—I see no objection to their issuing their shares at a discount as well as existing companies, provided it be done quite openly, and subject to this condition also: that the nominal share capital is not by that means so increased that the debenture capital exceeds what is the constant parliamentary limit of one-third of the share capital. For instance, suppose a small company with a capital of £300,000, in the ordinary course of things, with £300,000 issued at par, they would have £100,000 debenture powers; whereas, if, instead of that, they were to make their share capital £400,000 and issue it at £300,000, issuing it at a discount, they must not have £133,000 debenture powers instead of the £100,000. Of course the common way in which these things are done in weak speculative schemes is to swell the share capital as much as you possibly can: then you get as much debenture power as you can; and you very often divide that inflated share capital into two portions, the preferred and the deferred. The deferred is mere paper which contractors and promoters take as something which may give them profit some of these days, and then they trust to getting the public to take the debentures and the preferred stock, and so find the money. I have not the least objection to their issuing shares at a discount, provided they satisfy some proper tribunal that they are not unduly inflating the nominal amount of share capital, and getting larger financial powers than they ought to get.

197. *Mr. Shaw.*] Is not that done very constantly now? A contractor takes shares; he nominally takes them at par price, but in reality at a great reduction as part of his payment?—Yes.

198. It is just the same thing?—No doubt.

199. And the debenture stock is inflated in that way?—Yes.

200. You are not in favour of any modification of the Standing Order. You would continue the rule as it stands?—I would continue this rule about payment of interest out of capital as it stands, and I would alter the deposit clause so as to make it a better security; and I would give these companies a power of issuing shares at a discount; but, in doing so, I would provide that they

should satisfy some tribunal, either the Board of Trade or the Committee before which the Bill came, that their capital was not unduly inflated.

201. Your view is that the law of the land is against this practice of which we are speaking?—Yes, I think so. That is the decision of the Master of the Rolls, as I understand it.

202. *Mr. Brand.*] You have stated what happened in the case of the Brighton Company fifteen years ago. The whole Board has been entirely rechanged and reconstituted since that time, has it not?—Yes. That led to a revolution in the company, in which the old Board were turned out and a new one came in.

203. And at that time there was a strong feeling, was there not, amongst the shareholders against the course taken, and some talk of proceedings being instituted?—Yes; in fact, it brought the Brighton Company to ruin; and there, no doubt, what I call the clergyman and widow aspect of the case did apply a great deal; because a great many people, who were not speculators or fools, did invest in the Brighton Company under the idea that it was paying 6 per cent., and they suffered very heavily when the collapse came. That is one argument against the proposal. If you gave the privilege to new companies I do not see how you could refuse to give it to existing companies.

Mr. THOMAS HENRY FARRER examined.

204. *The Chairman.*] The Committee would be glad if you would give them your view of this Standing Order 167. Do you think it should be permitted to stand as it is now, or that it should be altered, or that it should be repealed?—I think that an Order which is so constantly evaded as this Order is now, ought not to stand as it is.

205. Then you agree with those who tell us that it has been systematically evaded in the past?—They have brought instances to us to show that it has been; and it appears to me that there can be no possible difficulty in evading it.

206. Then you do not concur with those who think that the recent decisions of the Courts of law will put an end to these evasions?—I do not, and for this reason: In that Hull and Barnsley case the promoters of the undertaking acted very straightforwardly, and explained exactly what they intended to do, and the Master of the Rolls had the whole case before him; but if, instead of acting as they did in that case, they had made a contract with the contractor, under which he was to be paid a larger capital sum for the whole undertaking, he undertaking at the same time to take shares and at whatever discount you please, the object of the Order would have been evaded, and no one would have known anything about it.

207. Then, in your view, do you go as far as to say that you do not think it is possible for Parliament by any such Standing Order as that, or any substitute for it, to prevent the practice of paying interest out of capital?—I do not say that they may not prevent the paying of interest out of capital, but they will not prevent the doing of that which is worse than paying interest out of capital—namely, making arrangements with the contractor by which he shall take the shares, and take them at a very great loss to the undertaking.

208. But that comes to the same thing, does it not?—It comes to the same thing.

209. And you think that that evil is worse than the other?—I do.

210. And that it will continue to prevail, notwithstanding the recent decisions of the Courts of law?—I think probably, if the Hull and Barnsley people had to make that arrangement over again, they would make an arrangement with the contractor which the Courts of law would not be able to get at.

211. Are you in favour of the total repeal of this Standing Order?—That is a difficult question, because it is so much entwined with the whole practice of Parliament, and with the Companies Clauses Act, as well as with the practice of Parliament. The Companies Clauses Act, which was passed in 1845, I think obviously contemplates that dividends shall not be paid out of capital. It has a clause which practically authorizes dividends or interest to be paid on capital which is not called, and therefore impliedly prevents its being paid on capital which is called; and I think it would be a question, if you had no Standing Order of this kind and did not alter the Companies Act, whether the Courts of law would not, upon the Companies Act as it stands, and the ordinary principles of law, prevent the payment of interest out of capital—at any rate, unless specially sanctioned by the special Act.

212. Then you rather take Mr. Laing's view, that it is against the common law?—I am not lawyer enough to give an opinion upon that.

213. But it may be so?—It may be so. But I should like to point out that at the time when this Order was adopted and the Companies Clauses Act was passed, very different views obtained with regard to the general policy of dealing with joint-stock companies' undertakings from those that have prevailed since. When the Joint-Stock Companies Acts of 1856 and 1857 and the subsequent Act, the Companies Act of 1862, were passed, it was then thought that, in undertakings which did not require parliamentary sanction, the companies should be left to frame their own financial arrangements as they pleased. There is in the Schedule to the Act of 1862 a table of regulations which the companies may adopt if they please, and in that table is a regulation that dividends are not to be paid out of capital; but it is entirely at the option of each company to accept that table of regulations or not, and, consequently, every joint-stock company which does not come for parliamentary powers may do what it pleases in that respect. That, I think, shows that a very considerable change had come over public opinion between the time when these parliamentary regulations were framed and the time when the Joint-Stock Companies Act was passed.

214. Then your evidence would rather go, would it not, to a revision of the whole system, dealing not only with this Standing Order, but with the Companies Act and the general law?—The principle on which my evidence is founded would do so; but that, of course, is a much larger

question than the comparatively small one of this Standing Order, which may probably be dealt with by itself, in the manner suggested by the Chairman of the Committees.

215. Can you give the Committee a general idea of the law in practice in other European countries with regard to this matter?—No, I cannot do that; I have not looked sufficiently into that subject.

216. *Mr. Salt.*] Do you think that Standing Order 167 is in any way necessary for the protection of the investor?—I wish now to be understood as speaking my own opinion, and not the opinion of the department. The opinion of the department, I think, may be taken to be in favour of such an alteration of the Standing Order as has been suggested by the Chairman of Committees; but my own opinion is that an investor, on the whole, will be better off if you leave him to take care of himself.

217. Now, as a matter of general policy, in the dealings of Parliament with the commercial world, is it, or is it not, well that the course of trade and commerce should be left as free as possible to take its own line?—As free as possible.

218. Do you think that the recent decision of the Judges in this matter will have much effect in enforcing Standing Order 167?—I think not the least in the world. I think it will only set parties who want capital upon other means of evading it. They will not, that is to say, act as straightforwardly as they did in the Hull and Barnsley case.

219. *The Chairman.*] The Master of the Rolls, in giving his decision on the question of evasion, expressed himself as opposed to the present Standing Order, did he not?—He was distinctly opposed to the principle of it, and was in favour of freedom.

220. And do you think that that would have a certain effect upon the public?—Yes; the public know that the Master of the Rolls is not only a very good lawyer, but an exceedingly sensible man, who understands these questions thoroughly.

221. *Mr. Salt.*] I take it that your opinion is this: that, as soon as those people who deal in new companies have recovered, so to speak, the shock of the decision of the Master of the Rolls, some convenient means would still be found by them for evading the Standing Order?—Quite so; probably putting the parties to considerably more expense, and throwing additional difficulties in the way of new undertakings. And I should like to say, with regard to that, that it is rather curious to see how, in the original debate upon these Standing Orders, as I believe is the case at present, it is the existing companies who are likely to be interfered with by new undertakings who are in favour of the Standing Order. Those who are promoting these new undertakings are for the repeal of it. It is a curious thing that in the debates upon the Standing Order we find Mr. Hudson strongly in favour of the Standing Order, and Mr. Beckett Denison strongly against it.

222. That means, I conclude, that the existence of the Standing Order, either as it stands or in some form, is rather in favour of the position of existing companies as against the invasion of new companies?—Certainly; it is an impediment to the raising of capital for new companies.

223. Now, as a matter of general policy, is it well to favour the formation of new companies, or to strengthen, so to speak, the defensive position of the old companies?—I think the utmost possible freedom for new companies is the best course. Parliament, it seems to me, has nothing to do with preventing new companies out of regard for old ones.

224. You say that without reserve?—That has always been my view.

225. I want to understand quite distinctly this: Your own opinion is in favour of repealing the Standing Order altogether?—My feeling would be that it would be well to do so if you could alter the whole system with it. As things stand, it is a question whether the Standing Order, as proposed to be altered by the Chairman of Ways and Means, would not fit in with the whole of the rest of the machinery better, and would not do all that is practically wanted at the present moment. You asked me just now about the investor. I think that what should be done for the investor is this: to give him complete notice of what is intended. When that is done, I think you may leave him to take care of himself; and the alteration that is proposed would give him that notice.

226. Do you mean that a mere alteration of the Standing Order would be sufficient to give notice to the ordinary investor?—It is proposed, I think, that in the first place the parliamentary notices shall contain a statement of the intention of the company to pay interest out of capital; and it is intended that the Bill shall contain a distinct enactment to that effect.

227. In other words, there are two or three points of detail which would require some attention in order to give proper notice to persons embarking capital in new undertakings?—Yes.

228. To go to rather a small point of detail, but one which is of some importance, would you suggest, that the scrip or certificates of new companies should be specially marked as paying interest out of capital?—That had not occurred to me; I have not thought about it enough to give an opinion on the question.

229. You think that some points of detail of that sort would be worth consideration?—I think, at any rate, that notice of what is intended should be given to persons who are likely to invest.

230. It would be necessary to carry that notice to some considerable point of detail when you have to deal with small investors, would it not?—Yes; you might require the notice to be inserted in all prospectuses by which capital was sought for the undertaking.

231. You have an analogous idea in the law which compels limited companies to use the word "Limited" very prominently?—Quite so.

232. I take it that, from your point of view, you would inform the Committee that there is no doubt whatever that, during the last thirty years or so, during which the Standing Order 167 has been in operation, a very large amount indeed of capital has been raised contrary to the provisions of the Order?—I have no doubt about it.

233. *Colonel Walrond.*] You have seen the proposal of the Chairman of Ways and Means?—Yes.

234. He proposes that the rate of interest paid should not exceed 5 per cent.?—Yes.

235. Would not that be contrary to the law of the Companies Act of 1862 as it stands now, that no interest may be paid out of capital?—No; I think not at all. The Joint-Stock Companies Act does not say that no interest shall be paid out of capital; it says that people shall arrange their financial matters as they please; but there is, as I said, a Table of Regulations in the Act, which companies may adopt if they please, or reject if they please. In that Table of Regulations is one that dividends and interest shall not be paid out of capital. That, no doubt, is a very wholesome general rule, and it is one that probably any good financier would generally adopt; but there may be cases in which it is desirable not to adopt that rule, and in such cases the companies are at perfect liberty to do as they please—to adopt it or not.

236. *The Chairman.*] Then, in your opinion, there is nothing in the proposals, either of the Chairman of Ways and Means or of Lord Redesdale, contrary to the Companies Act or any other existing Act of Parliament?—On the contrary, so far as they go, they go in the direction which has been carried much further by the Joint-Stock Companies Act.

237. And they are more consistent with the Joint-Stock Companies Act than our Standing Order 167?—Yes.

238. *Mr. Brand.*] Do you see any objection to giving relief by granting permission to new undertakings to issue their capital at a discount to the public?—No; I would give them the utmost possible liberty.

239. And do you think that that would be as efficacious a mode of relieving them, and more legitimate than by giving them leave to pay interest out of capital?—I would give them both. I am not sufficiently experienced in the finance of companies to say which of the two modes would be the better. I do not know whether the Committee have had before them a letter that struck me a good deal, written to the Board of Trade by Messrs. Capel, the great stockbrokers, who state that they have the very greatest difficulty in floating undertakings, in getting people to invest, where the investment is not to carry interest at once, but only to carry it from some future day. What people like is to put in their £1,000 and to get their £50 a year from it at once; and if they are not to have their £50 a year for four years they will not invest. That, coming from people of the experience of Messrs. Capel, is striking.

240. And yet that interest is, of course, only their own capital back again?—It is only their own capital back again.

241. But, speaking of your suggestion to protect the public, they would be protected more efficiently by the plan that I have mentioned of issuing capital at a discount; because the intending subscriber would know that there was the loss of interest during construction, and that it was for that reason that the company had issued their capital at a discount?—That may be so. I think the investor would be sufficiently protected in the other case also.

242. Your opinion is that they ought to be relieved in one way or the other?—Or both.

243. *Mr. Shaw.*] Your notion, I understand, is that the investing public have a great taste to be deceived or to deceive themselves?—That may be so, but I scarcely meant it.

244. That is the effect of your evidence, is it not?—No, not quite that.

245. I think it is the effect of all our observation?—It may be so.

246. *The Chairman.*] You would allow them to deceive themselves if they did it with their eyes open?—I think they are more likely in the end to be undeceived if they are allowed to act for themselves, and to find out what is the best for them, than if you try to guard them by safeguards of this sort, which can always be evaded. Let me put the case of a man who takes shares in a railway company of this sort, where the law is evaded by such arrangements as I have spoken of with a contractor. He has to pay a great deal more for his share in the undertaking, because the contractor does not do all this without a large profit to himself, and so he is so much the worse off; the undertaking produces so much less.

247. *Mr. Shaw.*] Do you not think those modifications suggested by the Chairman of Ways and Means are directly against the common law of the land?—No; I do not.

248. They change the law, evidently?—They change the Standing Order of the Houses of Parliament; they do not change the existing law.

249. The Standing Order of the House of Commons at present is in perfect accordance with the law as interpreted by the Master of the Rolls?—But the law as interpreted by the Master of the Rolls is founded upon the clause which was passed in pursuance of the Standing Order of the House of Commons. Repeal the Standing Order of the House of Commons, and there would be no clause upon which the Master of the Rolls could adjudicate in the same way in future.

250. You do not think that it is the ordinary common law that is founded on the rules of honesty?—The ordinary common law would very likely say that where there was no provision to the contrary in the articles of partnership, or the deed of settlement, there dividends are not to be paid out of capital; but there is nothing in the common law to prevent people from making an arrangement with one another that dividends shall be paid out of capital, and that is precisely the state in which the alteration of the Standing Order would leave the law of Parliament.

251. You refer to the Companies Act, I suppose; you refer to Table A?—Yes; Table A, Rule 72.

252. Do you think that the exclusion of that rule would justify any board of directors in paying dividend out of capital?—The exclusion of that rule, coupled with an article in their deed of settlement, stating that dividends were to be paid out of capital, would certainly do so; and such an article they have the fullest power to insert if they please.

253. But if that was stated in plain English, and the investor knew it, do you think it would facilitate their getting capital; or that, in the case of any company putting that on the front, except they had unmistakable means afterwards in property or rates to pay this—if, in fact, it was a mere speculative company—it would not at once stop their getting it?—Then it would prevent the public from being deceived, and answer all the purposes that this Standing Order is supposed to answer.

254. It would prevent the company from existing, very likely?—Then the directors would not put it in.

255. Then you are in favour of this modification of the Standing Order, I suppose?—Yes.

256. *Mr. Brand.*] In the case of the issue of prospectuses your opinion is that the promoters should put in plain English that the interest is to be paid for a certain number of years out of the capital of the company?—I suggested a prospectus, but I would say that, in some form or another, notice should be given. May I be allowed to mention one point bearing upon a question which I heard the Chairman ask Mr. Laing, namely, as to the deposit.

257. *The Chairman.*] Certainly: will you please mention it?—I should like to mention this fact, though perhaps it does not bear very directly on this point: that the deposit is supposed to be forfeited if the railway or tramway—I think it only relates to railways or tramways—is not made, or if the capital is not subscribed. It was found that this deposit, or the bond, which was formerly given in lieu of the deposit, was practically never enforced; and a few years ago an endeavour was made by arrangement with the Chairman of Ways and Means, and by alteration of the Standing Orders, to make that into a reality, and to secure that the deposit should be forfeited if the undertaking was not completed. We find now, when the thing comes to work, that it is extremely difficult to enforce that rule. The parties come with a Bill to Parliament for abandoning the undertaking, and in that Bill they insert a clause entitling them to have the money back again. That clause would not be passed without the consent of the Government. The parties then come to the Government, and they allege, with more or less truth, that all sorts of difficulties have arisen which they never contemplated; and it is found to be practically impossible to refuse them leave to get their deposit back through the medium of their Bill. I wished to bring that fact before the Committee to show how extremely difficult it is to enforce that law with respect to deposit.

258. You have found it, not only difficult, but impossible, as I understand you?—I should be sorry to say that it is impossible, because we are trying to enforce it, and it has been enforced in some cases; but I am not sanguine of our being able to enforce it generally.

259. Has it in any single instance been enforced?—I am told it has been enforced in two cases.

Mr. JAMES STAATS FORBES examined.

260. *The Chairman.*] You, as we all know, are the Chairman of the London, Chatham, and Dover and the Metropolitan District Railways?—Yes.

261. You have had many years' experience in railway business both in England and on the Continent, and especially in the raising of capital to carry out new railways?—Yes.

262. And you are fully alive to the operation of the Standing Order 167, which we are now considering?—Yes. The operation of the Standing Order is to add very much to the difficulty of making subsidiary railways, not only as regards entirely new projects, but also as regards projects promoted and to be carried out by the poorer class of companies. I have had, unfortunately, an experience of that especial kind in connection with both the London, Chatham, and Dover Railway and the District Railway—experience, that is to say, of a poor company which had to fight its way against a rich company. The Standing Order is not only in many cases fatal to the construction of new railways legitimately promoted in districts by local people, but it is also fatal to a poor company struggling against a rich company.

263. Then, in your opinion, the Standing Order has been effective in a sense?—It has been effective in a sense, in limiting railway construction where it is greatly needed; but in many cases it has been evaded. I am bound to say—I do not know whether I shall require shrift for saying it—that I have evaded it very often.

264. Then you agree with those who have represented to us that it has been systematically evaded and violated?—Yes; the law-breaker always has the advantage of coming after the law-maker; and, if laws are made which in practice are found obstructive and inapplicable, ingenuity can generally get either under them, or over them, or round them.

265. Then would you go so far as Mr. Farrer, who has told us that, in his view, he does not see how Parliament could possibly prevent a law of this kind being more or less evaded?—I do not think Parliament could prevent it, for the reason that people whose interest it is to evade these obstructive laws, and whose duty it is to carry out works sanctioned by Parliament, have to resort to ingenuity to overcome the difficulties made for them by Parliament.

266. Do you think that the payment of interest during the construction of a railway is a legitimate item of expenditure?—I cannot imagine any item more legitimate. If you apply it to anything but a railway, it is at once apparent. Suppose you want to build yourself a house, there are one or two things that the builder will suggest: he will suggest that, upon the house becoming habitable, you shall pay a lump sum; or, if you like to build it by your own architect, then you must find money from month to month to pay for it: you cannot divert money from your business or investments without sacrificing interest. I am astonished to find such a law existing.

267. Then, are you of opinion that Parliament has made an unwise distinction between railways and tramways on the one hand, and all other undertakings on the other hand?—I think so; and especially unwise as applying to a class of enterprise which it is the interest of Parliament to foster rather than obstruct.

268. Do you trace the origin of this distinction to the railway mania of forty years ago?—I think it was a Standing Order made in a panic of some kind or other; it is so irrational that it seems to be the result of panic.

269. I asked Mr. Farrer a question about the law and practice in regard to this question in other continental countries, and he could not answer the question; but can you give the Committee any information on that point?—Yes. I have been for many years the Vice-President of the Dutch-Rhenish Railway, which is the most important railway in Holland. It connects the ports

of Amsterdam and Rotterdam with Germany, and is a very important railway; and during the time I have been connected with that railway I have spent, in addition to the original capital, about a million of money in extending it in different directions; and there the Government of the country distinctly recognize that interest during construction is a part of the cost of construction.

270. What interest do they allow?—They allow 6 per cent.

271. In Holland?—In Holland; and the Dutch are fairly and properly accounted to be people who understand these matters quite well; the Government at the end of the concession are bound to take over these railways at the cost price; and, as the result of deliberate inquiry, they have recognized that the cost of raising money in the construction, and bringing the railway to that particular stage where it became money-earning, is a part of the cost, and they allow 6 per cent.

272. That is your evidence with regard to Holland: can you, from your knowledge and experience, tell us what is the practice in other countries?—I can only say generally that I believe that practice will be found to prevail in Germany and other countries; but I have not the same intimate knowledge of other countries, and should not like to speak with the same certainty with regard to them.

273. Do you think that very great evils arise from the mode and manner in which this Standing Order is evaded?—Yes; the evils which arise are that the ultimate cost of the undertaking is greatly increased, and the difficulty of carrying it to a conclusion is increased. Works are postponed in consequence of the difficulty of raising capital, and when they are ultimately proceeded with they are carried out at much greater cost to the owners of the railway than need be.

274. Can you illustrate that opinion by some specific instances within your own knowledge?—On the general subject of the evasion of the Standing Order, I can only say that a great deal of the capital of that, I was almost about to call it notorious enterprise, the London, Chatham, and Dover Railway, was raised on a prospectus in which it was distinctly set forth that interest, in some cases 5 and in some 6 per cent., was to be paid by the contractor during the construction. That capital was raised on those prospectuses, and in that way it has been carried out. There are some other railways I know of which have resorted to the same method. Perhaps I may summarize all I have to urge about the disadvantages of the Standing Order by saying that I am appearing in the capacity of one who has had to carry out a great public work, sanctioned by Parliament, after the most violent opposition by a neighbouring company, during the last year or two. There the London, Chatham, and Dover Company had actually guaranteed 4 per cent. interest upon the necessary capital, to date from the opening of the railway. Now, a 4-per-cent. guarantee, paid half-yearly, in the nature of rental, is about as good a security as you can get. Of course, the question arose there, "How soon are we to arrive at that happy moment when, the railway being completed, the guarantee attaches?" Going to the public for a subscription nowadays is quite out of the question. If you offer capital of that sort to the public, the chances are you get a very small portion of it subscribed, and you are left with the balance on your back at very great disadvantage. You cannot deal with balances if there is a portion of the capital in the market; you cannot get anybody else to touch it. Therefore one is obliged to go to what are called financiers or contractors, or both. In the case I am alluding to I have had to go to both—men of the very highest character in London, contractors and financiers. Of course, the first thing they say to me is, "Now, then, this guarantee is very good, but when is this railway to be opened?" "Well, I do not know." "But have you not made a contract to secure that?" "No, I have not felt my way about that; I want to see how I am to get my money." "Do not you see, we can make no calculation about the value of the thing until we know the exact date at which this guarantee applies? Now, you must make up your mind about that; we must have something like a penal contract to satisfy us that if we lend our money the interest does attach from a given day." That is difficulty number one. Then I am driven to find a contractor of sufficient means and of sufficient responsibility not only to undertake to make the railway upon reasonable terms, but who will undertake a penal obligation to deliver that railway over to me on a given day. There are a few men, but very few, who are prepared to run this risk of what may happen in the course of two or three years through the accidents of weather or what not; and therefore you are thrown into the hands of the great moneyed people, and the result is that you get the contract made that this work shall be done, and handed over on a specific day; and, if it be not, there are penalties to be paid. You are obliged to make an arrangement of that sort; and it turns out that, over and above the price at which you could have got the work done if you had the money at command, you must pay a very large additional sum, not an outrageous or an extravagant sum, but a very large one, because you are thrown into the hands of a limited number of people instead of a larger number.

275. You concur with Mr. Farrar, I suppose, rather than with Mr. Laing, that this restriction is needless for the public, and that every reasonable facility should be given to new companies and fresh undertakings?—Yes. Mr. Laing and the other gentlemen in big companies are like the man in possession; they do not want to be disturbed, nor do they want to have imposed upon them the continual claims of districts not yet supplied with a railway, or to have increased facilities for that sort of thing being done. They want to do it at their own time. That is natural enough. They are, so to speak, anxious to protect their own interests, and not to be driven to make subsidiary railways except at their own convenience and upon their own terms. That is contrary to the public interest. The Standing Order as it exists now makes it much more difficult for independent people, local landowners, or anybody whatever wanting railways to get them, and that is the effect also of the deposit: that is an anomaly. An existing railway company may propose to make extensions or new railways, and they are not under the obligation to make any deposit at all; but a new company must. Now, I happen at this moment to be the chairman of the promoters of an undertaking of the greatest possible interest to London: that is an undertaking to make a railway from Paddington to the Albert Dock, thirteen miles long, through the heart of London, for the purpose of giving additional facilities and connecting those great railways with the

Albert Dock. I am a promoter—one of twelve—and we have to put our hands into our pockets and find £350,000 before we can move. If the Great Western or the Great Northern or any existing company did that they would not have to put down a shilling.

276. Do you advocate the placing of new companies in that respect in the same position as the others?—I think any obstruction placed in the way of new companies ought to be removed.

277. Including the being prevented from issuing shares at a discount?—Yes.

278. Do you attach much importance yourself to that suggestion which has been made to the Committee? Witnesses have appeared before us who said that they thought that all that was wanted was to enable the new companies to issue shares at a discount. What is your view as to that?—What ought to be done is to leave the companies free, within rational limits, to do that which is best for everybody—the companies and the public; because, of course, if a railway is constructed at a cost much beyond what it need be constructed at, the public pay. In reality the public always pay for these things, and issuing shares at a discount is of all methods of raising money the most improvident. I think I can illustrate that very well in the case of the District Railway. Everybody knows the District Railway. That was carried through with a good deal of difficulty, and the whole of their preference capital was raised at a discount. There is a million and a half of it. And this illustrates very well one or two nostrums that have been suggested from time to time, to the effect that before the completion of a railway you ought to offer it to the public. Now, we offered this stock of which I am speaking—having got £2,300,000 in hand of ordinary stock—the 5-per-cent. preference stock to the shareholders; and out of £1,500,000 they took £250,000—just enough to spoil the value of the rest. They took that at £70, or 30 per cent. discount, and we were stuck high and dry with a damaged stock, because the directors were weak enough—I was not in it at that time—to be impressed with the argument that they ought to offer it to the shareholders and to the public. Then we had to fall back upon a great financier and a great contractor, and they took the balance of it at £68 10s., and of course, in order to be quite fair and square with those people who had subscribed the £250,000, we had to return them the £1 10s. difference. Therefore the whole of that preference stock of £1,500,000 on a railway like the District was issued at an enormous discount. What is the result to-day? We had to wait several years after paying the fixed charges upon the debenture debt before we reached our 5 per cent. preference; but we do pay that, and have paid it for several years. And this is the result: that upon the preference stock we are paying £7 17s. 8d. per cent. per annum for ever. That is the most improvident thing you can conceive.

279. *Mr. Shaw.*] Was the line open?—Partially open. That is not limited to the District Company. One of the evils of this clause, and one which I individually feel that I have a right to protest against, is the evasion which it drives otherwise honest people to. The District Company are not the only people who evade it, nor are the poor companies; some of the rich companies evade it, as for instance the Metropolitan Company, which is presided over by a great railway authority in excellent credit. (I have always been in very bad credit. I have had to go about begging for money; but some people can go about commanding it.) Now, this great authority, being chairman of the Manchester, Sheffield, and Lincolnshire Railway Company, amongst other things, at his very last meeting held on January 25th, says this: "He believed it was the late Mr. Rawson who said that no railway man's property was safe while Parliament was sitting; and, while he would not go so far as to say that, a change in the law relating to railways was proposed which he hoped would receive the very watchful care of the whole railway interest"—that is this change. "One reason why the shareholders"—at that meeting—"would not receive so good a dividend as they might have done was that the directors had been compelled to charge to net revenue the interest on dead capital, which simply meant that the dividend on dead capital should not be paid out of that capital, though it really formed part of it. He had often said, and he repeated it now, that this was unjust; but it was the law, and they were obliged to conform to it. There was a proposal by the Hull and Barnsley gentlemen to extend their line, and to sanction in their exceptional favour the charging of interest during construction to capital and not to revenue. Of course, in the particular case of that company, they could not charge it to revenue because they had no revenue to charge it to, and by the law the shareholders would have to wait till they had; but what should be sauce for the goose should be sauce for the gander, and they should certainly say in Parliament that if the law generally was to be altered they had not much to say, but, unless every existing railway company was to be placed in the same position, they should certainly object to a new project of a doubtful character"—that is, the Hull and Barnsley—"being permitted to break the law, or to have a law made specially for it, in order that it might be the better able to compete with the Manchester, Sheffield, and Lincolnshire Company, the North-Eastern, and other existing companies." Now, that is the whole question which underlies all these big companies coming here to fight these little ones. The Hull and Barnsley Company will tell their own story. But there are various ways of evading the law. Now, this ingenious gentleman who finds that there is not much to be said against a change of the law, provided that it affects everybody alike, as of course it will, is the chairman of the Metropolitan Railway Company, and the Metropolitan Railway Company is associated with the District Railway Company in probably one of the greatest works that have ever been contemplated, either as regards the railway interest or the public—that is, the completion of the railway between the Mansion House and Aldgate. That is a terrific job. I have had to face some heavy ones, but that is the biggest I have ever had to undertake. There we have got between us to raise two and a half millions of capital and £800,000 of debentures, for about two miles of railway. I need not trouble the Committee with the reason why the raising of that capital has been deferred, but during the last four or five months I have been in a position, in consequence of an agreement with the public bodies, to proceed to raise our half of that capital. I am met exactly in the same way as I have already described by a great many people in London. "Now, all right," they say; "when is this railway to be opened?" "I

do not know; we have not made any contract." "But how do you suppose that we can put a price upon the value of a railway when you cannot tell us when it will be opened? What is the basis of calculation? It is no good your coming to us unless you can pay interest during its construction. If you attempt to raise the money by payment of deferred interest, you are resorting to the most improvident thing which can be conceived." Now, that is exactly what my friend of the Metropolitan Railway has done; he has done it with very great ingenuity. First of all, payment of interest out of capital being contrary to law, the company are precluded from doing that, but in the course of their business they issue stocks at a price which realizes a considerable premium, and they carry that premium to a reserve fund, and then, having carried that capital to a reserve fund, they obtain power in an Act of Parliament to apply it in a certain manner. This is clause 30 of "The Metropolitan Railway Act, 1877": "The company may form a fund, to be called the reserve fund, and may carry to such fund all premiums paid to the company upon the issue or sale of new shares or stock, and any other moneys which the company may from time to time have at their disposal, and are not applicable to any specific purpose by virtue of any Act relating to the company. And the company may from time to time invest the reserve fund, and the annual income derived therefrom, or any part thereof respectively, in such securities as they may think fit, and may from time to time apply the reserve fund and the annual income derived therefrom, or any part thereof, for any such purposes connected with their undertaking"—and this is the important part—"not being in payment of dividends or interest on any of the stocks or shares of the company as may from time to time be directed at a meeting of the company." Therefore, having built up their reserve fund by issuing stock at a premium, and having put themselves in 1877 under an express disability to apply it to the payment of dividends or interest, in 1879 they, conjointly with my company, get a power to raise this large amount of money for the Inner Circle; and in "The Metropolitan Railway Act, 1880," clause 33, is this: "The company may from time to time, until but not after the expiration of three years from the day on which any of the railways authorized by the Act of one thousand eight hundred and seventy-nine shall have been commenced, apply their reserve fund and the annual income derived therefrom, or any part thereof, in payment of interest upon any calls or capital sums expended in carrying out the undertaking authorized by the Act of one thousand eight hundred and sixty-nine, and therein called 'the joint undertaking.'" Now, that is a means of evading the Standing Order. That is a distinct payment out of capital.

280. *The Chairman.*] Then the Standing Order has been evaded by the great companies who are opposed to the repeal of the Standing Order, or its alteration, as well as by new companies desirous of promoting fresh enterprises?—That is one mode of evading it. There is another mode: that is the allotment of stock in respect of which this power is reserved, and it carries out the idea of improvidence, the first allotment of £500,000 4 per cent. perpetual preference stock. That is issued to the shareholders in the Metropolitan Railway Company for the purpose that I have described, and the condition is the balance of the call being paid "on the 1st of April next"—that is, the 1st of April, 1881. "The dividend upon the stock will not commence to accrue until the 1st of April, 1882." Now, that stock was issued at par. At this very moment the 4-per-cent. preference stock of the Metropolitan Railway Company is worth from 105 to 107. Now, if they had issued that stock bearing 4 per cent. interest from the date of issue, every penny of it would have been placed at a premium. If it is worth 105 to 107 now, it would have been worth 105 to 107 then if it had carried interest. They have, in fact, paid from 5 to 7 per cent. in order to save one year's interest at 4 per cent. That is as regards the preference. Now, here is the balance of the stock, £750,000 new ordinary stock; £750,000 and £500,000 make the £1,200,000 which is their half of the contribution to the Inner Circle completion. That is issued, and the call is spread over a considerable time. It comes to this: It was issued at par, ranging *pari passu* with the ordinary stock of the Metropolitan Company for dividend, but the dividend only to accrue in October, 1884. That stock was issued at par at the moment when the ordinary stock of the Metropolitan Company was at 124 to 125. That is a most improvident method of raising money.

281. *Mr. Shaw.*] It was issued to their own shareholders, I presume?—Yes.

282. Then it is all in their own pockets?—It may be, but it is improvident, nevertheless; it is paying interest out of capital.

283. *The Chairman.*] You are of opinion that the evidence we have heard, and the representation of the Chairman of Committees, is correct, that this Order has been systematically violated in practice; but do you not think that, after the recent decisions of the Courts, these violations will be put an end to?—Not in the least. There was a decision on a case of the Metropolitan Company many years ago, the well-known case of *Salisbury v. the Metropolitan Company*, in which the contractors were made use of in the same way to pay interest during construction; and that was challenged, and a very strong decision against it given by Vice-Chancellor James; but it goes on.

284. Then this decision of Sir George Jessel's is not the first on the same lines?—It is by no means the first. The case I have mentioned was a device for setting aside the Standing Order under which the contractor paid the interest during construction.

285. *Mr. Shaw.*] I do not quite understand how you make out that operation on the reserve fund, to which you referred just now, to be a payment of interest out of capital?—Because, if you issue stock at a premium, you issue it at a greater rate of interest than need be, and it becomes a greater charge on the permanent income of the company.

286. But it is within themselves; it is their own money and their own business altogether?—That may be.

287. They are not spoiling their business and giving it to an outsider?—That is a mere question between the company and the shareholders; it does not affect the principle of the thing. If you give anybody for £100 what is worth £120, the fact of giving it to a present shareholder in the railway does not in the least affect the principle; he benefits, but his successor loses.

288. Is it not almost the universal practice of companies, in issuing shares at a premium, to issue them to their shareholders at a lower premium than when they issue them in the market?—Yes.

289. They are only doing that in the case of this railway to which you have referred, I understand?—Yes.

290. Do you think that the repeal of this Standing Order will really get money into the pockets of the railway directors quicker than at present?—Yes.

291. In what way? From the public outside?—Not from the public. You cannot raise money from the public now; you cannot get the public to invest until the thing is a tangible, existing, money-earning concern; and you must provide for a kind of interregnum between the passing of the Bill and the construction of the railway; and the only way in which that can be got over is by a great company using their funds—I mean their general funds, not these specific funds allowed by Parliament to carry out works—or by contractors, in combination with financiers, taking on themselves the risk of preparing and completing a railway which, when it is prepared and completed, they can sell to the public.

292. Do you not think you would pay as much for the money always as you do now; that you will always have to get it done as now, in a general way, by contractors and financiers?—I have just made a contract which I will undertake to say will evade even Sir George Jessel; and the cost of that I estimate at about £35,000—very nearly 10 per cent. more than I should have had to pay if I could have gone to the people and said, “I will pay the interest on this money from the date of issue.”

293. Then you are in favour of repealing the Standing Order, and giving the investor full notice of what is being done?—I am.

294. We have had a question raised here before us of how this notice should be given: you would give it on the prospectus, I suppose, if you were issuing to the public?—Yes, I should give it on the prospectus, and I should venture to suggest to some of the authorities, I think Dr. Lyon Playfair, that the Committee before whom any Bill for a railway comes should deal with this very question. I think it is desirable that there should be some limitation to it; and I think that the time within which this payment is to be made should be specified in the special Act; and I think that the extreme amount should be specified.

295. In each Act?—In each Act. As you know, Parliament always gives a certain period for the completion of the railway, and there would be no great harm in saying that up to that date interest shall be paid, up to a certain rate, not exceeding 5 per cent. Then, if the parties fail in completing the railway in the time specified, they have to go to Parliament for an extension of time, and if they had to show cause for that extension of time they would also have to show cause for an extension of the period of payment of interest. This being in the Act of Parliament, every broker, every man conversant with these transactions, would be able to see exactly what the position of the company was in that particular; and it would be put upon the prospectus.

296. And in the scrip, I suppose?—Probably that might involve some technical objection; but no doubt it ought to be fairly guarded and secured.

297. Would you put in the words “interest to be paid out of capital”?—“Interest paid during construction.”

298. It is really paid out of capital?—Yes.

299. It is better to state the real thing on the document, is it not?—Yes.

300. *The Chairman.*] The time allowed would vary according to circumstances?—Yes. If, for instance, Parliament gave five years for the execution of the work, they probably would say that the payment of interest should be for five years; and if they gave two years for the work they would say two years for the interest; the real object being that an essential and inseparable element of the cost of the work up to the completion should form a part of the cost of the work.

301. *Mr. Brand.*] Then I understand that, even in the case of this Standing Order being repealed, you, in promoting a railway, or any one who promotes a railway, would still, in your opinion, not go to the public for the money; they would still have to go to the financier?—Yes; I think that is the most economical and the best way of doing it.

302. Then I apprehend you would be able to get money more cheaply than you do at present if you were able to say that these shares would either be issued at a discount or that the interest would be paid during construction out of capital?—Issuing at a discount is, in fact, discounting your credit. It is like men who go to borrow money and are prepared to pay a very heavy discount. If I go to a man in the City and say, “I want £100,000, and I will give you $\frac{1}{4}$ per cent. above the Bank rate,” he gives it me; but if I say, “I will give you 10 per cent.,” he suspects me, and I should get nothing by it.

303. You say this is a very improvident method of raising money. I want to ask you to point out the difference between my subscribing £100 to your undertaking and getting back in the course of five years £20 during construction, and, on the other hand, my paying £80 and getting back nothing during those five years, except this: that I shall have £20 to use myself. As far as the investor is concerned, it seems to me the most improvident method of applying the money?—When you issue at a discount—issuing, for instance, £100 at £80—it follows you for ever. Take a case in point, the District Railway. If they had borrowed the money for three years at £30 discount, that would have been a sufficient penalty to pay; but at the end of three years, the railway being a going concern and earning money, they would have been relieved of the consequence which follows having issued the whole capital at a percentage of £7 17s. 8d. out of the earnings of the company, instead of £5.

304. Upon that point, may I ask you what is the interest that the Metropolitan District Company are paying upon their ordinary stock?—Very little; they have only got up to $1\frac{1}{4}$.

305. If they were paying, say, 4 or 4½ per cent. upon the ordinary stock, then their capital would be worth, not the 70 or the 68 which you obtained, but it would be at par?—That capital—that 5-per-cent. stock now—is worth from 115 to 118. But it is the effect on the profit of the company which is so serious. That nominal £100, issued at £68 10s., now takes out of the profits £7 17s. 8d. per cent., instead of £5.

306. I understand that you issued at £68, and it is a 5-per-cent. stock, is it not?—Yes.

307. And upon that you are paying really £7 17s. 8d.?—Yes; for ever.

308. But supposing you had obtained that at £100, and you had spent the same amount in construction, say £70, and you returned the £30 to the investor, that is to say during construction, you will still really be paying on that stock the same interest?—But if we could have paid interest during construction on it it would not have cost us that enormous discount.

309. You mean that there would not have been the same amount of loss in the two methods of dealing with the money?—Yes. Of course I have had a great deal to do with some of the leading brokers and jobbers. I went the other day to a gentleman, in fact, to sell to him stock worth £625,000; and the first question he asked was, "When does the interest run? from the date of payment?" "No, not until the opening of the railway." "That is quite a different matter," he said. I do not mind telling you what the difference was: payment of interest from the day he put down the money, £96 to £98; payment deferred for two years (the date of the assumed completion of the railway), £90: that was the nearest thing we could get. I was obliged to say, "That is so dreadfully fatal to me that I cannot entertain it; I must see what the Committee will do that is sitting; I know perfectly well that if this Standing Order is amended I can go and issue that £625,000 of stock to-morrow at a premium." Meanwhile the state of the market has somewhat altered: that was three months ago, when the market was rather dull.

310. *Mr. Shaw.*] Does it depend greatly on the character of the railway?—I will tell you the line. The line is the Inner Circle Completion Railway, and the thing is guaranteed by the whole preference income of the District Railway.

311. Supposing you issued it on a new line, and the public know nothing about it, they discount all that; the mere payment of interest for a couple of years would not help you much?—But those gentlemen appreciate the enormous difference between interest accruing at once and interest accruing ten years hence; and they say, "I cannot go and pick up money in the gutter; I must draw it from A, B, and C." Now, you exclude the whole class of trustees; the moment you talk of paying interest two years or one year hence, all that class are out. Then, further, a vast number of people who invest, invest for current income: they are all out; those people cannot wait for two years. And the operation of the thing is in fact greatly to limit the ground from which moneys are gathered by these brokers and financial persons.

312. But an investor would never think of taking a security by the mere nominal payment of interest for a few years unless there was a substantial after-security?—Of course; but you see here is a case where the interest is guaranteed on the opening of the railway, and the Standing Order crops up and damages you.

313. *Mr. Brand.*] As far as I understand, in the case of a railway company who obtain their capital at par, the payment of interest during the construction only trickles back gradually to the investor, and they have the use of the balance for some time; whereas in the other case, where the company issue at a discount, they do not have any use of the balance at all?—Yes.

314. And there is a loss to them in that way?—Yes.

315. *Mr. Salt.*] I rather want to work out what the honourable member said just now with regard to this question of raising money for the District Railway Company. You say that with a deferred payment, deferred for two years, ending in an absolutely good guarantee of 4 per cent., the price at which you could now raise the money would be £90?—That was the suggestion.

316. But that if you raise the money with a power of paying at this moment, with the 4 per cent. commencing from to-morrow, the price would be £98?—No; the price now would be par, or over; it would have been £98 a few months ago.

317. The price probably would be about £105, would it not?—I should think between 102 and £105.

318. We will take it at £103?—I shall be disappointed if, with the power to pay interest at once, I cannot place that stock at £102 or £103.

319. Therefore the money that you would get upon a deferred payment of interest would be 90 per cent., and upon an immediate payment of interest it would be 103 per cent.?—Yes.

320. But if you pay interest immediately for two years, you must deduct £8 from your £103?—Yes.

321. Therefore the loss upon the transaction is the difference between £90 and £95—5 per cent.?—Yes. I have got to place within a few months of this time £1,250,000 of that stock: that is about what it will cost; whether I can pay immediate interest or not will make about 5 per cent. difference.

322. Now, I want to ask you a question about payment of interest during construction: do you remember what the rule is in Holland as to the length of time that the interest is allowed to be paid during construction?—There is no limitation whatever; we have never had any limit. But then I must tell you that those railway works are carried on with the cognizance, and, to some extent, under the control, of the Government department; and as long as they are satisfied that due diligence is being exercised no question is raised. We have never had any question raised. I may state that I have had a work—the Gouda line to the Hague—which was about two years and six months in construction, and during the whole of that time we charged 6 per cent. on all moneys expended from day to day to the account.

323. Supposing there had been great delay on the part of the contractor?—It did not arise; and we have never had the question raised in all the work we have done; being in ample funds and having good credit we have done it off-hand, so to speak, and not had the question raised.

324. I want to bring you to your own suggestion. You suggest that in each Railway Bill it should be defined in the clause for what period interest should be paid during construction, say two, three, or five years, as the case may be?—Yes.

325. Now, assuming a new railway to be started by promoters who are somewhat careless, let us suppose that they put in a clause containing a period much longer than is necessary, say six or seven years, when three or four would be sufficient, who is there to protect the public from the action of such a clause, or from the insertion of such a clause, assuming this Standing Order to be swept away?—The question of the length of time occupied in these works, as you know, is generally pretty carefully guarded in Committees. The time for the acquisition of lands and the time for the construction of works is always put into the draft Bill in italics, and the attention of the Committee is expressly called to it; and, generally speaking, in the discussion which takes place before the Committee, those figures are settled, and it is not at all infrequent to have a discussion as to the length of time; and I assume that the Committee of Parliament that passed the Bill would protect the public in that respect. Then, there is a noble Lord in another House who exercises rather a large power and is very critical upon that amongst other things; he occasionally strikes out “three” and puts in “two.” It does not go, as a matter of course, as it is first proposed. But I think there ought to be a reasonable limitation.

326. There is not quite the same ground for, or the same likelihood of, the interference of Committees in regard to the period of payment of the money that there is in regard to the period of the construction of the works, because a good deal of inconvenience arises if the works are delayed?—I rather suggested that the period of the power to pay interest should not run beyond the period of the power given by the Committee to construct the works. They are always anxious that land-owners should not have unfinished railways hanging over them, and they always limit the time allowed for the completion of the works.

327. May I take it that your view is in favour of the absolute repeal of the Standing Order 167?—I would go so far as to argue for the absolute repeal of it. I think that any obstruction or limitation under that Standing Order is prejudicial to the public interest.

328. Have you seen the suggestions made by Lord Redesdale?—I think I have, if you mean the suggestions about interest.

329. I want to know whether you think the adoption of those suggestions would cause obstruction?—Yes. One of the suggestions is that two-thirds of the capital should be paid up: “That such payment of interest or dividend shall not begin until the company have proved to a Justice (Sheriff) that two-thirds of the share capital (if any) has been *bona fide* issued and accepted.” Now, that is a thing which at once clashes with practice. In this very important work, the Inner Circle Completion, which involves not only a railway of the first importance to railway travellers, but a new street of the greatest importance to London, we are expressly empowered to raise our capital in two portions: that is to say, when we have raised £625,000 of capital we may proceed to raise £400,000 of debentures; and then, having done that, we may proceed with the second portion. This Standing Order would clash with that. And we do not want the money all at once; these are very large sums of money, and there is no object in the company being driven to raise money before it wants it. I should, therefore, press upon the Chairman of Committees for some modification of that.

330. Does anything else occur to you with reference to his suggestions?—He proposes some limitation upon the rate of interest.

331. Four-and-a-half per cent. he proposes?—Yes; and I think that it ought to be made somewhat elastic. I think, if I remember right, the Great Northern Company, in their original Act, were authorized, notwithstanding any clauses or anything of the kind, to pay interest during construction not exceeding 5 per cent.

332. *The Chairman.*] And that is the proposal of the Chairman of Ways and Means, is it not?—Yes; and I think that 5 per cent. is more elastic, because one can easily understand that the circumstances of the money-market might make it very difficult to raise at a rate under $4\frac{1}{2}$ per cent. when it might be easy to raise it at 5. During the last four months, almost on a sudden, the state of the market was so altered that you could not raise money at $4\frac{1}{2}$ per cent. I should think myself, therefore, that this suggestion as to $4\frac{1}{2}$ per cent. would want a little modification.

333. *Mr. Salt.*] Do you think 5 per cent. high enough?—I think 5 is a rational sum.

334. Now, very often when a railway is made its dividend-earning power does not commence immediately upon its completion; there may be an interval of a year or two?—Yes.

335. Do you propose to leave that a blank, with no earning-power?—I am hardly prepared to go so far as to suggest the payment of interest after the railway is finished and has become a money-earning concern. Then it must stand on its merits.

336. I may take it as your feeling, with regard to a general monetary and commercial policy, that any restriction in the way of the natural flow of money and the natural course of commercial enterprise is more or less inconvenient and mischievous?—I think it is exceedingly mischievous; and it is especially mischievous in relation to the class of railway works which are now nearly the only class of works that are wanted—namely, works to fill up what may be called intermediary districts. It is quite fatal to those.

Lieut.-Colonel GERARD SMITH examined.

337. *The Chairman.*] Have you heard the bulk of the evidence that has been given in this room in regard to the operation of Standing Order 167?—I have heard a good deal of it.

338. Generally speaking you concur, I understand, with those who think that this Order ought to be greatly modified, if not repealed?—Yes. I do not think I should go as far as Mr. Forbes and say that the Order ought to be entirely repealed, but I am satisfied there must be some modification of it.

339. Generally speaking you concur, do you not, with the evidence given by Mr. Rees?—I do.

340. Then you think that, notwithstanding the decision of the law-courts, the Standing Order will continue to be evaded?—Yes; I feel no doubt that that will be the effect; for this reason: that if Parliament authorizes certain railways to be made, and gentlemen have banded themselves in the shape of a provisional committee and incorporated a company, they will make the railways in some way or another; they will find the means, whatever the recent decision of the law-courts, to carry out that which Parliament has decided they can carry out.

341. Provided Parliament were to sanction an alteration of this Standing Order and allow interest to be paid out of capital under certain circumstances, do you think that very full notice ought to be given to the public on the face of the scrip or otherwise that that was proposed to be done?—No doubt that should be done. Your question refers to what was said about the certificates being specially marked, I think; but there is a little practical difficulty that arises there. Those certificates would have to be called in when the line was opened, because, if they were especially marked "interest paid out of capital," there are a certain class of investors who do not part with their certificates, and in their case they would be locked up in a box, and in the event of death or some other circumstances occurring the certificate remains for all time with the statement that the interest on it is paid out of capital. Undoubtedly some provision of the sort to which you refer might be necessary, but those certificates would have to be called in when the line was opened for traffic.

342. Have you anything to add to the evidence which we have already heard from those in favour of an alteration or amendment of this Standing Order?—There are one or two practical suggestions which I should like to make with reference to the issue of stock at a discount. I am told—and I believe that it is so—that that provision does not now apply to the case of new companies; but it has been suggested that that would be a solution of the difficulty. Now, without going into the question of the extravagance of it—as to which I generally concur with Mr. Forbes, who has had more experience of that than I have—there are other considerations which should enter into it, and one is a practical one: that is to say, if a new company were to attempt to issue their shares at a discount, I venture to say that they would signally fail. I do not think you would find any banker or broker in the City of London who would allow his name to appear on the prospectus of a new company whose shares were issued at a discount. Personally, as a banker, I should certainly decline to receive subscriptions over our counter for a new railway whose shares were issued at a discount, and I feel satisfied that our friends, Messrs. Smith, Payne, and Smiths, would do the same. We should treat the thing absolutely as having a tendency to cast discredit upon the undertaking and upon those whose names were on such a prospectus.

343. Do you think that there is a material difference between issuing capital at a discount and paying interest during construction?—I think there is that practical difficulty, undoubtedly. I will deal with the other portion of it presently. There is another point that I wanted to put before you, and that is with reference to the issuing of these shares at a discount. A man has one hundred pounds' worth of stock allotted to him, and he pays £80 for it; that is to say, it is issued at a discount of 20 per cent. When that line is opened for traffic nothing will make the transferee of that certificate believe that it is worth £100, the face value of it being £80; you will not instil into his mind the idea that it is worth £100 by any possible operation, and therefore the thing must be taken for market purposes, and for the purposes of the transferee or intending purchaser, as being of its face value of £80, and not £100.

344. Whether right or wrong, logical or illogical, what I understand you to say is how the public view these things?—That is how the public view these things.

345. Therefore, without entering into the merits of the distinction between the two, you think that the issuing of the shares at a discount would not have the effect supposed?—I feel certain it would not have the effect supposed.

346. Do you know anything about the practice of other countries in regard to this matter?—There is nothing like an illustration of it. The law in the colonies I know nothing about, but here is the prospectus of a company, the chairman of which is Lord Brabourne (the deputy-chairman of the South-Eastern Railway Company), which guarantees 6 per cent. during construction. That is issued at the Cape of Good Hope in March, 1882; it is the prospectus of the Graham's Town and Port Alfred Railway Company; and that guarantees 6 per cent. during construction. The paragraph runs, "Interest at the rate of 6 per cent. per annum is guaranteed upon all amounts paid upon the shares during the construction of the railway." I do not know what the colonial law is in the matter, but that is the practice.

347. Could you say from your own knowledge whether this statement, made to me by a merchant of one of the largest firms in the city connected with railway enterprises, is correct; he says that "it is the universal custom in raising money for new railway enterprises, both in India, the colonies, the United States of America, Brazil, and other foreign countries, to allow subscribers interest during the construction of the works"?—Yes; I know of my own knowledge that it was done in the Saint Paulo Railway, and in the Minas and Rio Railway; it is done in India; but in most of those cases, especially the Brazilian railways, which pay exceedingly well, the interest has been guaranteed by the contractor.

348. Do you know any case of a colonial railroad where the interest has not been paid during construction?—No; I do not know one where the capital has been raised successfully without a promise of interest during construction.

349. You concur with those who believe that, notwithstanding the decision of the Courts of law, this Standing Order will continue to be evaded, greatly to the detriment of the public?—No doubt.

350. *Colonel Walrond.*] You agree with Mr. Rees, do you not, as regards this Standing Order?—I have seen a copy of the alteration of the Standing Order proposed by the Chairman of Ways and Means, and I think Mr. Rees concurs with that.

351. Mr. Forbes suggested the absolute repeal of the Standing Order just now; but I gathered from his evidence also that he would leave it to the Committee before whom the Bill was brought in the House of Commons to settle the percentage, and to limit the time. Under the circumstances, would you agree with that, or would you rather have a Standing Order framed?—I should prefer to have a Standing Order framed, with certain questions left to the discretion of the Committee. I mean, by that, that I think the rate of interest should be settled by Standing Order. I mean that the time should vary with what the Committee think is reasonably necessary for the construction of the works. In some cases two or three years might suffice; in others, not less than five or eight years would suffice. With reference to the amount of interest, I think it is desirable for that to be fixed at 5 per cent. I see no object in leaving that to the discretion of the Committee, and for this reason: that 5 per cent. is the usual and ordinary and legal rate of interest, and the fluctuations in the value of money are so great that there are times when, if the Committee fixed the rate of interest arbitrarily, say at 4 or $4\frac{1}{2}$ per cent., the directors would or might find themselves extremely embarrassed, and might find themselves under the necessity of pushing on their works with a limitation of time, and being forced into the market at a time when they could not raise their capital under 5 per cent.

352. It would be impossible, you think, for them to raise it with a limit of 3 per cent.?—You would never raise a shilling.

353. *Mr. Brand.*] You have applied a very strong word to the practice of issuing shares at a discount; you said that so much discredit would attach to that course that you yourself, as a banker, and you thought that Messrs. Smith, Payne, and Smiths, of Lombard Street, would not take subscriptions for such shares over the counter. Would you apply the same course of conduct to the case of the Metropolitan District Railway, as mentioned by Mr. Forbes just now, or even to the issue of a new Russian loan?—I do not know how I can well answer the question. With regard to foreign loans, it seems to me that the question probably lies in a different compass, and, especially with reference to foreign loans, I should not be competent to deal with it: but railways are a particular class of business in themselves, and bankers are constantly consulted as to investments in that class of securities, and the first question which would be put would be this: "You say that this is a good thing; but it is issued at a discount: what is the reason of that?" "We cannot tell you." "I am very sorry, but I cannot invest." I think there is a tendency to discredit, there is a taint of discredit, about the issuing at a discount.

354. The Metropolitan District Railway has been a very improving railway lately; and it is rather a strong term which you used?—I do not apply it to the Metropolitan District Railway Company.

355. But you applied it to the practice?—I applied it to the practice of new railways. I do not wish to be misunderstood. I do not apply it to the issue of stock at a discount by old railways. I thought I had carefully guarded myself against that. The other day, I think, the Great Eastern, in which I am a shareholder myself, issued some stock at £80, but there is no objection to that in the case of old railways. In the case of new railways, at the present moment it is illegal, and, if it was made legal, the effect would be such as I have described on the minds of those called upon to find the capital.

356. *The Chairman.*] You are chairman of the Hull and Barnsley Railway, are you not?—Yes.

357. Is there anything in connection with that particular undertaking you wish to state to the Committee?—Only this: that we had before us the question of how we were to raise our capital, and after taking a great deal of advice, and being told that several of the modes which were suggested to us were not legal, we did what the Master of the Rolls said was perfectly straightforward; indeed, he thought it was so patent and obvious that it was an insult to the Court or to the common-sense of any man to suppose that he could think that it was not an evasion.

358. You meant it to be an evasion, and wished the thing tried, I suppose?—No, we did not wish the thing tried; but we thought that there was a doubt about the legality of the thing; we did not know there was a distinct decision against doing it in the way we proposed, but we did not desire to overlay it with other methods of evasion, and we thought that the simplest and best way of doing it; and the result is familiar. If this Standing Order is altered, there are one or two things I should like to lay before you with reference to the amount of interest being added to the estimate. The estimates for works are never too high. We will say that you have a work which is to cost, it may be, 2d., or £2,000, or £200,000 to make: if it is to cost 2d. to make, you must not take 1d. out of it to pay for something else; therefore the effect, if you did so, would be to necessitate the company, in order to finish their works, coming for additional capital before the works were finished; therefore I would suggest that the estimated amount of the interest should be added to the estimate, and that could be ordered to be done in the passage of the Bill between the House of Commons and the House of Lords Committees. Then there is a point with reference to the protection of the debenture-holders, which I should like to point out to the Committee, and that is this: that if you increase the capital—add, that is to say, the interest during construction to the capital estimated for works—your borrowing powers, in the ordinary course of things, would be one-third of the amount on the construction of the works, *plus* the interest: that would be an undue amount of borrowing powers, and would naturally reduce the security of the ordinary shareholder. If the Standing Order, therefore, is altered, the borrowing powers should be exercisable only in respect of the capital required for the construction of the works *ex* the interest, without the interest.

359. *Mr. Salt.*] Are you speaking of the nominal or the real capital?—I mean the capital for the construction of the works.

360. But if you issue the shares at a discount you have two capitals, one nominal and one real?—I am not dealing with the question of raising the shares at a discount. If I might be allowed to continue, I might point out one effect which, if the Standing Order is altered, the alteration of it would have. I think that those who promote new undertakings would be forced into this position: that they must bestir themselves and get their capital and construct their works; otherwise, if they

come, as companies do, for an extension of time, I think—certainly it would be so to my mind—that their coming for an extension of time under the alteration, and with the improved facilities that Parliament had given, would be regarded with suspicion as evidence of the want of intrinsic merit in the scheme, and that the extension of time would therefore not be so likely to be granted. I think, in fact, that the public would get the railways made with greater certainty than they do at the present time. And I may perhaps add one word with reference to the independence of certain schemes: we think very strongly, as an independent railway, that it is not a desirable thing that small, and perhaps very beneficial, undertakings should be amalgamated with larger affairs; the perpetuation of monopolies by the amalgamation of great interests we do not think is in the interest of the public.

Mr. JOHN CHARLES REES recalled, and further examined.

361. *The Chairman.*] I believe you have some paper to hand in?—I hand in a list of the directors named in the Railway Bills to which I referred in my evidence on Tuesday last. [The same was handed in.] Then I quoted, as an illustrative case, the case of the Ely and Newmarket Railway, in which an agreement was scheduled to the Act, by which a large company virtually allowed the payment of interest during construction as part of the actual cost of the works. I merely wish to hand in the prospectus which was issued by that company, by which it appears that in that case the result of that arrangement was the direct payment of interest out of capital by the company itself [handing in the prospectus].

Mr. R. W. PERKS examined.

362. *The Chairman.*] You are a solicitor practising in London in partnership with Mr. H. H. Fowler, M.P., as I understand?—I am.

363. And you have a considerable knowledge from your business of the question now being discussed before this Committee?—I have knowledge of it, not merely in connection with railways that I am directly and indirectly connected with, but also with reference to trustees and private investors, and particularly with reference to stockbrokers, whom I frequently advise with reference to the validity of these arrangements before they are put forward to the public.

364. I understand that you are opposed to the repeal, and even the alteration in the sense proposed, of the present Standing Order?—I think it would be undoubtedly most mischievous. I think with Sir Edward Watkin—he did not altogether father the suggestion—that the proper method is to give notice to the public of payment of interest by issuing stock at a discount in the case of original capital.

365. Is it your opinion that an effectual remedy for the evils now complained of would be to alter the Railway Companies Act of 1867 and the Companies Clauses Act of 1869, so as to authorize the issuing of original as well as new stock at a discount?—Yes, that is my opinion.

366. Have you been in the room all to-day?—Not the whole of the day. I had to go before Lord Redesdale; but until two o'clock I was here.

367. But you have heard the evidence given by various gentlemen exactly to the opposite effect to this opinion of yours?—That is so; but I look at it more in the case of people who are misled by the prospectuses, and induced to invest their money on the faith of prospectuses which perhaps, if they were technical experts familiar with all the devices adopted, would not be misleading, but which are misleading to any ordinary investor. For instance, a man who has invested his £100 in Hull and Barnsley stock would not be familiar with the fact that his £20, which he is to get during the next five years, was coming back out of his own pocket; and therefore, on that ground, I think it would be far more honest to tell him so, and, if he was going to pay himself his interest for four years, he should therefore take it in the shape of a discount on the original issue.

368. We have been informed to-day that practically that would be inoperative: is that your opinion?—No; I think it would be extremely well for the advocates of the change if they could induce the Committee to think so. I do not think that any sensible man would take stock in a company if he knew he was going to receive his money for the next four years out of his own pocket, unless he were a person of sufficient capital to be induced to be content with no interest at all, or only a small rate of interest for some years.

369. That is not quite an answer to my question; my question was with reference to the evidence given to us that it would be all very well to alter the Acts as you propose, but that practically it would have no operation, because the public would not be induced to take shares in new companies the shares of which were issued at a discount?—I do not like to express an opinion about that; but I can cite the case of a railway referred to on a former day here, which within the last few months has issued a capital of £600,000 upon a perfectly honest and legitimate prospectus with no guarantee from any large company at all; and that seems to me a very good illustration of a company, even under existing legislation, being enabled to issue capital where there is a *bonâ fide* scheme without resort to these contrivances. I refer to the Mersey Railway Company, where a capital of £600,000 was recently raised in this way, where there is no guarantee of any sort, and no promise to pay interest during construction out of capital. Then, there is another little company, which was being advertised in the papers a few days ago, called the Helston Railway, in the West of England, which has, I understand, had all its capital subscribed, and there there is no proposal to guarantee interest during construction. In the Mersey case the capital is £600,000 issued, and in the other case that I have referred to it is simply £60,000.

370. Then in your opinion things are very good as they are, and ought not to be altered?—I think they are very good as they are. I think the class of people who would be attacked, if I may use the phrase, by the alteration in the Standing Order would be very small investors who are constantly looking out for a safe 5 per cent. investment.

371. I asked you, without consulting the Committee, to give evidence here, because you had stated to me that in your opinion what is wanted is the alteration of these Acts of which we have

spoken; and now you say nothing is wanted at all: you are departing from the point.—I think it would be desirable to alter the Acts, and to make them perfectly plain, if there is to be any alteration at all; but I think it would be better to have no alteration.

372. No alteration either in the Standing Order or in the Companies Act of 1867?—I think so; but I think, if any alteration at all were permitted, it should take the form of making the legislation of 1867 and 1869 clear, which I think it is not now, and of allowing people to issue original stock at a discount.

373. *Mr. Brand.]* I gather from your evidence that your view is that, if the law is changed and Parliament authorizes the issue of capital at a discount, the practice would be changed and the public would get accustomed to it?—Yes. Would you allow me to refer to the question raised this morning as to the operation of the Joint-Stock Companies Act? I think it is perfectly clear that, if Table A were so altered by a joint-stock company as to omit the clause which prohibits the payment of dividend out of capital, yet even in that case any Court of law would restrain the company so paying a dividend. For instance, in a case now before me the Courts held that the payment of interest to the shareholders before any profits have been realized out of capital or borrowed money, even though made in pursuance of a resolution at a general meeting, was *ultra vires*, and they restrained such payment by an injunction, on this ground, that it diminished the capital of the company.

374. That was not my question. It has been stated before the Committee that this plan would be inoperative because the public will not take capital issued at a discount; and I suggested whether, if the law was changed, and Parliament authorized capital to be issued at a discount for new undertakings, the practice might not be changed also, and the public view it in a different light?—I am hardly able to say how the public would view it; but I think then it would have the effect that a man would understand what he was doing, and at present the ordinary investor does not.

375. It would be a protection to the investor, you think?—It would be a protection to the investor.

376. *Mr. Salt.]* When you say that you are in favour of issuing the shares of a new company at a discount, do you apply that opinion both to preference and to ordinary shares?—You can at present, I believe, issue preference stock at a discount if you think proper to do so; but I was not speaking of preference stock when I made that observation; I was simply referring to ordinary stock.

377. As a matter of finance there is a considerable difference between the two?—Clearly there is a great distinction between the two.

Mr. JOSEPH W. PEASE (a member of the House) examined.

378. *The Chairman.]* Will you kindly state your view to the Committee on this Standing Order 167?—The main point upon which I wish to give evidence is this: that, having been long connected with the railway world—in fact, I was a railway director very soon after I came of age—I believe that there is no practical difficulty in any sound undertaking raising money without having recourse to those expedients which have been placed before the Committee. I am not speaking of my present connection with the North-Eastern Railway, which is a large and powerful company, but of my experience in times when I have been engaged in railway undertakings which had to raise their money and issue their prospectuses without offering to pay interest upon capital during the course of the construction of the works, and which yet received all the capital that they required. I believe that the plan proposed at the present time is most unsound financially. The amount of accumulated interest, stated as 20 per cent. addition to capital, I think, has been rather exaggerated in this room. From a calculation that I have made it is about 11 per cent., taking it for granted that the payment of calls would be in equal proportions during the five years of the construction of the works. If so, at the end of the five years, in order to obtain the same rate of interest, the company must earn more than 5 per cent. for the dividend. The dividend naturally goes down to about £4 8s. per cent. owing to the addition of capital; but I can see no possible reason why the company should not go on after the works are opened on the same principle. If it is right to pay interest during the construction of works in anticipation of the earning of a dividend, it must be right to pay as interest the difference between the amount earned and the 5 per cent. for the future; and that process goes on just so long as the shareholders remain unexhausted. It seems to me that the principle is the same. And with regard to Mr. Forbes's illustration of building a house, if I build a house I of course have to sell some other investment in order to build the house; and I am living during the time without the interest—in fact, I am paying two rents until I get out of my old house into my new house. I do not think that the parallel holds good at all. With regard to the effect of these smaller branch railways which are so much spoken of, there was one brought before Parliament this year, the parliamentary agent for which, I believe, has given evidence before this Committee—the Northumberland Central. It was not for a moment denied that that line could not have paid 2½ per cent., and that it probably could not, under any circumstances, have paid 2 per cent. to the shareholders. It seems to me, therefore, most unreasonable that Parliament should repeal a Standing Order, the effect of which is to protect the weak investor, in order to give him 5 per cent. for five years during the construction of the works, and then to land him in 2½ or 2 per cent. after the construction of the works. Then, is Parliament to interfere at all? The argument here has been a free-trade argument in money. The answer to that is that Parliament does interfere. I believe that in many cases Parliament interferes far too much; but there is not a thing we do, not a trade we are in—and I am in a good many—but what Parliament interferes in some way for the protection of the workmen or the public or the weak. Who is to be benefited, I ask, by the alteration? Certainly, not the investor. I think he is very likely to be misled. The only two persons who are likely to be helped are the

contractor and the speculator. Those two persons are those who are promoting the change of the Standing Order for their own purposes. Take the Hull and Barnsley case. I do not wish to go into it more than this: that the report of the Hull Savings-Bank was put into my hand, which showed what they had lost in that case. It was a special paragraph. I can hand in that report, which shows that £20,000 was drawn for the Hull and Barnsley Railway from that savings-bank at one time; that means, £100,000 of money is to be drawn out of the Hull savings-banks, probably the savings of the poorer classes in Hull, in order that they may receive, if they can get it, the 5 per cent. during the construction of the works, to land them up in a very uncertain dividend for the future. The consequence is, to this large number of small shareholders, that the Hull and Barnsley shares are at this moment at a discount to a large amount. May I read a note which I made, though at the risk of a little repetition? It is this: "Such capital is earning nothing, and therefore cannot pay out what it does not produce." There is no more reason for paying interest on non-productive capital during the progress of works than there is for paying interest out of capital after the works are formed. To do the first, you must necessarily add to your capital account the amount required for the payment of interest during the formation of the works, and you can continue the process so long as your shareholders produce their own money to receive it again. Then, there is another point to which I should particularly call attention. I believe the firms which I represent, and of which I am the senior partner, are the largest payers of dues in the railway world. I think we pay between £320,000 and £350,000 a year to different railway companies. If you permit this proposal to be carried out, you will probably have for a few years a whole inundation of these small lines built out of the savings probably of the smaller and weaker class of investors; and I say that with some knowledge of the investments made by the weaker class of investors, and as the result of seeing what they do put their money into. The consequence will be that the larger railway companies will absorb them as they have done everything else. The line that I am a director of, the North-Eastern, is an amalgamation of I do not know how many companies. I promoted the amalgamation of the company of which I was a director, the old Stockton and Darlington, into it, because I thought it was for the benefit of the whole district; and it is a monopoly railway. The consequence of that monopoly is that its rates are lower than on any other railway in the kingdom. I say that if you admit a flood of railways you will have the old companies buying them up, very much to the detriment of the traffic-senders, who have to pay higher charges.

379. Do you think that the effect of the present Standing Order is to prevent the building of unsound and unnecessary railways?—I think it has that effect.

380. And do you think that it would not continue to be evaded in the future as it has been in the past?—I do not think that the evasion of an Order is an argument against it, if the Order is sound in itself, any more than you should do away with your laws against burglars because you do not catch all burglars. You ought to strengthen them, I think, rather than the contrary, if it is necessary to do anything at all. I should like to observe that this Order was very strongly debated in the House of Commons in 1847, and Mr. Ricardo, who was considered then a very strong financial authority, gave this opinion: He "considered the insertion of a clause allowing interest to be paid out of capital to be a delusion and a snare; it only led people to believe they were investing their money instead of speculating." Those are very much my opinions at the present time. Then, Mr. Hume, who for all time, I suppose, will be admitted as a high financial authority, said that he thought the principle of paying interest on the capital of railways before profit could accrue a fraud on the Legislature, and a bait held out to ignorant persons for the purpose of inducing them to engage in speculations which they would otherwise avoid. And so there are a great many of the leading authorities of that day who in that debate gave a very strong opinion on the subject. It seems to me that, if the Standing Order is repealed in any way, the Committee that tries the Bill will be bound to look into what are the financial prospects of the future, and make an estimate of the rate that the company ought to have. Of course, to allow such a company as I have referred to, the Central Northumberland—to allow them to go into the field to raise money at 5 per cent. for five years, with the certainty of 2 per cent. afterwards, is really only subjecting the weaker class of investors to a trap. It is true that the North-Eastern Company is about to make a central Northumberland line; but they do so on the assurance of their general manager that it will involve a loss of some £20,000 a year.

381. You see no objection, do you, to permitting new companies to issue shares at a discount, as the old ones are permitted now?—I see no objection whatever to that; it seems to me to mark the class of shares which would be issued to the public. We all know that our old State loans were issued at something like 56 or 60, so that what we call eight hundred millions was not practically more than, I suppose, five hundred and eighty millions to the State.

382. You do not concur with those who think that such an alteration of the law would not practically produce any effect at all?—I do not; I think that a banker would take the share issued at a discount on its merits.

383. *Mr. Salt.*] I understand that you are in favour of retaining Standing Order 167 as it is?—I am.

WEDNESDAY, 3RD MAY, 1882.

Present: Mr. Baxter (Chairman), Mr. Salt, Mr. Shaw, Colonel Walrond.

Sir FRANCIS S. REILLY, Q.C. (Mr. Speaker's Counsel), examined.

384. *The Chairman.*] If you refer to Questions Nos. 201, 211, 212, 235, 236, 237, 247, and 249, you will find that conflicting evidence has been given to this Committee in regard to the relation of Standing Order 167 to the common law, and to the law laid down in the Companies Acts. I believe you have carefully looked into the subject, and we shall be much obliged if you can give us your

opinion, and throw as much light as you can on the question?—I have looked into the subject so far as the short time since I received notice to attend has permitted. With regard to the first question mentioned, No. 201, that is a question put to Mr. Laing: "Your view is that the law of the land is against this practice of which we are speaking?" and his answer is, "Yes, I think so: that is the decision of the Master of the Rolls, as I understand it." It appears to me that that view is completely met by the answer to one of the other questions to which you have referred: that is No. 249, in which Mr. Farrer says, "The law, as interpreted by the Master of the Rolls, is founded upon the clause which was passed in pursuance of the Standing Order of the House of Commons. Repeal the Standing Order of the House of Commons, and there would be no clause upon which the Master of the Rolls could adjudicate in the same way in future." The decision of the Master of the Rolls is not upon any general principle or doctrine which may be called the law of the land, but is specifically on a section which had been inserted into a special Act in pursuance of this Standing Order.

385. So that, in your opinion, were this Standing Order repealed, there would be nothing remaining in law to prevent this practice being adopted?—I am not quite prepared to go so far as that, because that raises considerations bearing on the general construction of "The Companies Clauses Consolidation Act, 1845." My opinion is rather the other way. But treating that particular point raised in Question 201, and in the answer, I think there is nothing in the suggestion that the decision of the Master of the Rolls turned on any general principle of common law, the law of the land, as distinguished from the specific provisions of Railway Acts.

386. *Mr. Shaw.*] It was not before the Master of the Rolls as a question of general law?—Not in any shape.

387. It was for an injunction?—It was a question whether an injunction should be granted to restrain directors from doing what was alleged to be contrary to the terms of a section of their Act, that being a section following the terms of this Standing Order, and inserted in consequence of it. It was a narrow question; whereas here, in Question No. 201, nothing can be larger than the expression "the law of the land." At least, that is the way in which I understand it, and my answer has reference to it in that view.

388. *The Chairman.*] Two important questions were asked, one by Colonel Walrond and the other by myself, at Nos. 235 and 236. Have you anything to say with reference to the answers that were given to these questions by Mr. Farrer?—There is a little confusion in No. 235, in the terms of the question as reported, because it is difficult to understand whether the Companies Clauses Consolidation Act of 1845 is meant, or the Companies Act of 1862. The word "clauses" in the question should probably be struck out, and I will treat it so if you will allow me. That being so, I should say that the Companies Act of 1862 has no bearing on this question, unless the Committee choose, by way of analogy, to draw some conclusions as to legislative expediency and policy from the provisions of the Companies Act of 1862, that being the Act which is popularly known as the Limited Liability Act. That Act has no bearing upon railway companies; it is not in any way referred to in Railway Acts, and has, I think I may say, no operation whatever with reference to them.

389. Then, on the Committee coming to a decision on this matter, may they dismiss from their minds, in your opinion, all considerations arising out of the Companies Act or the common law?—That is my opinion, so far as the Committee look to strict questions of law. They may search about into various departments of legislation, and discover analogies and principles to guide them; but that set of Acts now summed up in the Act of 1862 has no bearing on the law under consideration. Perhaps I might say a word or two about the general principle, if there is a general principle in these matters—that is to say, the common law antecedent to or independent of all legislation. I think it is plain that, at what may be called absolute common law, men may combine together for any scheme or adventure of a legitimate kind, on any terms, with regard to the division of profits, which they think fit.

390. *Mr. Shaw.*] But the terms must be stated very distinctly?—They are responsible only to themselves; they have no account to give to the world: they are not answerable to others for the arrangement of their accounts, or the division of their profits among themselves; they may agree to pay interest to one another, though their capital is not earning anything. Strictly speaking, I apprehend that money paid in that way could not be called dividend, because dividend implies profits; but they might pay interest. There is no doubt that, in theory, profits should not be divided until they are earned; but a body of men combining together at common law might anticipate profits. They might say, "When our hotel which we are about to establish is open, we shall be making 20 per cent., and before it is open we will anticipate the profits and divide 5 per cent. among us." All that is perfectly legitimate, and the common law would allow any arrangement of a financial kind among a body of men that were partners. Then, the next stage is the Companies Act of 1862. There it has been pointed out that there is what might appear to be a provision of the Legislature against the payment of dividend except out of profits—that is Article 73 of Table A appended to the Act; but it has already been explained to the Committee that the adoption of Table A is entirely optional.

391. Is there not a clause in the Act prohibiting that?—No; there is no such provision in the body of the Act.

392. Are you sure of that?—I am certain there is no such provision. Table A provides that; but it is very usual in articles of association to begin by saying that the regulations in Table A do not apply to the company. I have before me Mr. Palmer's work containing a collection of precedents on the subject, in which the articles of association begin in that way—by excluding Table A; but then there is inserted this provision, which is in the same words as Article 73: "No dividend shall be payable except out of the profits arising from the business of the company." And the learned author appends this note, which is instructive, I think: "This clause is almost always

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.

WEDNESDAY, 10TH MAY, 1882.

Present: Mr. Baxter (Chairman), Mr. Brand, Mr. Salt, Mr. Shaw, Colonel Walrond.

Mr. HENRY TENNANT examined.

400. *The Chairman.*] You are the general manager of the North-Eastern Railway Company?—
I am.

401. You are aware of the information which we have received from various witnesses with regard to Standing Order No. 167?—Yes, I am.

402. Probably you can give us some additional information which will be interesting to the Committee?—I have listened to the evidence, or, at all events, most of it; and, to begin with, it strikes me that the origin of the Standing Order has scarcely been placed fully before the Committee. My experience extends as far back as the year 1845, and I have taken steps to make myself familiar with what actually did take place at the time the Order was made. It was in 1847 the question was raised; it was raised on a debate introduced by the late Mr. Hume, who said that great irregularities had crept into railway legislation. There was no haste about it; the Government themselves appointed a Committee; that Committee sat for a considerable time, and they reported, not upon Standing Order (now) 167 only, but with respect to the regulations which ought to guide in legislation respecting railways.

403. You do not think that it originated in any panic caused by the wild schemes of that period?—There was no panic at all; it was a calm deliverance on the part of the Committee of the House of Commons, ratified by the House itself. The resolutions which were then passed were ten in number, and they stand, in great measure, to the present day. I took the trouble of copying out a good many extracts from the speeches of those who took part in the debate, and they show clearly that the object of Parliament in passing those regulations, including the Standing Order under consideration, was to introduce and enforce sound principles of legislation on the one hand, and to protect the public on the other.

404. Then you entirely agree in principle with the Standing Order?—I do. I will not weary the Committee by reading that which took place; I have a copy of it here, and will hand it in [delivering in the same].

405. Is it not the case that it has been systematically violated, and violated in a manner which is more prejudicial to the public than even if the principle were permitted of paying interest on capital before the construction of the line?—I am not prepared to admit that. The Standing Order is said to have been evaded, and I dare say it has been evaded, but I do not think it is so injurious to the public as if they had been allowed by law to pay interest out of capital, because I think paying interest out of capital is an unsound theory altogether. That is the opinion which I hold.

406. But we have been informed by men high in authority in connection with some of the larger railroads that it has been evaded, and evaded not only by new lines, but by old companies: is that so in your opinion?—I can speak for the North-Eastern Company, and I can say that we have not evaded it; and, except in individual cases, I do not know that it has been evaded. But the evasion of a Standing Order, designed for the protection of the public, does not appear to me to be any reason for repealing that Order, if in itself it is just and good.

407. Certainly not; but can you advise the Committee with regard to any proposal for making the Order more stringent so that it could not be evaded?—This question has arisen from the simple fact that one company did evade the Standing Order. The case was brought before a Court of law—namely, before the Master of the Rolls—and he made a declaration that it was illegal to do that which that particular company had done. Now, it having been so declared, I presume that most people, at all events, would consider that, having the law so declared, and so recently declared, they were bound to pay respect to the law of the land.

408. Was not a similar decision given by a Judge years ago, since when the law has been constantly evaded?—The law, I dare say, has been evaded: that is to say, I believe some other mode has been adopted.

409. Notwithstanding the further decision of the Court?—I consider that it is rather a compliment to the Order as it stands, and shows that it was well designed for the purpose. Of course, I cannot say that people have not evaded it. All I can say is that the payment of interest out of capital has been entirely contrary to all the Acts of Parliament which have been passed on the subject. The declarations of Parliament, as embodied in their Acts, have been, in effect, that to pay any interest out of any fund except profits was an illegitimate proceeding. It was so set out in the Act of 1862, the Companies Act, Table A: that Act clearly declared the mind of Parliament on the subject. In 1864 two Acts of Parliament were passed relating to railways: one was for the purpose of facilitating the construction of railways, and for facilitating the formation of companies for that purpose; and although this Act was thus specially designed to facilitate the construction of railways, there is a clause in it prohibiting the payment of interest. The other Act of 1864, the Railway Companies' Powers Act, passed with the same object—namely, facilitating the operations of railway companies—contains the same clause prohibiting the payment of interest or dividend out of capital. If I were asked whether the repeal of a clause so sanctioned by the action of Parliament ought to take place, I should beg leave to refer to what was done in the years 1866, 1867, and 1868 in relation to railways. We all know that the power of borrowing on the part of any company is limited to one-third of its share capital. Prior to 1866 one notable instance, and probably others, took place where companies did not adhere to that rule. Parliament did not propose—no one proposed—to alter the restriction as to borrowing powers; but, on the contrary, Parliament passed an Act, entitled the Railway Companies' Securities Act, by which the representatives of the companies were obliged to make certain returns and declarations; and it was also stipulated that, if false declarations as regards their borrowing powers were made, the parties making them should be punishable by fine or imprisonment. In 1867 an Act was passed strengthening the audit depart-

ment of railways. Previous to 1868 several companies had paid dividends which were not legitimate; their stock had assumed a fictitious value, and the investor was injured, and Parliament adopted more stringent measures. The Railways Regulations Act was passed, by which a form of account is prescribed. The chairman and the accountant or secretary are required by that Act to sign the accounts; the engineers are required to give certificates; and, if any of the parties concerned make any declarations which are not correct, they are liable to fine and imprisonment. Nothing has been of more use to railway companies than the making of them stable by these Acts; the old railway companies have been removed from what I would call the region of speculation, and the effect has been good for the companies and beneficial for the public. The effect on the companies has been that their stock has stood better in the market, they have been enabled to raise money on easier terms, and by having to pay less interest for their money they have had a surplus revenue with which they could do one of two things—either reduce the rates, fares, and charges; or extend railways in districts that were not of themselves remunerative.

410. We were considering the question of these evasions; you admit, as I understand, that the Standing Order has been evaded recently, but you think that the decision of the Master of the Rolls will finally put a stop to violations of that kind?—I do not say finally put a stop to them, but I say that the decision of the Master of the Rolls as to the illegality will exercise an influence on many men, at all events, against perpetrating similar evasions; and I think that in all probability other actions will follow, and that in the case of railways, as in the case of anything else, the parties who disobey the law will be made to take the consequences. On this question I saw a report in the *Times* the other day in connection with the Alexandra Palace, where the directors were required to refund money which had been paid to preference shareholders contrary to law. What I think is this: that if the law is good, as I think it is, it should be left to the Courts of law to administer; and the mere fact that the law is evaded is no reason whatever for its repeal.

411. But the Master of the Rolls said that the law was bad, did he not?—I think that that stage of the case was not reached. I have noticed that Judges often enter into little by-conversations with learned counsel, and I have read what the Master of the Rolls said. I do not think that there was any judgment given at all; but I have quite confidence myself in the Master of the Rolls that, if it was put to him whether, seeing that Parliament had intended to protect the public from the payment of interest out of capital, he would approve of the law, the Master of the Rolls would not give a judgment in favour of anything that was calculated to mislead the public.

412. But, as I understand the words of the Master of the Rolls, they are very plain. He indicated that, in his opinion, although it was a distinct evasion of the law, the law was an unwise law?—That was not in his judgment. There were one or two very casual observations made, for I read it all through, and that was not in his judgment.

413. Have you anything to add to what you have stated to the Committee?—A question, I think, was raised as to whether the Standing Order interfered with the construction of legitimate railways. I do not think that it would interfere with *bonâ fide* undertakings. But I am not sure what meaning to attach to the term "*bonâ fide* undertaking." A *bonâ fide* undertaking, in my view, is one where there is some prospect of the payment of a reasonable dividend. A *bonâ fide* application in our sense merely implies that there is sincerity in the application. Mr. Rees referred to the Central Northumberland Railway, and included it in his list. I happen to know something about the Central Northumberland Railway, because it is in our own district. He said that it emanated from a great meeting of landowners—as no doubt it did; but what the landowners desired, and what they endeavoured to do, was to induce the railway company of which I am manager to invest about a million of money in making a railway through an agricultural district which we said would not pay. In our answer we admitted that, having the command of the district, we ought to aid in the further development of railways in any district where railways did not exist; but we said we were not prepared to undertake so large a scheme. But, we said, if you will undertake to raise half the capital, and take your interest or dividends out of the earnings of the undertaking, we will recommend our shareholders to supply the other half. We went even a little further, because we gave them an ultimate guarantee on the capital which we suggested they should raise. But they turned upon the North-Eastern Company with something approaching to scorn at the idea that they should be expected to take steps towards raising any money themselves. We decided that, having offered to raise about half the capital, we would come to Parliament for a Bill to fill up that part of the district which we thought really required railway accommodation, at an expenditure of about £400,000. The other party—the independent party—came to Parliament for an extended scheme. The case was submitted to a Committee, and before the Committee the promoters had no plan whatever for raising the money. They had raised none themselves; and the Committee came to the conclusion that that which the North-Eastern Company proposed should at all events be passed, and they gave to the Central Northumberland Company a portion of their undertaking. But the Committee coupled the decision with this recommendation. They say "that the financial statement regarding it"—that is, the part of the new line—"is not all that could be desired, but that the North-Eastern Railway Company, having offered, under conditions, to make this line, and being in possession of the adjoining country, are to a certain extent bound to provide for the requirements of the district, and that it would be well, in the case of the Central Northumberland Company being unable to carry out the scheme, that the North-Eastern Railway Company should undertake it." Of course the Central Northumberland scheme was practically a scheme got up without any means whatever of raising the money; but if a prospectus had been issued, with those respectable names upon it which Mr. Rees placed before the Committee, with the high-sounding phrases which are commonly put in prospectuses, coupled with what would be regarded by inexperienced people as the practical guarantee of Sir Charles Trevelyan, Sir John Swinburne, and others, that they should have 5 per cent. for a period of five years, I am quite sure of this: that whilst the people in Northumberland would not have raised the money, it is quite possible that people—say, in Cornwall

or other distant places might have been induced to subscribe ; and therefore I say that the power to issue legally a prospectus promising interest is eminently calculated to deceive. I advised the directors of the North-Eastern Company that, although they might be called upon to spend £400,000, yet, under the most favourable circumstances, they would not be able to get more than 2 per cent. interest for it ; whereas in the case of an independent company, without the facilities of working which an old company possesses, the dividend would be practically *nil*. There is another question which has been raised, and that is as to the interference with railway extension which this Standing Order is said to be calculated to exercise. I have said already that the Standing Order will, if obeyed, prevent sensible people being decoyed into putting their money into speculations which cannot pay ; but I do not think it is a correct representation of the actual facts to say that railway enterprise has not gone on in a satisfactory way in this country. I have made extracts from the Board of Trade returns of the capital expended on railways. Twenty years ago the amount expended on railways was £348,000,000—I give all the figures in round numbers. They have gone on adding every year up to 1880, until in 1880 the amount was £728,000,000, which is an average expenditure on railways of £19,000,000 per annum for the last twenty years. The bulk of that, of course, has been spent by the old companies. [The paper was handed in.]

414. *Mr. Salt.*] Have you got the proportion which was spent by the old and the new companies?—No ; it would be impossible to get that. The net receipts of the railways was equivalent to 4 per cent. upon the capital outlay in 1861 ; in 1871 it got up to 4·66 per cent. ; and in 1880 it was equal to 4·38 per cent. Now, during that period there has been an enormous development of trade in the centres of traffic, and a very great increase upon the main lines of railway ; but the action of the companies in extending railways involving, as I said, during the last twenty years nearly £400,000,000 sterling has practically kept the net receipts in proportion to the capital as nearly as possible the same as it was twenty years ago. That does not show that the old railway companies have neglected their duty in extending railways in the country. [The paper was handed in.]

415. *The Chairman.*] Many shareholders, on the contrary, think that you have gone much too far in that direction : is not that so?—Many shareholders say so, but most of the shareholders in the old companies have confidence in the directors who have the charge of their property ; and the directors of the old railway companies have not been indisposed to arrange for expending capital where there was a chance of the most moderate return. When I say a moderate chance, I do not mean anything like full interest upon the capital itself. In fact, it is difficult now to point to any place in the country where, in the way of filling up a gap, there would be the smallest chance for a dividend for any independent company. I know from my own experience of the smallness of the traffic in those districts that, according to the map, would appear not to have been supplied with railways, any independent company got up for the purpose of supplying such want, and inducing anybody to raise the capital, must lay their account to going without any interest upon the money expended.

416. *Mr. Salt.*] Does that remark apply to the whole of England, or to the north only?—I think it applies to nearly the whole of England, according to my view of the case. I gave the figures of the capital expended up to 1880. I have taken out the commitments of a few of the large companies. At the end of December, 1881—because the Board of Trade returns were only published up to the end of 1880—I find that those large companies, in 1881, spent £10,000,000 ; and at the end of 1881 they were committed to £26,000,000 more for the expenditure in the future half-years ; so that the expenditure on railways may be taken at about £770,000,000 in round numbers. Then, as to the question whether railway construction has gone fast enough, from the same Board of Trade returns I have taken out a list of the little companies who pay no dividend at all [delivering in the same] : there is a very long list of them.

417. *The Chairman.*] How many are there?—I did not count them ; but these are the figures which I have been quoting from. Summarized, it comes to this : that from the Board of Trade returns for the year 1880 there are nearly £38,000,000 of ordinary stock on which no dividend at all is paid, made up mostly by those small companies that I have mentioned. The total ordinary stock in the country is £270,000,000 ; so that about one-seventh of the whole capital raised as ordinary stock for the construction of railways in this country at the present time returns no dividend at all.

418. Do you think that if the Standing Order were repealed the state of things would be worse?—I think it would be worse in this way : that it might induce parties to become more active in proposing these kind of concerns, which never had a chance of paying, and which never will have a chance as independent companies.

419. Notwithstanding the evasion, you are distinctly of opinion that the Standing Order has a very important deterrent influence in a good direction?—I think in a good direction certainly. I think I heard some remark by one of the witnesses that it was not the business of Parliament to protect ignorant, unwary, and foolish people. The business of Parliament I think those in Parliament understand. Some reference was made to parties in Hull who had been depositors in the savings-bank, and had transferred their money. There is the document on which that statement is founded [delivering in the same]. I have dealt with independent companies got up for the purpose of “filling up” districts. Mr. Forbes, I think, felt the difficulties he had had in raising money. I think his case, perhaps, would have been stronger if he had been able to show that the concerns he raised money for in the way he himself described, and which I do not propose to repeat, had, after all, turned out to be remarkably prosperous, or anything of that sort. Now, the London, Chatham, and Dover Railway Company, with which he is specially associated, was originated—of course as a small concern—in 1853 ; and it has gone on increasing until there stands on its books at the present time about £11,000,000 of ordinary capital. I do not mean to say that they received £11,000,000, because I suppose they did not ; but the nominal amount is £11,000,000—on which up to this time, I

believe I am correct in saying, they have never paid any dividend at all. But that is the natural effect of duplicate railways. Some, perhaps, may advocate the duplication of railways. The case of the London, Chatham, and Dover Railway and the South-Eastern Railway is a very striking one. The London, Chatham, and Dover Railway is practically a duplication of a good many lines of the South-Eastern; and the South-Eastern Railway Company has been obliged to do the best it could to get dividends in the best way it could, being attacked in this way; but what has been the effect on the public?

420. I think this is wandering a little wide of the reference to the Committee: the general question of duplicate railways is not referred to us; our reference is particularly to this Standing Order, and the effect of it?—I was merely going to point out that where there have been no duplicate railways the railway fares between 1845 and the present time have been greatly diminished.

421. *Mr. Brand.*] I understood you to say that the result of the injunction in the Hull and Barnsley case would be, in your opinion, to prevent promoters in future promising to pay interest out of capital?—I think it will have an effect in that direction.

422. In that case, however, there was in the prospectus—was there not—a direct statement that the Board of Directors could pay interest out of capital?—Yes, it was put forward that they would: it was in the “heading” of the prospectus.

423. You have made some error in your evidence—have you not—with respect to the Railway Construction Facilities Act? I understood you to say that the railway companies under that Act were able to pay interest out of capital?—I meant to say exactly the reverse: that, although those Acts of Parliament were distinctly designed to facilitate the construction of railways, Parliament had taken care in both those Acts of 1864 to provide that no one should be permitted to raise money for the purpose of facilitating the construction by the payment of interest out of capital.

424. Your evidence on that point is in collision with the evidence of Mr. Rees, for Mr. Rees states, at Question 109, “That provisional order must still be confirmed by Parliament, and therefore Parliament ultimately sanctions the undertaking in the one case as in the other; but in the case of a limited-liability company coming for a provisional order they can pay interest out of capital during construction, or do anything they choose; and yet a tramway company coming for a special Act of Parliament is put under special terms as to the mode in which the capital is issued. That appears to me to be an anomaly: I can see no reason why it should be allowed in the case of a company registered under the Act of 1862, and not in the case of a company having exactly the same powers, but obtained by a special Act. And the same thing applies theoretically, though perhaps not practically, in the case of railways; for in 1860 an Act was passed called the Railway Construction Facilities Act: it has not been of much practical use, because it involves purchasing all the land, and so forth—there have been one or two cases, I believe, under it—but in that case the company might register themselves under the Act of 1862, provide in their articles of association for the payment of interest out of capital during construction, come under the Railway Construction Facilities Act, and obtain a certificate of the Board of Trade”?—That may be evidence about the way of doing a certain thing; but the Railway Construction Facilities Act of 1864, and the Railway Companies Powers Act of 1864, both contain a clause that companies shall not pay interest out of capital. The Acts themselves will be the best authority.

425. *The Chairman.*] Do you believe that, even were this Committee to recommend an alteration or repeal of Standing Order No. 167, still the law of the land would prevent the practice which has been adopted?—I am not sufficiently a lawyer to say exactly that. If it was decided to repeal it, it would be taken to be an indication that Parliament had changed its mind, and that it was a legitimate thing to pay interest out of capital.

426. *Mr. Salt.*] I take it that you are in favour of retaining the Standing Order precisely as it stands now?—Certainly; at least, I see no reason for altering it.

427. You have no wish to see any modification at all, however careful that modification might be?—No; I see no reason for any modification. I am not aware that any of the old companies desire to have any alteration in their favour in the Standing Order. It is a very salutary Order as regards the old companies.

428. Two important witnesses have told us that during the last thirty years, or whatever the period may be, very large sums of money have been raised for railway construction in spite of and against the principles of Standing Order 167: do you concur in that?—I should think that is very likely; but I could not say in the least how much, but I think, from the general idea which I have, that a very large proportion of the capital expended has been raised by the old companies.

429. And this system of duplicate railways, which you justly condemn, has been carried out also to a great extent in spite of the Standing Order?—Yes; there are some duplicate railways that have been passed and carried out.

430. I take it that your contention is that if this Standing Order had not existed those evils would have been greatly increased?—It might have cured itself a little earlier, perhaps, by people finding out sooner the unproductive character of the railways.

431. Have you had occasion in your company to raise capital for the construction of new lines or new works to any large extent?—Yes, to a large extent.

432. Have you paid interest on the capital out of revenue?—Yes.

433. You have always had sufficient revenue to cover the cost?—Yes. The experience of the North-Eastern Company, and, I think, of nearly all the companies, is that the new railways which they can now construct are not likely to bring in immediate revenue when they are opened, and that, the shareholders having taken the burden upon themselves, it is the much more prudent course to let the burden come upon them gradually by paying interest as it is incurred, rather than by charging it to capital during construction, and then having a large sum coming down upon the revenue, which in some cases might cause fluctuations in the dividend and disturb the stock.

434. There is no doubt that that is by far the most legitimate way of raising new capital; but,

at the same time, supposing that that system could be carried out—which it is not—with complete strictness, it would throw the whole of the country into the hands of the large existing railway companies: do you see any evil in that?—Into the hands of the existing railway companies it must and will come. I speak from my own experience. The North-Eastern Railway Company is composed of about thirty-eight small companies which had a separate existence. Whenever we have thought in any of our districts that it was the right thing to expend money we have expended it; but several other companies—little companies—have from time to time got an independent existence, and as soon as ever they have got fairly completed they have come to us to work them. At the present time we have three such concerns, one of which is being absorbed by the North-Eastern Railway Company by a Bill passing this year; and communications from the other two companies asking the North-Eastern Company to do something for them have been received.

435. Have not these little companies, before they arrive at an independent existence, either directly or indirectly—either through contractors or otherwise—paid interest upon the unprofitable capital?—I believe not. I have not positive information upon the subject, but I believe I am right in saying that none of them have.

Sir FRANCIS S. REILLY, Q.C. (Mr. Speaker's counsel), further examined.

436-7. *The Chairman.*] You have a memorandum which you wish to hand in to the Committee?—Yes [delivering in the same].

438. Your attention has been called by this Committee to the rather conflicting evidence given by the various witnesses as to the effect of certain Acts of Parliament upon the Standing Order, and what might be the effect if that Standing Order were to be relaxed or repealed. Having looked into the question with great care, the result of your reflection and consideration and examination is that you think there ought to be a general Act of Parliament with regard to the whole question?—Certainly—at least, upon the whole question so far as it may be considered to be within the four corners of the existing Standing Order; but whether there should be any legislation upon what may be called collateral questions arising under the Companies Act of 1862 or not I do not make any suggestion. In short, I should wish to confine my observations as regards a Bill to the effect of the Companies Clauses Consolidation Act of 1845, on which this Standing Order bears directly, and with which Railway Bills and Acts alone are concerned, as a rule.

439. Have you anything else to add to the evidence which you gave to the Committee on the former occasion?—I have not.

440. *Mr. Brand.*] I would like to put a question which I put to the last witness with respect to the Railway Construction Facilities Act—whether railway companies have or have not power under that Act to pay interest out of capital?—In some cases they have not; in some they may have. If the company are incorporated by a certificate of the Board of Trade, granted under the Act, they are prohibited by that Act from paying interest out of capital, except on sums in advance of calls. But if a company, having incorporated themselves under "The Companies Act, 1862," come to the Board of Trade, under the Facilities Act of 1864, for railway powers simply, not seeking fresh incorporation under that Act, they are left by that Act free to make any such arrangements about capital and interest as the law which applies to them, irrespectively of that Act, may admit, and as they may think fit.

441. *The Chairman.*] So that, whilst the intention of Standing Order 167, and that of the Act to which you have referred, is clear, it seems that there are means and modes of evading them both?—Yes; I suppose I may say so as regards the Standing Order. Long before this question was raised, I think I may say that I have always understood professionally that those devices existed and operated to a great extent, particularly when they were put into operation through the medium of contractors. But, in the case of the Facilities Act, payment of interest out of capital is not necessarily an evasion: that Act leaves the matter open as to companies not incorporated under it.

Mr. RICHARD WITHERS examined.

442. *The Chairman.*] You are the chairman of the Liverpool Stock Exchange, are you not?—Yes, I am.

443. You are aware of the question which has been referred to this Committee, with regard to which very full and very fair evidence has been given on both sides: is there any statement which you wish to make to the Committee with respect to any point which has been omitted, or with respect to your own opinion on the matter?—I should like to give my own opinion upon the matter, based upon my experience of forty-six years in railway matters, and for a large portion of that period as chairman of the Liverpool Stock Exchange, and for the whole of that period in connection with railway business; and particularly my recollection of the state of things out of which this Standing Order which is sought now to be repealed by certain parties was instituted. In 1845—a period of great excitement and speculation, particularly in the railway world, followed by legislation in 1846 of a very wide and large character *in re* Railway Bills—the Committee of the Stock Exchange, foreseeing the commercial disadvantage that might arise by the large commitments to which individuals were then binding themselves under application to Parliament, sent a deputation, of which I happened to be one at that period, to the then Chancellor of the Exchequer, with a view to bring before him the various schemes before Parliament, which were far too numerous in our opinion to be safely carried, and likely to very seriously influence the money-market unfavourably when carried, and thereby to react upon the trade of the country. We went to see Sir Charles Wood with that object; but he threw off all responsibility upon the matter as Chancellor of the Exchequer, and he said people must take care of themselves, and he said that we had better go and see the railway chairmen, Mr. Glynn, of the London and North-Western, Mr. Hudson, of the various lines of which he was chairman, Mr. Denison, of the Great Northern,

Mr. Ellis, of the Midland, &c. We did not succeed in our object, which was to improve legislation generally in railway matters; for we foresaw as men of business, with our experience and knowledge of the shareholding portion of the public, that, if this thing was to go on to the extent that was then contemplated, very serious commercial disaster might result. We went to the various railway chairmen. I remember going to Mr. George Hudson on that occasion, and he pooch-pooched us, and he said, "If you get Mr. Glynn, or Mr. Denison of the Great Northern, or Mr. Ellis of the Midland, to make certain arrangements, you may then come to me." By-the-by, he was connected with the Midland too. He referred us to those chairmen, and we went to see some of them; but we made no impression. They said the thing must take its chance. They did not withdraw their Bills unless their opponents withdrew theirs. There was a great deal of antagonism amongst railway people at that time. What we saw would be likely to come to pass really did come to pass: Bills were passed in the most wholesale manner in 1846; and I have no doubt that the commitments of the public *in re* those Bills was very largely contributory to the great commercial panic of 1847, in which the Bank Act had to be suspended; and during that year and in subsequent years the railway property of this country was almost wrecked for a time, and great ruin was brought upon families who had gone into those schemes without consideration of the number of calls that were likely to be made upon them; and the property, which is now to some extent a good one, and in many cases a very good one, was absolutely, for a time, as I said, wrecked. For instance, the Lancashire and Yorkshire stock, which is now at about 134 in the market, fell to £31 10s. or £32 per £100 paid-up shares without any further liability; causing, as I said, ruin to families. The Midland stock fell to about the same price. I myself purchased Birmingham and Derby stocks, £100 paid up, at £15 a share. I mention this to the Committee as an instance of the sad havoc which was caused by the indiscriminate legislation of that period. Not only did that punish the unfortunate families of the people who, in the country, had gone into these things upon the promise of interest, &c., but it reacted upon the money market.

444. Was the interest on those schemes paid?—Many of them paid 5 per cent. on the calls; and the consequence was that the estimates to get Bills were all very much under the actual cost of the construction of the works of those companies, and it followed that when they came to pay interest upon the money there was a collapse—all the capital was gone, and they could not pay any interest. And I know that in Scotland many companies were instituted to lend money on railway stock during the course of construction, and they took as security shares, £20 paid up, say £50 shares, and every call that was made of £5—and they were made almost every three months: the stock fell more than the call, and those companies who had lent money upon the original shares of £20 paid up, found themselves, in fact, instead of getting a security for the money, under a liability. In fact, there was a complete upset of railway credit and commercial credit in consequence.

445. The Committee are generally aware of all those facts; but what we want you particularly to state to us now is, what is your opinion with regard to the operation of the Standing Order—has it tended to cure the evils or not?—Yes; we have heard of no such evils since that period.

446. Do you believe that the comparative freedom from such wild undertakings has been caused very much by the operation of this Standing Order?—Very largely.

447. And you are strongly in favour of retaining it?—Yes, most strongly. I think that the breakdown of the Standing Order would produce a very serious state of things. You would have on a considerable scale the same state of circumstances; because the British public, as Carlyle said, is composed of 34,000,000—chiefly fools. The promoters of those companies are a comparatively small number of people, and, I am afraid I must say, some of them knaves; and if you give them the power of promising people 5 per cent. interest for five years, they will not have the wit to see how it is obtained, but they think it is all right when they think it is under an Act of Parliament, or under the authority of Parliament; in fact, when they see the names of *bonâ fide* directors published to the public in prospectuses, hopeful people will go on taking shares, and I have no doubt that very widespread ruin will be the consequence.

448. You admit that the present law had a salutary effect in putting an end to that state of things?—I do not think that the violation of the Order has been to any very large extent. There are about £700,000,000 of railway capital, which we may take has been raised by the public. This is an average of about £14,000,000 a year, supposing it to have been obtained in the average way. It is not quite that, but for the last twenty years the expenditure has been equal to £19,000,000 a year.

449. Then that systematic violation of the Order to which the attention of the Committee has been called you think is rather exaggerated?—I think it is very much exaggerated. I think that what has taken place with regard to the Hull and Barnsley line will very much tend to diminish any further evasion, because of course it is notorious now that directors are in this position, as the Master of the Rolls has laid it down, that they are committing an illegality in paying this interest; and I take it that if that law remains unrepealed the law must be good law as pronounced by the Master of the Rolls; and whatever his opinion of the Act itself may be, and his is no better opinion than any other man upon that point, but in laying down the rule he has laid it down strictly that it would be illegal. I think, myself, the very fact of that being so, if these gentlemen put themselves into a false position, and perpetrate an illegal thing, they would probably be open to an action by the shareholders when they find that it is an illegality.

450. Notwithstanding that these violations have disappeared since?—If you take the £700,000,000 of railway capital, you will find that the violations are to a very small extent indeed. But the suspension of the Order would have this effect: People in the country who now can get a very small rate of interest, or none at all, from a country bank upon their deposits, will be tempted, upon the faith of an Act of Parliament, to withdraw their money upon notice, because they will be offered openly 5 per cent. interest for five years under the authority of an Act of Parliament.

451. *Mr. Salt.* Would you kindly look at Questions 115, 116, and 117, in which an important

witness states that many millions of capital have been raised in spite of the Standing Order; and I want to know how far your opinion concurs, or does not concur, with what has been stated?—This witness does not give the amount: it is rather vague evidence. He was asked whether it would amount to millions, and his answer was, "Yes, several figures before the million point." But, taking the entire millions of railway construction as over £700,000,000, I do not think that the percentage of what has been done in this evasive manner would amount to a very considerable matter; and I think that the example which was given was so fatal to the continuance of this kind of evasion that it is not likely to continue unless Parliament breaks down the Standing Order. Steps, no doubt, have been taken, and any law that you pass upon any subject will be evaded; but you would not on that account abolish the law. Any steps taken to evade the Act of Parliament would be very much curtailed and diminished by examples which were held up in two kinds of cases: one is the want of success in the schemes themselves, which generally have been of a very inferior character, and have not paid any dividend at all, and they form part of the £30,000,000 of railway ordinary stock which pays no dividend; and the other is the danger to directors and promoters of evasions of the Act of Parliament; and now that the Courts of law have pronounced it a positive evasion, those gentlemen will not be found to take seats at boards, or even to promote companies, through the evasion of an Act of Parliament which may bring down upon them very serious personal liabilities.

452. You think that, whether the Standing Order 167 has been evaded largely, or whether it has not, still it has been of use so far that the case would have been infinitely worse if that Standing Order had not existed?—Tenfold or twentyfold worse; because you would then tap the savings of the whole country; whereas by the evasions that have taken place the tapping of the capital of the country has been to a very trifling extent, because the great public are not misled by these sort of evasions. They do not like them, but they would be misled by an Act of Parliament authorizing this to be done. They would then say that it was under the authority of an Act of Parliament. They would say, "Certain respectable names are the promoters of this scheme; they will pay a certain 5 per cent. for five years: and we will go into it."

453. Even if the Standing Order were altered, and very careful modification were introduced, you still think that it would be better to remain as we are?—Decidedly. In fact, all the modification of the Act of Parliament in connection with the Standing Order that I would suggest would be this: that the deposit which now has to be paid of 5 per cent. should be a *bonâ fide* deposit, and not a deposit borrowed from loan companies or from banks under these conditions: that if the Bill is to be granted by Parliament the man who lends them the deposit has power over the Bill, so that after Parliament has taken the trouble to investigate the merits, the Bill cannot be got unless this man can be made safe afterwards by some financial arrangement. All that is an evasion which I think ought to be stopped. There should be further protection to the public; and I think that the rule of Parliament is most seriously evaded, and that deposits are obtained and borrowed under the conditions that the man who lends them the money is to have the command of the Bill, and that the Royal assent to the Bill is not to be given to it until he is satisfied.

454. What you have just said refers to another matter, and not to the Standing Order?—Not to this particular Standing Order, but it is part of the general case.

455. *The Chairman.*] Is there any good reason why this Standing Order should be confined to railway and tramway companies, and that it should not apply to all companies?—The reason, I take it, why it is more particularly valuable for railway companies is this: that there is a longish period between the institution of a company and the construction of the works. In most mercantile companies they go into trade at once and launch into business, and they find out very soon whether they are going to get a dividend or not, and therefore it is not so requisite; but I have such a horror of those promoters gulling the public that I would impose every restriction that I possibly could, because I am certain that *bonâ fide* business will not be interfered with by those restrictions, but that those restrictions will catch the people who ought not to be the promoters of companies at all—who, in fact, do not contribute, themselves, to the funds of the company, but they get up a company in order to get money themselves, and to pay themselves out of the subscriptions of the shareholders for what they call their services.

APPENDICES.

APPENDIX No. 1.

Letters, &c., put in by the Chairman as sent to him by the Chairman of Ways and Means.

No. 1.—LIST of RAILWAY BILLS, and FORM of CLAUSE to put aside Standing Order 167.

THE company may from time to time, out of any money by this Act authorized to be raised, or out of any other funds of the company, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him.

(1.) Regent's Canal, City, and Docks Railway Bill. (2.) Hull, Barnsley, &c., Railway (Extensions) Bill. (3.) Hull, Barnsley, &c. (Interest), Bill. (4.) East and West Yorkshire Union Railways Bill. (5.) Central Northumberland Railway Bill. [Passed Committee.] (6.) Waterloo and City Railway Bill. [Withdrawn.] (7.) Metropolitan District Railway Bill. (8.) Ascot, Windsor, and Aldershot Junction Railway Bill. [In this case the Committee decided that the "preamble was not proved."] (9.) Banff, Buckie, and Elgin Coast (Great North of Scotland) Railway Bill. [Banff, Buckie, &c., Bill.—The title of this Bill has been changed to Great North of Scotland (Buckie Extension), and the clause required by Standing Order 167 has been inserted.] (10.) Poplar and Canning Town Railway Bill. [This Bill was not proceeded with.]

No. 2.—The BOARD of TRADE to the CHAIRMAN of WAYS and MEANS.

Board of Trade (Railway Department), London, S.W.,
23rd February, 1882.

SIR,—

I am directed by the Board of Trade to refer to certain Railway Bills of this session, in which it is proposed to raise the ordinary share capital of the respective undertakings, amounting to more than twenty millions, by paying interest upon calls out of capital.

The Bills in question are: (1) Regent's Canal, City, and Docks Railway, 8,100,000 shares; (2) Hull, Barnsley, &c. (Extensions), 2,400,000 shares; (3) Hull, Barnsley, &c. (Interest), 3,000,000 shares; (4) East and West Yorkshire Union, 510,000 shares; (5) Central Northumberland Railway, 930,000 shares; (6) Ascot, Windsor, and Aldershot Junction, 330,000 shares; (7) Waterloo and City Railway, 2,700,000 shares; and (8) Metropolitan District, 1,250,000 shares.

As you are aware, for many years past a clause has been inserted in every Railway Bill, pursuant to a Standing Order of both Houses of Parliament, prohibiting the payment of interest upon calls out of capital.

The Standing Order (167) of the House of Commons is as follows: "A clause shall be inserted in every Railway Bill prohibiting the payment of any interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him, except such interest or 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."

The Standing Order (128) of the House of Lords is to the same effect, but more stringent.

The eight Bills above mentioned not only omit such a clause as is required by the Standing Orders, but, so far as the first seven are concerned, distinctly authorize the payment of interest out of capital; while the Bill of the District Railway Company authorizes such payment out of capital or any surplus or reserve fund.

It is unnecessary to discuss the policy of the Standing Order above referred to. It was well considered, and is supported by obvious reasons of expediency. Even if it were unsound, it should be altered as a whole, and not exceptionally in the Bills of certain particular companies.

As at present advised, the Board of Trade are disposed to think that the companies in question should be called upon to amend their Bills in accordance with the usual practice; and they will be glad to learn what are your views on the question.

The Right Hon. Lyon Playfair, M.P.

I have, &c.,

HENRY G. CALCRAFT.

No. 3.—The CHAIRMAN of WAYS and MEANS to the BOARD of TRADE.

SIR,—

24th February, 1882.

The subject of your letter regarding the Bills which claim powers to pay interest out of capital, contrary to the provision in Standing Order 167, had already engaged my attention, and the counsel to Mr. Speaker has had conferences with the counsel of the Chairman of the House of Lords in relation to it. I propose arranging a conference with Lord Redesdale in relation to these Bills. I agree with you that the powers sought cannot be allowed to be given by Acts unless the Standing Orders be materially altered. Undoubtedly the spirit of this Standing Order is constantly evaded in the practice of railway construction, and the arguments in favour of it do not seem to be very strong. I enclose you a letter from Mr. Rees describing the inconveniences of the Standing Orders. When you have read this letter kindly return it.

Of course I will take no step in relation to changes in the Standing Orders without full consultation with your department. I would be glad, however, that you consider its operation, as it is not good policy to preserve unchanged a Standing Order which seems now to be systematically violated in practice.

I have, &c.,

Henry G. Calcraft, Esq.

LYON PLAYFAIR.

No. 4.—MR. REES to MR. WARNER.

SIR,—

13, Great George Street, Westminster, 20th February, 1882.

In accordance with your desire, I beg to put in writing the views which I expressed to you verbally a few days since upon the subject of the Standing Order which prohibits, in the case of railways, the payment of interest on calls out of capital.

It strikes one at first sight as somewhat singular that such a restriction should have been imposed in the case of railways alone. The evils, if any, which might arise from such an application of capital would seem to be common to all undertakings for which money has to be raised by means of shares. I do not suppose that the Standing Order had its origin in any peculiar prejudice against railways; it was probably due to the fact that the only security which Parliament thought it right, in the first instance, to take for the completion of railways was that there should be a subscription contract for a certain proportion of the share capital, and it may have been thought right that the whole of the money so subscribed should be devoted exclusively to the execution of the authorized works. If this was the cause of the passing of the Standing Order, one reason, at all events, for still requiring its retention would disappear, since Parliament now requires that the money deposit shall be impounded for securing the completion of the works, and forfeited in case of their not being carried out.

There can be no doubt—and I believe that any amount of evidence could be procured in proof of the fact—that the insertion of the clause required by the Standing Orders in Railway Bills has two effects—first, to prevent the promotion of genuine schemes; and, secondly, to prevent the carrying-out of powers actually conceded, in many cases in which works highly beneficial to the public would be otherwise executed.

It may be said that it is the same thing whether a shareholder subscribes in the first instance, say £100, and receives back £20 by way of interest during the construction of the works, or whether he subscribes £80, and in his private accounts adds the loss of interest to his principal; but, in practice, it is found that men will not argue in this way, or, at all events, will not act upon such an argument, and that it is impossible to place in the money-market railway capital on its own merits, and this because of the real or apparent loss of interest upon it for a term of years. It follows that railway capital can, under ordinary circumstances, be issued only through the medium of a contractor with means sufficient to enable him to carry out the works without money aid from the public. The consequences which follow from this are serious, although perhaps not apparent at first sight.

The contractor insists upon a rebate guarantee, or other agreement, with one of the larger companies, which will insure such a dividend as will give the shares a par value in the money-market, and enable him to raise money upon them. Thus the larger companies, whose general interests are to discourage independent railway enterprise, acquire something like a veto upon the construction of local lines. This is surely contrary to public policy. Or, secondly, the contractor is strong enough to make the works unaided, and makes what is termed a "paper contract"—that is to say, he undertakes to complete the works, taking the shares and bonds of the company in payment.

The difference between a paper contract and a cash contract is, of course, enormously to increase the price paid for the works, and thus the capital of the company is unduly inflated, to the loss of the public, who have to find, in the shape of higher rates, the money necessary to pay the large amount required for dividends.

Again, in a great many cases the contractor, in the hopes of obtaining part of the capital from the public, undertakes to pay interest on the capital during the construction of the works; and, of course, takes good care to add the amount, with a handsome bonus upon it, to his contract price. This, no doubt, is illegal; but it is constantly done with impunity, and without question, and the Standing Order clause is not only evaded, but evaded in the most objectionable way possible.

I venture to think that the Standing Order can, at the present day, be justified only on two grounds—first, that the promise of immediate interest might be a bait to inexperienced persons to invest their money in unsound enterprises; and, secondly, that, by means of the payment of interest, a rotten concern may be kept on foot for years, the greater part of the capital lost for purposes of construction, and eventually the scheme abandoned, landowners having in the meantime been kept in a state of suspense, and prevented from dealing with their properties, whilst other and better schemes may have been delayed by the prior occupation of the ground.

Whatever may be the weight of these reasons, I would submit that they do not justify the application of a remedy which has undoubtedly the effect of fettering and restricting legitimate enterprise, if the mischief admits of another and equally efficient remedy which will leave honest enterprise free. And I think that such a remedy may be found by an alteration (not by a repeal, for that might lead to an increase of merely speculative Bills) of the Standing Order.

I would suggest that the payment of interest out of capital should be authorized, subject to the following conditions: (1.) That it should be of moderate amount only—say, $4\frac{1}{2}$ or 5 per cent. (2.) That its payment should be limited to such a period as, according to the circumstances of each case, is reasonably necessary for the completion of the works if fair diligence is used. (3.) That the capital be issued with full notice to all subscribers that interest is to be paid during construction, and of the conditions which are attached by Parliament to its payment. (4.) That before any such interest is paid, a certificate (similar to that required before the exercise of borrowing powers) should be obtained from two Justices that three-fourths of the share capital has been issued, and is *bonâ fide* held.

It seems to me that if these conditions and restrictions are imposed, no possible mischief can arise from allowing interest to be paid out of capital, whilst the practical impediment which the present rule creates to the raising of money for *bonâ fide* enterprises would cease; nor would any undue inflation of the capital of a railway company result, for the amount added to capital would represent as truly a capital outlay as the interest lost (or paid if the money be borrowed) during the construction of private works or buildings.

It may, indeed, be said that Parliament requires a money payment by way of security in the shape of a percentage on the estimate for the works, and that this estimate (which, in practice, never includes interest during construction) would not truly represent the cost of the works if interest were allowed to be paid as suggested. But there are many other items which, although adding to the capital outlay, are, according to practice, equally omitted from parliamentary estimates—*e.g.*, the cost of management during the construction of the works, the engineer's commission, the parliamentary costs, &c. If, however, any weight is fairly due to the objection, it would be met at once by the requirement that when a Railway Bill contains a power to pay interest out of capital the amount so payable should be included in the estimate.

I have, &c.,

Joseph H. Warner, Esq.

JOHN CHARLES REES.

No. 5.—The BOARD of TRADE to the CHAIRMAN of WAYS and MEANS.

SIR,—Board of Trade (Railway Department), London, S.W., 3rd March, 1882.

I am directed by the Board of Trade to acknowledge the receipt of your letter of the 24th ultimo upon the subject of certain Railway Bills of the present session which provide for the payment of interest out of capital, contrary to the provisions of the Standing Orders of Parliament.

In reply, I am to state that, in view of the habitual infringement of the Standing Orders in the carrying-out of railway schemes, the Board of Trade are disposed to think that some alteration in

the Orders is demanded, while the suggested conditions would appear *prima facie* to be reasonable, and such as might probably be observed.

The Right Hon. Dr. Lyon Playfair, M.P., &c.,
House of Commons.

I have, &c.,

HENRY G. CALCRAFT.

No. 6.—PROPOSALS for altering STANDING ORDER 167, by the CHAIRMAN of WAYS and MEANS.
STANDING Order 56, line 2, after “second class” insert “including therein all payments intended to be made to the shareholders as interest on calls made in respect of shares held by them.”

Repeal Standing Order 167.

New Standing Order to follow Standing Order 166:—

A clause shall be inserted in every Bill authorizing the creation of share capital for railway purposes, providing that no interest shall be paid to any shareholder on money paid by him upon calls, except under the following conditions—viz.: (1.) That the rate of interest paid shall not exceed 5 per cent. (2.) That such payment of interest shall not begin until at least two-thirds of the share capital authorized by the Bill has been subscribed, and is *bona fide* held by the subscribers. (3.) That such payment of interest shall not be continued after the completion and opening for traffic of the railway to which the capital is directed to be applied, nor in any case for more than five years after the passing of the Act. (4.) That notice of the intention of the promoters to pay such interest be given, together with the notice of other particulars required by the Standing Orders, by advertisement in the *Gazette*.

No. 7.—LORD REDESDALE'S PROPOSED ALTERATIONS of STANDING ORDER 167.

In Standing Order No. 3, line 15, after “privileges,” insert “or to empower a company to pay interest or dividend out of capital.”

In Standing Order No. 56, line 2, after “class,” insert “including therein all payments, if any, to be made to shareholders by way of interest or dividend out of capital.”

In lieu of Standing Order No. 168: A clause shall be inserted in every Railway or Tramway Bill by which the creation of share or loan capital is authorized, to provide that no interest or dividend shall be paid out of such capital to any shareholder, on money paid by him upon calls, except upon the following conditions—viz.: (1.) That the rate of interest or dividend shall not exceed $4\frac{1}{2}$ per cent. per annum. (2.) That such payment of interest or dividend shall not begin until the company have proved to a Justice (Sheriff) that two-thirds of the share capital, if any, has been *bona fide* issued and accepted, and is held by the persons and corporations to whom the same was issued, or their executors, administrators, successors, or assigns, and that such persons or corporations, their executors, administrators, successors, or assigns, are legally liable for the same; and upon production to such Justice (Sheriff) of the books of the company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which certificate shall be sufficient evidence thereof. (3.) That such payment of interest or dividend shall not be continued after the completion and opening for traffic of the railway or tramway, nor in any case for more than five years from the passing of the Act in the case of a Railway Bill, or three years in the case of a Tramway Bill.

New Order, 168A.—In the case of all Bills other than Railway and Tramway Bills, by which the creation of share or loan capital is authorized, and express provision is made that interest or dividend may be paid out of such capital to shareholders upon money paid by them upon calls, conditions similar to those set forth in the preceding Order shall be inserted, with such alterations as the circumstances of each case may, in the opinion of the Committee, require.

APPENDIX No. 2.

Paper handed in by Mr. Rees, 28th April, 1882.

DIRECTORS named in Bills of the present Session by which it is proposed that Interest should be paid out of Capital during Construction.

Central Northumberland Railway.—Sir Charles Edward Trevelyan, Sir John Swinburne, Ralph Carr Ellison, Hon. Frederick William Lambton, John Robinson, William Forster the younger, Charles Macartney Swarbrick.

East and West Yorkshire Union Railways.—Joseph Charlesworth, Henry Bentley, Humphrey Brooke Firman, Edward Bower, Hon. Fitzroy Stewart.

Rhondda and Swansea Bay Railway.—The Right Hon. Victor Albert George Child Villiers Earl of Jersey, Charles Bath, Thomas Cory, John Richardson Francis, Thomas Joseph, Morgan Bransby Williams, John Jones Jenkins, John Crow Richardson, William Williams.

Regent's Canal, City, and Dock Railway.—Sir George Henry Chambers, William Rushton Adamson, James Brand, James Staats Forbes, Albert George Sandeman, Charles Gassiot, William Hamilton Crake, Colonel Ben Hay Martindale, Alexander Lang Elder, Henry William Carter.

Hull, Barnsley, and West Riding Junction Railway and Dock Company.—Lieut.-Colonel Gerard Smith (Chairman), John Fisher (Deputy Chairman), Henry Hodge, Esq., Henry Briggs, Esq., the Right Hon. Lord Beaumont, William Day, Esq., Edward Leetham, Esq., Francis Reckitt, Esq., William Hamilton Crake, Esq., James Stuart, Esq., Watson Arton Massey, Esq., Lawrence Stephenson, Esq., John Leake, Esq., William Rayment, Esq.

APPENDIX No. 3.

MEMORANDUM by Sir F. S. REILLY, Q.C.

1. If Standing Order 167 did not exist, the practice would, I think, be to take express power in Railway and other Bills, where the promoters desired to pay interest before earning profit. They

would not, I think, venture to dispense with an affirmative clause. The clauses in different Bills would vary in character and in form, according to the views of the respective promoters; Committees would arrive at different decisions; the uniformity, which is one of the objects of "The Companies Clauses Consolidation Act, 1845" (as expressed in the preamble), would be lost.

2. Therefore, if Standing Order 167 is not maintained, I think it should not be simply repealed, but a substituted Standing Order should be passed, allowing (not requiring) the insertion of an affirmative clause in Bills, and indicating the conditions to be imposed.

3. The present Standing Order restricts railway companies only; a new permissive Standing Order might, I think, apply to all companies.

4. The limitation on the rate of interest might, I think, be left wholly or in part for the Committee on the Bill, who might decide according to the nature of the undertaking, and other circumstances.

5. The Standing Order then might be expressed somewhat as follows: In any Bill authorizing the creation of share capital, and incorporating "The Companies Clauses Consolidation Act, 1845," provision may be made to the effect that, notwithstanding anything in that Act (of 1845), the company may pay interest to shareholders on sums called for and paid, on the following conditions, but not otherwise—namely: (a.) That the rate of interest may be agreed on between any shareholder and the company, but so as not to exceed the rate of [five] per cent. per annum, or such lower rate, if any, as the Committee on the Bill think fit to prescribe in the Bill. (b.) That such payment of interest shall not begin until [two-thirds] at least of the share capital authorized by the Bill has been in good faith issued and accepted, being held by persons legally liable for it (the usual proof to be given). (c.) That such payment of interest shall not be continued after the completion and opening for public traffic or other user of the railway or other works authorized by the Bill, nor in any case for more than [five] years from the passing of the Bill, or such less period as the Committee on the Bill think fit to prescribe in the Bill.

6. Where a Bill contains such a clause, section 24 of the Act of 1845 should, I think, be repealed by the Bill.

7. The terms of the Standing Order would have to be adapted to Scotland.

8. Other Standing Orders affected would be Nos. 3, 56, 57, 153.

9. Standing Order 3.—Notice of the intention of the promoters to seek power to pay interest out of capital would have to be inserted in the *Gazette* notice for the Bill.

10. Standing Order 56.—In the estimate of the expense of the undertaking there should, I think, be a separate item for the aggregate amount of such interest sought to be allowed.

11. Standing Order 57.—That amount should not, I think, be treated as comprised in the estimate with reference to the deposit.

12. Standing Order 153.—Nor be treated as part of the capital of a railway company with reference to the amount of loan capital.

13. I think that the Bill itself should also distinguish the share capital to be raised for interest, and separate accounts thereof should be kept and be laid before meetings of the company.

14. Further questions would have to be considered with respect to—(1) Bills pending at the time of the change in the Standing Order; (2) Railway Acts theretofore passed.

15. Those Acts could not be relaxed except by general Act of Parliament.

16. Having regard to that consideration (among others), I think it may be doubted whether the required substitute for Standing Order 167 would not be better provided by a Bill for amending the Act of 1845 than by Standing Order.

5th May, 1882.

FRANCIS S. REILLY.

Enclosure 4 in No. 3.

[Extract from the *Times*, 7th June, 1883.]

DEBATE IN HOUSE OF COMMONS, WEDNESDAY, 6TH JUNE.—STANDING ORDER 167.

SIR A. OTWAY rose to move an amendment to Standing Order 167, which prohibits railway companies from paying interest out of capital. The amendment was to the effect that a Committee on a Railway Bill should be allowed to empower the payment of interest out of capital, subject to the following conditions: (1) That the interest do not exceed 4 per cent.; (2) that it be only allowed until the railway be completed; (3) that no such interest be allowed until the issue by the Board of Trade of a certificate that two-thirds of the share capital has been issued and accepted; (4) that no interest be allowed on calls in arrear; (5) that the interest so to be paid be stated in the Bill, and be not deemed capital in their Standing Order 153; (6) that notice of power to pay such interest be given in all prospectuses or advertisements of the company; (7) that the half-yearly accounts of the company show the amount so paid in interest; and, lastly, that penalties be imposed for the unlawful payment of such interest, and that any contract for the payment of prohibited interest be made void. The right honourable gentleman said it would be well to consider the history of the Standing Order. Before the passing of "The Companies Clauses Act, 1845," the payment of interest out of capital was only allowed if there were provisions authorizing it in the special Acts. In 1837 there were only three such Acts, in 1844 there were seven, in 1845 twenty-six, and in 1846 ninety-two. The Order was made in 1847. The Order was passed in consequence of the railway mania, which caused great distress to many persons who had invested their savings in railway speculations. Now that there was no such danger to be apprehended as existed at that time, it was well to consider whether it was necessary to continue without modification the prohibition contained in the Standing Order. A correspondence had passed in the early part of the year between his predecessor and the President of the Board of Trade, in which it was stated on both sides that some modification of the Standing Order was desirable. He was not

disposed to question the soundness as a matter of principle of the prohibition of the payment of interest out of capital; but it ought not to be forgotten that such payment had been absolutely necessary in some cases. The Great Northern Railway Company, for example, was empowered during a term of seven years to pay 5 per cent. interest on capital, and but for that permission that great and important line would probably have never been constructed. The most serious objection to his proposal was that bogus companies might abuse the power. But he thought he had provided sufficient safeguards against that. His honourable friend the member for the County of Durham (Sir A. Pease) had raised his voice on behalf of clergymen, widows, and orphans who might be deluded into putting their scanty savings into unsound undertakings. But he did not know that it was the duty of the House to protect such persons from their own imprudence; and he had provided security against the abuse of the privilege. There were some members in the House who appeared to think it their duty on all occasions to oppose railway companies and railway directors as if they were malefactors. He had no sympathy with such persons; but care had been taken to protect the interests of the public at large by the limitations which he proposed to place on the power proposed to be conferred. The right honourable gentleman concluded by moving his amendment.

Sir J. PEASE, in rising to move, as an amendment to the motion of the Chairman of Ways and Means, that it was inexpedient to alter the Standing Order in the way proposed until both the English and Scotch Companies Clauses Consolidation Acts of 1845 had been amended, said that he did not think that the proposed change in the Standing Order would operate in the interest of either the railway companies or the community at large. If railway companies were to be allowed to pay interest out of capital during the construction of their works, the same latitude would have to be allowed to limited companies of all kinds. In the debate that had taken place on this subject in 1864 Mr. Beckett Denison, Mr. Ricardo, Mr. Hume, and Sir Charles Wood strongly objected to the principle of the proposed change, on the ground that it would deceive the public as to the speculative character of the undertakings, and would operate as a fraud upon the Legislature. The object in view at that time was to guard as much as possible, not against legitimate enterprises, but against bubble companies and rash speculations. His experience in regard to railways had been considerable; and the one with which he was most connected was made upon the most wholesome of all principles—it was made principally by the men who required to use it, and a large proportion of whom were on the board—and it had turned out to be a railway which paid remarkably well. But he must confess that there was a class of railways which did a great deal of damage to the commercial interests of this country—those got up by contractors and speculators, which came to nothing, or came to grief, or were absorbed by the large railway companies to the detriment of the traffic-senders. They were told that, because some railway speculators had broken through their rules, therefore the House should alter the Standing Orders; but, in the last ten or twelve years, this related to a comparatively small amount of the entire capital spent by the railway world. It was altogether a bad doctrine to lay down, that, because the Standing Orders of the House had been infringed by a few persons, therefore the House should modify them. As well might they say that, because there were many pickpockets that were not caught and put into Newgate, therefore they should give up the laws against them, and let those out that were in gaol. Was there equity in their Standing Orders or not? If there was, let them be upheld. A few figures would prove that the effect of the existing Orders was not to stop enterprise. In 1847 the railway mileage in this country was 5,640 miles; in 1882 it was 18,180 miles. In 1847 the capital in railways was £196,000,000; and in 1882 it was £750,000,000. Upwards of £200,000,000 had been invested in spite of this Standing Order in the railways of the United Kingdom. Three years ago persons brought up this fallacy of paying interest out of capital, and subsequently, as a consequence, schemes involving £4,000,000 were proposed; in 1882 ten schemes were brought out, involving about £29,000,000; and in 1883, when his right honourable friend near him had taken up the question, forty-six schemes were brought before the House, involving seventy-eight millions of money; and he feared that, if the course proposed was adopted, there would be a great danger of bringing back that reckless expenditure which his right honourable friend would be the first to deprecate, and which the House would do wrong to encourage. Tracing the action in this matter to the course that had been taken by the Hull and Barnsley Company, he said that, if this company had made a mistake in issuing their prospectus—as they had done—against the Standing Orders, they should have acknowledged it to the House, and sought a remedy in a proper and reasonable manner. To that he should certainly have had no objection; but it was too much to ask the House to alter or modify its Standing Orders in order to meet their difficulty. If the right honourable gentleman had proposed the repeal of the Standing Orders on free-trade principles he could have understood his position; there would then have been the logical argument that all people should be left to take care of themselves. But, as a matter of fact, that House did not allow people to do so: by many laws the House prevented it, and took care of them as best they could. The honourable member then urged that the proposed modification of the Standing Order would give no additional safeguard to those interested, and on that ground also he opposed the resolution. He begged to point out that they were beginning again with what had already fallen through—namely, subscription contracts. He had himself signed many such contracts. But subscription contracts had proved so delusive that they had to be abandoned; and now the Chairman of Ways and Means proposed that they should go back to them again. Surely the Committees of that House had enough of responsibility upon their shoulders in passing those Railway Bills without imposing on them the additional responsibility of saying how much interest the railway companies would be able to pay. Again, he would ask, was it worth while, for the sake of doing so little, to require so much from the Board of Trade and the Committees of that House? Clergymen and small shopkeepers were the people who took those shares, and among them could not be found a single person who knew anything about the merits of the case. What he wanted to show was that by doing what was now proposed they would draw in the very class of

people who ought to be protected, if they were to protect investors at all—the class which was least able to protect themselves. In 1881, out of the whole amount of ordinary railway stock, £36,500,000 paid no dividend, £6,250,000 paid 1 per cent. and under, and £15,250,000 paid 2 per cent. or less. In 1870–71 the average dividend paid by railway companies was 4·4 per cent.; in 1880–81 it dropped to 4·29 per cent. He would ask, then, had the time come when the House could with propriety repeal a law and a Standing Order which had so long operated without detriment to railway enterprise and for the protection of people who ought to be protected? He objected to the encouragement of these lines from the point of view of the mercantile community. His experience had been that these small lines were thorns in the sides of the larger companies. He believed that an alteration of the Standing Order in the manner proposed would be detrimental to the commercial interests of the country. There was no difficulty whatever in now raising any amount of capital for legitimate railway enterprise, and there was, therefore, no necessity for the alteration. On the other hand, it would not stop fraud; for the man who was unable to raise capital by the *bonâ fide* merits of his undertaking would continue to attract investors by means of the Standing Orders. On the whole, he thought that the alteration would do a great deal more harm than good. In accordance with the opinion of the Speaker, he should take the simple course of simply proposing to negative the motion.

Mr. GREGORY doubted whether an alteration of the Standing Orders would affect the construction of railways to any extent. That was, no doubt, the intention in 1845; but in 1848 some of the heaviest railway contests took place. Nor did the subsequent Standing Order have any material effect in checking speculation. What would check speculation to a considerable extent was a better understanding between the great railway companies themselves that they would not promote lines for the purpose of speculation or of attacking each other's interests. That would be a greater check than anything the House could do by Standing Orders. He thought, however, that the motion of the Chairman would have a good effect in checking what were known as contractors' lines. A contractor sometimes took shares in the proposed railway in part payment of his price, and then he got off these shares as well as he could. The contractor ought only to be able to get shares from shareholders in the ordinary way, and he should only be allowed a moderate rate of interest on his outlay, instead of the company being driven to accept his own terms. At present he received not only more than a moderate rate of interest, but also a very large premium on the prices he charged and the capital he expended. What was contemplated by this Standing Order was that a shareholder should receive a moderate rate of interest on any money he advanced beyond the amount of his calls actually made; so that if he liked to advance money in anticipation of calls he was to receive interest at 4 per cent. per annum, subject to certain specified conditions. The proposal was, in effect, to allow of an ordinary mercantile transaction taking place, such as occurred out-of-doors every day. It appeared to him to be, under the circumstances, a very fair and moderate proposal, and he hoped it would be accepted by the House.

Mr. CARBUTT thought it would be most disastrous to the railway companies and the public in general if the Standing Order were altered in the manner proposed. If the proposal were accepted it would work best for the large capitalists and worst for the small holders. It was not for them to encourage small investors to go into investments which ought to remain in the hands of large capitalists only. In the interest of the working-classes, he trusted that the House would hesitate before it accepted the proposal then before it.

Mr. SALT said that the question was peculiarly difficult, as the arguments on both sides were evenly balanced. The broad principle on which the House was invited to act might be invoked with equal propriety on either side, some contending that capital should be left as free as possible, and others that interest was of its very nature something to be earned, and should not be paid without being earned. As for the alteration of the Order, it was impossible to look at railway companies now as they were regarded in 1847, when the Order was passed, and when the railway system of the country was in its infancy. Our system now was all but complete, and it was doubtful how far it would be fair to existing companies to alter the Order on which their concerns were expressly based. Whatever was done ought to be done without much delay, as the promoters of many very great enterprises, representing many millions of capital, were awaiting the decision of the House. His right honourable friend the Chairman of the Committee of Ways and Means had adopted the views of the Committee of last year—that as things were some change was expedient, and that, though it would be well if the Standing Order could be generally adhered to, yet, in peculiar circumstances, some relaxations should be permitted. The Committee of last year, partly in consequence of the memorandum of Sir F. Reilly, had recommended that the alteration should be made, not by way of resolution, but by means of a Bill; and the latter was certainly the preferable course. A resolution was a rather summary method of procedure; but a Bill, being sure to meet with opposition, would give every member and every interest an opportunity of being heard.

Colonel SMITH remarked that, as the Act of 1845 was in existence, there was no particular necessity for the Standing Order, which was naturally and inevitably evaded. There could be no doubt that the Standing Order had been frequently evaded, and he hoped the House would carefully consider what had been the effect of perpetuating the old system. One result was to cripple legitimate enterprise, and to drive the companies into the hands of contractors. The principle of the proposed change in the Standing Order had been approved by Sir G. Jessel, the late Master of the Rolls, and if carried out it would merely have the same effect as if a railway company were to issue their stock at a discount. He thought that the rule of *caveat emptor* should apply to the case of shareholders of railway stock as much as to the purchasers of other property. The effect of the alteration would be to return to the old permissive system. The Standing Order referred to had not worked well; it had been evaded; and it would not work well in the future if retained. He believed the Chairman of Ways and Means had hit the happy medium with regard to the rate

of interest, and he hoped the House would adopt the motion, because it would be an aid towards the carrying-out of important works which had been sanctioned, and it would give an impetus, not to bogus or merely speculative works or companies, but to trade generally in those directions where it was needed.

Mr. C. LEWIS said that so far the discussion had been almost entirely confined to gentlemen who were particularly interested in railway enterprise; but the general public had a right to be considered in the matter. Having observed that opposition to the motion came chiefly from the representatives of three great railway companies—the London and North-Western, the Midland, and the Great Western—and that their object was to prevent the smaller companies getting the independent advantages which the proposed alteration would give them, he contended that it was not for the public good, in relation to the great question of the extension of railway accommodation, to keep any longer the restriction it was proposed to remove. He should have thought that the opinion of the Chairman of Ways and Means on such a point as this would have gone a long way with honourable members; but it appeared to him that many of the objections that had arisen, and many of the difficulties that had been started, were removed by the careful and protective way in which the provision in question was to be carried out, for it was rather on the side of strictness than of laxity.

Sir L. PLAYFAIR said that this proposed alteration came under his notice while occupying the office of Chairman of Ways and Means. It involved no question of principle, and was solely a matter of policy and expediency, which the House could determine for itself. The present Standing Order was adopted in 1847; but in the previous year nearly one hundred Bills, involving a capital of forty millions, were passed through the House. But in 1847 the House, seeing the great railway mania that existed, thought it necessary to put a stop to it, and a very efficient Standing Order for repressing the growth of railways was passed. It was not then treated as a question of principle, and the Master of the Rolls in his judgment put it in this way: If a house were built by a man, and £1,000 had to be paid for it, he would draw that amount out of his investments; but while that house was building he must add to the cost of the house the interest on the capital, as well as the capital itself. It was the same with respect to railways—whether paid by the individual or by the undertaking, the cost of the undertaking was the capital plus the interest on it before it became reproductive. The question that came before him as Chairman of Ways and Means was as to whether the time had not come for relaxing this repression of enterprise. He found that there was a great net of railways, constructed by great capitalists, covering the country; but there was still a demand by localities for branch railways, such localities not considering that they had the encouragement from the large companies that they ought to have. They then came for power to construct those railways, and they did so by evading the Standing Order in almost all cases. The railway was constructed, and interest was paid to the small capitalist during construction, and the Standing Order was treated as if it had not existed. The very fact of the small holdings in undertakings such as the Hull and Barnsley Railway, averaging only £250, against an average holding of £1,700 in the larger companies, was a strong argument in favour of the proposed alteration. It showed that the public were interested in the undertakings, and were willing to offer small sums for the construction of railways in their localities. This Standing Order as proposed would offer far more efficient protection to the unwary investor by the securities placed upon it than by the continuance of the present system. But it was on the ground of the dignity of the House chiefly that he was desirous of seeing the Standing Order changed. It was not right that a Standing Order should continue in existence which could be evaded by any person who chose.

Mr. RAIKES cordially agreed with the observations of the right honourable member for Edinburgh University. The alteration of the Standing Order had been opposed on the ground that it would afford facilities to impose upon the unwary investor. The present operation of the Standing Order was that the only investment denied to the small capitalist was the small English railway. All kinds of foreign undertakings guaranteed interest, and there was no question that an immense amount of English capital ready for investment was driven abroad through the restrictions now imposed on small English undertakings. He agreed with the honourable member for Stafford and others that a matter of this sort should be dealt with by Bill rather than by an alteration of the Standing Orders. His honourable friend's proposal would, in his opinion, carry into effect the *dictum* of the late Master of the Rolls that had been referred to. He would call attention to the fact that in the largest undertaking now before Parliament—that of the Manchester Ship Canal—it was proposed by the Bill to charge a sum of money, being part of the total capital, with interest, during the construction of the undertaking; and unless the promoters were enabled to give effect to that proposal, he understood the scheme would be dropped. He hoped that, having regard to the fact that the proposal now before the House was that of the Chairman of Ways and Means, who had devoted special attention to it since he had been in office, and that it gave effect to the recommendations of the Committee of last year, and that it had, moreover, received the support of every member who had spoken except the representatives of the great railway companies, the House would pay attention to what had been shown to be the interests of the public, rather than listen to the demands of powerful corporations.

Mr. CHAMBERLAIN said he desired to make a few observations, and in doing so must be understood as speaking, not on behalf of the Government as such, but only as expressing his own strong opinion, though he believed it was the opinion of most of his colleagues, and particularly of his right honourable friend the Prime Minister, who, it would be admitted, was not an unimportant authority on State finance. He thought the House had to thank, and to thank warmly, his right honourable friend the Chairman of Committees for having brought this matter before them. It was a difficulty which had grown in the time of his predecessors, and it was only in performance of his official duty that he had called the attention of the House to the subject, and had proposed a method of getting over the difficulty which had arisen. Upon the merits, he thought there were two questions to be

decided, the first question being one between the proprietors of the great existing lines and the promoters of new lines. It was not in the interest of the great lines to promote or encourage competition. The great lines had obtained the greater part of their capital by the evasion of this Standing Order; and, having broken down that bridge, they were desirous of preventing any one else from passing over. But their interest was not the interest of the public. They asserted that their desire was not to discourage railway enterprise, but to put a stop to bogus companies. But the effect of this Standing Order was to discourage enterprise. What was the meaning of the term "bogus enterprise," as applied to railway undertakings? If it meant an enterprise that did not give good returns, then the London, Chatham, and Dover, the Metropolitan, and the Great Eastern Railway Companies were bogus enterprises, for up to the present moment they had not paid more than 1 per cent. on their capital. But their undertakings had been of very great advantage to the country; and he felt bound to say that he was less inclined to protect those investors whose losses were of the greatest possible benefit to the country. According to the supporters of the great companies, enterprise was not to be encouraged unless it paid 4 per cent. There could be no absolute law against speculation; but he believed that the moderate proposals of the Chairman would prove beneficial, whereas proposals of a more stringent character would prove useless. These proposals having received the support of three Chairmen of Committees, and also having given effect to the recommendations of a Select Committee, he hoped the House would give them its support.

Mr. HUBBARD said it appeared to him that the main reason for abrogating the Order now in force was because it had been in existence for so long a time. He failed to see the force of that argument. He thought the honourable member for Durham had done good service in bringing the matter before the House. It was most essential that the House should not sanction a false principle.

Mr. MUNTZ said he had heard the strangest proposition to-day—namely, that because a rule was evaded it ought to be abrogated. The real question before the House was, was the House prepared to sanction the payment of interest out of principal? To pass a resolution sanctioning 4-per-cent. payments was quite unprecedented, and he trusted the House would not agree to the proposal.

Mr. MOLLOY thought it was unfair to occupy the time of the House on this matter, to the exclusion of an important Irish measure, which stood first on the Paper. As a protest against this misuse of the time of the House, he begged to move the adjournment of the debate.

Mr. O'C. POWER said that, as the discussion had been introduced by the Chairman of Ways and Means, the Government could not be exonerated from blame in this matter. He should support the motion for adjournment.

Sir W. HARCOURT said that the Government had really nothing to do with the order of business on Wednesdays. He appealed to the honourable member to withdraw his motion.

Colonel MAKINS supported the motion for adjournment, on the ground that the question was too important to be dealt with by way of resolution.

Sir A. OTWAY was sorry that it had been necessary to postpone an important Bill; but the question he had raised was also important, and had been several times postponed. A decision one way or the other was absolutely necessary; and the only result of an adjournment of the debate would be that it would have to be resumed on another Wednesday.

After a few words from Mr. SHAW, the motion for the adjournment of the debate was withdrawn, and the House divided on Sir A. Otway's resolution.

The numbers were—For the resolution, 131; against, 123: majority, 8

Enclosure 5 in No. 3.

[Extract from the *Times*, Thursday, 7th June, 1883.]

PAYMENT OF INTEREST OUT OF CAPITAL.

THE main discussion, however, arose upon a motion by Sir Arthur Otway to amend the Standing Order which forbids railway companies to pay interest out of capital. He proposed that a Committee on a Railway Bill should be empowered to authorize payment of interest out of capital upon the following conditions: That the rate of interest shall not exceed 4 per cent.; that it shall be payable only during the construction of the line; that it shall not be payable until the Board of Trade has certified that two-thirds of the share capital has been allotted; that it shall not be payable upon calls in arrear; that it shall be stated in the Bill, and that notice of power to pay it be given in all advertisements and prospectuses of the company; that the half-yearly accounts shall show the sums paid as interest; and, finally, that penalties shall be imposed for infringement of these conditions. The Standing Order which the House of Commons has thus modified was made in 1847, with the view of checking the excessive speculation in railways which at that time was doing much mischief and causing widespread distress. Circumstances have greatly changed since that date. Nearly eight hundred millions have now been invested in railways, and our system is so far complete that no recurrence of the mania for railway construction need be apprehended. All that we have to do is to keep pace with the growth and displacement of population, and no field remains for the numerous and gigantic enterprises of forty years ago. On the contrary, the limited and local character of the lines now to be constructed operates to discourage investors, and the Standing Order originally framed to check excessive speculation has become a serious obstacle to legitimate enterprise. As always happens in such cases, means have been found to evade it, and the House of Commons is really compelled to consider whether it will recognize the alterations brought about by time and circumstances, or whether it will adhere to its old rule, and devise new and more stringent methods of making it operative. Sir J. Pease argued that we may as well abolish the laws against theft because some thieves go at large, as modify the Standing

Orders because they have been infringed. The analogy, however, is incomplete. In one case we are dealing with a matter of principle; in the other one of mere policy and convenience. The law, moreover, is not openly evaded without fear of punishment; while the Standing Order is. The pickpocket is not punished only because his offence cannot be brought home to him; the Standing Order is evaded by men who are in evidence, but whom the House of Commons cannot punish. A rule which can be set aside in this fashion requires modification in one way or another, and none of those who yesterday opposed Sir Arthur Otway's motion suggested any means of rendering the Standing Order effective for the ends they desire to attain.

It will be cheerfully conceded by every one that, according to common-sense and sound business principles, profits ought to be earned before they are divided. Indeed, we may go further, and say that nothing but the general approbation accorded to the venerable but illogical aphorism concerning the 'counting of chickens before they are hatched' could justify us in even contemplating the possibility of dividing what is as yet non-existent. If it could be shown that there are persons weak enough to suppose that a railway not yet constructed is earning profits it might become a question whether the Education Department should not insist upon maintaining the prohibition against payment of interest out of capital. But, as a matter of fact, the most credulous investor is aware that the interest he receives while the line is in process of construction cannot be profit. If he ever thinks at all he must be quite aware that he is really receiving back a portion of his own capital, and that what remains in the form of shares is by exactly so much less valuable. Yet experience shows that this process of paying out of one pocket and receiving into the other exercises so magical a charm over the investing mind that a railway which promises to pay interest during construction will obtain money, while one which does not will fail. On promise of 4 per cent. for his money a man will invest £100, knowing that at the end of a couple of years he will have only ninety-two pounds' worth of labour and material for it; while without any interest he will not invest, although he knows that in two years he will have the worth of the whole £100 in property. The interest-loving investor is in the position of a dog who dines off a joint of his own tail—if, indeed, he escapes the yet worse fate of the animal whose astute master is said to have dined off the tail and given only the bone to its owner. But then the whole transaction is so open and aboveboard that there is nothing to be said. If people prefer to build their railways in that fashion, there is no reason why the Legislature should step in to hinder them. Interest upon the money used in constructing a railway is an item of cost as unavoidable as the wages of the navvies or the fees of the engineer. The shareholder has to pay it somehow, and it would be positively cruel to interfere with a process so ingenious and delightful that it actually makes him feel as if the interest were profit. At first sight it looks as if the interest paid to shareholders were an actual addition to the cost of the concern. But it would in any case have to be paid to somebody. Suppose that the shareholders did not step in until the line was finished, and that the contractor had borrowed five millions from his banker to carry on the works. They would have to pay the interest on that money in the purchase price. But if they find the money to start with, they receive the interest instead of the banker, and are charged with it exactly as if it had been paid to the banker instead of to themselves. Sir J. Pease and others are much concerned for the small investor, the little shopkeeper, or country clergyman, who may be tempted by the promise of interest to go into undertakings of an unsound kind. But no legislation can help people who can be tempted to invest capital on the promise of 4 per cent. for a year or two, without knowing anything of the prospects of the line when finished. The mere payment of interest during construction does not make the enterprise one iota better or worse; and if, notwithstanding the ample warning secured to them by Sir A. Otway's amendment, people mistake the nature of the advantages offered them, they must be far beyond the reach of legislative assistance. It may, indeed, be laid down as a sound general principle that small investors have no business to speculate in new lines. They can know nothing about their prospects, they can hope for no share in their management; and if they take shares at all they are gambling just as truly as if they backed a horse for the Derby. It is all very well for men who have money to play with, or who can go into the thing on a big scale; but the small investor should stick to certainties. He may rely upon it that, if a new line is judged by those who know to be a very good thing, nobody will ask him for a penny. So long as people are simple enough to think that a number of financiers lay their heads together only to put good investments in their way, so long, we fear, will there be unfortunate small investors, no matter what may be the Standing Orders of the House of Commons.

Enclosure 6 in No. 3.

[Extract from the *Times*, Wednesday, 27th June, 1883.]

DEBATE IN HOUSE OF LORDS, TUESDAY, 26TH JUNE.—RAILWAY BILLS: PAYMENT OF INTEREST OUT OF CAPITAL.

THE EARL OF REDESDALE said he wished to ask the careful attention of their Lordships to the subject of altering the Standing Order relating to the payment of interest out of capital. He wished most distinctly that their Lordships should determine the matter according to their own judgment, and let him know what their opinion was. He would not have brought the question before their Lordships at that period of the session were it not for the Order that had been adopted by the House of Commons. The subject was fully debated in the House of Commons; and, on a division, the proposed alteration of the Order was carried by 131 to 123. The division was, therefore, a narrow one; but then the whole question was raised, and the matter was of great importance. Some slight alterations had been made in the Order as it came from the House of Commons. As their Lordships were aware, there was a Standing Order against the payment of interest or dividend out of capital. That Order, as it stood at present, was made in 1848, and had since practically governed the action of that House with regard to Railway Bills. At the same time, in one or two instances,

payment of interest out of capital had been allowed. There was no doubt that at the present moment there were a number of railway companies which desired to have that power; and those engaged in the management of the business of the House of Commons reported in favour of the change. Certain conditions and restrictions, however, were proposed. In the first place, the interest to be allowed was not to be more than 4 per cent. There were several instances in which interest had, properly or improperly, been paid at a higher rate than was allowed by this Order. The next portion of the Order was that interest be not allowed to begin until the railway company had obtained a certificate of the Board of Trade to the effect that two-thirds at least of the share capital authorized by the Bill, in respect whereof interest might be paid, had been actually issued and accepted. Another regulation was that interest be allowed to be paid only until the expiration of the time allowed by the Bill for the completion of the railway, or until the half-yearly dividend day next after the opening of the railway for public traffic, whichever should first happen, or for such less period as the Committee thought fit. That was also a very important condition, intended to secure that the scheme was *bona fide*. It was also provided that interest should not accrue in favour of any shareholder for any time during which his calls were in arrear. That was also a very proper arrangement. The next regulation was that the aggregate amount to be so paid for interest be estimated and stated in the Bill, and that a specific amount of the capital be appropriated by the Bill for that purpose, and that no capital in excess of that amount be so applied, and that such appropriated capital be not deemed capital within Standing Order 112. It was also provided that if any part of the capital specifically appropriated for the payment of interest should not be required and applied for that purpose, the same might be applied for the general purposes of the company; that notice of the company having power so to pay interest be given in every prospectus, advertisement, or other document of the company, and of any promoter, director, or agent of the company, inviting subscriptions for shares, and in every certificate of shares; and that every such prospectus, advertisement, or other document should distinguish and state in clear terms the amount of capital specifically appropriated for the payment of interest; that the half-yearly accounts of the company should show the amount on which, and the rate at which, interest had been paid; and the company be authorized by the Bill to pay interest accordingly, but not further or otherwise. He was extremely anxious that their Lordships should give a fair and impartial consideration to these proposals, and either assent to them or reject them. It was the decision of the House of Commons which induced him to bring the matter forward; and, as he had already stated, if it had not been so decided by the House of Commons, he would not have troubled their Lordships with the subject at that period of the session. It was a grave question for the consideration of their Lordships' House whether they adopted the proposals or not. He hoped noble Lords would consider what was urged on both sides, and would decide according to what they thought just and best. The amendment of his noble friend (Lord Auckland) was to the effect that it was not desirable to alter Standing Order 128, or to substitute for it a new Standing Order, until a Bill had been passed to amend "The Companies Clauses Consolidation Act, 1845," and "The Companies Clauses Consolidation (Scotland) Act, 1845," so far as these Acts related to the payment of interest out of capital by railway or other companies. It was altogether a matter for their Lordships to consider; and what he desired was to have their Lordships' opinion upon this Order, which had passed the House of Commons in a very well-attended House.

LORD AUCKLAND observed that the Standing Order had been in existence for the last thirty years, and had worked well in checking the reckless railway speculation which had formerly done so much harm. He held that a sweeping change like that which was now proposed ought not to be made by a mere resolution; and he therefore moved, as an amendment, That it is not desirable to alter Standing Order 128, or to substitute for Standing Order 128 a new Standing Order, until a Bill has been passed to amend "The Companies Clauses Consolidation Act, 1845," and "The Companies Clauses Consolidation (Scotland) Act, 1845," so far as these Acts relate to the payment of interest out of capital by railway or other companies.

EARL CAIRNS said that the question was of the utmost importance to all who were concerned in railway enterprise, and he regretted that it had come before the notice of the House in its present form. It was felt last year that this Standing Order would have to be reconsidered, and in March, fifteen months ago, a Select Committee of the other House was appointed to take evidence on the subject. That Committee reported in favour of the general principle on which Parliament had hitherto acted, but held that exceptions might very well be made in particular cases, and that the alteration, if made at all, should be made by an Act of Parliament, and not by a new Standing Order. As far as the other House was concerned, there appeared to be a disposition to alter the law, and several new undertakings were launched during the recess on the faith of the proposed alteration. This year the judgment of both Houses ought to have been taken as soon as possible, and a good way of doing that would have been to appoint a Joint Committee; but nothing whatever was done till the other day, when this important question was disposed of as private business at a Wednesday sitting. It was much to be regretted that the subject had now to be considered at a comparatively late period of the session. With regard to the main question, he might observe that there was much to be said on both sides. The practice of allowing interest to be paid out of capital during construction was, no doubt, very apt to mislead the unwary, who bought shares without looking much below the surface of the investment; but, on the other hand, the position of all the great railway companies had to be taken into account. They had the power of issuing capital at a discount; and if £100 stock were issued, say, at £80, it was much the same thing as issuing the stock at par on the understanding that interest should be paid out of capital for five years at 4 per cent., seeing that in either case the proprietor would have paid no more than £80. If new companies could neither issue shares at a discount nor pay interest out of capital, they could not be placed on the same footing as the old companies. It had sometimes been said that if railway companies were allowed to pay interest out of capital the same permission must be extended to other

companies also. It seemed to him, however, that there was no very complete analogy between trading companies and companies formed for the purpose of constructing works. In the former case, the law simply ordered the companies not to diminish their capital by the payment of interest; but in the latter case this principle did not apply in the slightest degree, for Parliament could ascertain the amount wanted for a given undertaking, and could specify the sum, if any, to be allowed for the payment of interest during construction. He mentioned these considerations to show that the question was not as simple as it had sometimes been assumed to be. He hoped that the House would not at the present moment do anything which might finally determine the question. It should be dealt with deliberately at the beginning of the session, either by a Joint Committee, as he had suggested, or by the introduction of a Bill. The course taken by the other House, however, if their Lordships simply refused to assent to it, would greatly tend to injure undertakings launched in view of the alteration of the Order; and he should accordingly suggest that with regard to the Bills of the present session the alteration might be made on clear proof that the proposed lines were desirable, and could not otherwise be constructed. If the House took that view of the matter he would propose to insert into the resolution words to that effect; and by this means all injustice would be avoided. He might mention one other point. Of late years several Acts had been passed authorizing trust funds to be invested in railway stock, and such provisions were very common in trust deeds and wills, but with the qualification that the investment should be in the debenture stock of companies which had paid a dividend on their ordinary stock for a certain number of years. If the change were made that qualification would not hold good any longer.

Lord HOUGHTON, who was indistinctly heard, was understood to support the proposal, but to recommend that the House should proceed by way of a Bill next session.

The LORD CHANCELLOR hoped that the House would deal with the proposal according to its own deliberate opinion, and not attach too much importance to a resolution passed elsewhere by a not considerable majority. It seemed to him that the reason given by his noble friend for the opinion—in which he thoroughly concurred—that the time had not yet arrived for a permanent change of the Standing Order, went further than his noble friend had suggested. If the House did not now come to a decision it ought to leave the question unprejudiced; and that would hardly be done by his noble friend's proposal. His noble friend had not given any positive opinion on the subject, though he had said more in favour of the change than for the retention of the existing rule. It was a very serious thing to change without ample deliberation a rule founded on the sound principle of letting it be understood that, when Parliament sanctioned a certain amount of capital, it meant what it said and not something else. If a deduction in the way of interest were permitted from £100 nominal capital the operation would be equivalent to a simple return of part of the money invested. His noble friend had stated that the same thing might be accomplished by the issue of shares at a discount, power to do which was often granted. But the distinction was this: that the issue of shares at a discount was after, and not before, the execution of the work for which the company was formed; whereas his noble friend suggested that a similar course should be taken at the very beginning of the undertaking, and when shares were being floated in the market by persons who intended to have no permanent connection with the company. It was better to call that which was discount by that name, and not by the name of interest. Nobody would be deceived in the one case; but, in the other case, inconsiderate persons might imagine that they were putting money into a secure investment from which they would get a return in the shape of interest. His noble and learned friend had argued one side of the case rather than the other; and he had so far followed the example as to put the arguments on the other side. If this were a matter that ought not to be determined without inquiry by a Joint Committee of both Houses, then it ought to be remitted to such Committee without the prejudice which must necessarily arise if in the meantime their Lordships were to say that a new principle was to be adopted *ad interim* in the case of Bills which had passed the other House this session. On what ground could it be said that any principle of good faith required anything of the kind? Those who had introduced the Bills were perfectly well acquainted with the Standing Orders of both Houses, and they had no reason to apprehend any change in either because a Committee had recommended that the subject should be considered. He could not help thinking, therefore, that that consideration must be dismissed. There was great force in the view that it was not desirable to alter the Standing Orders until a Bill had been passed to amend the Companies Acts as to the payment of interest out of capital, as they embodied the view of Parliament in 1845. It was in the power of Parliament in any particular Act to determine that the existing provision should not apply; but, on the other hand, the general rule was that the law as laid down by the Act should be applied, and the suspension of the Standing Order was necessary to enable a deviation to take place. If the general rule were not right the Act of 1845 ought to be amended. He was not prepared to lay down the contrary rule, as they would do by adopting this resolution; and he did not think any sufficient reason had been given why it should be done in favour of any Bills now before Parliament.

The Marquis of SALISBURY said that the noble and learned Lord beside him had thought that he would follow the advice and promote the wishes of the Government. This change, he believed, had been proposed by the President of the Board of Trade in the other House. His noble and learned friend no doubt imagined that, in providing a middle term by which, without entirely differing from the President of the Board of Trade, we could protect the principles of existing legislation, he should be complying with the wishes and following in the path prescribed by the Government; but his noble friend omitted sufficiently to reflect on the remarkable phenomenon of modern politics—the dual personality of Mr. Chamberlain. He did not suppose the Government was divided—such a thing never occurred; but Mr. Chamberlain was two personalities: he was not the same man in Birmingham that he was in Downing Street; nor was he the same man on a Tuesday evening that he was on a Wednesday morning. He had a double personality of time and

of place. It was through overlooking this remarkable peculiarity in Mr. Chamberlain that his noble and learned friend found himself in his present position. At the same time, the arguments of the noble and learned Lord on the woolsack appeared to be convincing, and he thought they had better leave the matter unprejudiced, as there seemed to be no anxiety on the other side of the House to spare Mr. Chamberlain's feelings. Considering the enormous amount of property affected, this was one of the gravest resolutions the House could pass. It was a proposal to enable a certain number of investors to practise upon themselves a wholly innocent self-deceit, and to take, in the form of interest, what was really a little of their own capital returned to them. He was far from saying there might not be reasons of public policy in favour of the change; but the reasons of public policy were of two kinds, and pointed in two different directions. This was entirely a question whether the railway which its friends called a contractor's railway, and its enemies called a bogus railway, was a kind of railway which it was desirable to multiply. There was a scarcity of investments at present, and money would be speedily found to make these railways. They might be wanted by districts, or by persons in districts, and yet they might not pay their working expenses. The passing of the proposed Standing Order would facilitate the making of these railways. They would benefit the district or some of its inhabitants; but it was only fair to remember that considerable injury might be inflicted upon the main railway to which the district belonged, and a blow of that kind might result in injury to the public. One of these contractors' railways, which did not pay its expenses, must in the long run be bought up by the main railway of the district. This was really like presenting the father of a family, already overburdened with spendthrift sons, with a prodigal son for whose existence he was not responsible. It might be necessary to do it, but it ought not to be done hastily or with a light heart. To inflict heavy burdens on main lines in this way would probably result in increased fares and diminished accommodation. He was anxious not to prejudice the consideration of a subject upon which sufficient argument had not been heard; and it was not the duty of Parliament permanently to take the course proposed without giving so grave a matter the utmost consideration in its power.

Earl GRANVILLE said it was not quite accurate to state that this change was proposed or supported by the Government. The proposition was made by the Chairman of Committees in the other House, and was supported by Mr. Chamberlain, who expressly stated that he did not speak for the Government on the matter, although he quoted a great authority in favour of the change. When the noble Marquis criticised apparent differences of opinion it must be remembered that this was not the first time this session that such difference had been exhibited by the speeches of the noble Marquis and those of the noble and learned Lord by his side. They had nothing to do with any question as between old and new railways. A good many years ago, Parliament came to the conclusion that it was unsound in principle to sanction a nominal payment of interest which was only a return of a portion of the capital. The matter certainly ought to be carefully considered; and he could not see why the necessary consideration should not be obtained by the simple adoption of the amendment of the noble Lord behind him. He could not conceive any question which could possibly bear less of a party character than this, and individually he should vote for the noble Lord's amendment.

Earl CAIRNS was under the impression that this was a proposal which was supported by the Government, and that the Government came there in order to maintain, as they had maintained in the other House, the alteration of the Standing Order.

Earl GRANVILLE said he did not state that it was not supported by the Government as a Government.

Earl CAIRNS remarked that Mr. Chamberlain was President of the Board of Trade, and in that capacity he was at the head of the Railway Department in this country. Did the noble Earl mean to say that it was competent for the President of the Railway Department to support a proposition in the House of Commons, and that he did not commit his colleagues by doing so? He was entitled to view this as a proposition of the Government, and he had ventured to suggest an amendment which would remove some of the objections to the proposal.

The Earl of KIMBERLEY said this was not a proposition of the Government. It had never been the custom of the Government, as a Government, to take up questions relating to the Standing Orders. Such questions were left to the discretion of each House of Parliament.

The Earl of Redesdale's motion was then negatived.

The Marquis of SALISBURY suggested that, as the noble Lord had now attained his main object, it would be expedient for him to withdraw his amendment.

After some conversation, Lord Auckland's amendment was withdrawn.

Enclosure 7 in No. 3.

[Extract from the *Times*, 2nd May, 1885.]

DEBATE IN HOUSE OF COMMONS.—REGENT'S CANAL BILL.

MR. DODDS moved the second reading of the Regent's Canal, City, and Docks Railway Bill.

Sir J. PEASE moved, That it is not expedient to pass any Railway Bill which involves the payment of interest out of capital during the construction of works pending the introduction of a public measure on this subject, as recommended by a Committee of this House in 1882, especially where such a Bill practically makes the alteration of the Standing Orders of this House retrospective in their action. He said he had taken up this question entirely as a matter of public duty. He was in no way influenced by what might be the opinion of the railway associations in the matter, nor had he anything to do with the shareholders. The position he took up was simply one of principle, and had nothing whatever to do with the railway contentions of the district. He appealed to the House simply on the principle that it was wrong to pay interest out of capital during

the construction of the works. This line was about eighteen and a half miles long, and he understood that the share capital to be raised was £6,600,000. The Bill provided for the raising of an additional sum with the consent of Parliament—£660,000—which is to pay interest out of capital during the construction of the works. The total amount of capital involved which would be handed over to the care of the directors would be about £11,150,000. Immediately to the north of the proposed line was the North London Railway. Over this line the North-Western Company exercised running-powers. At the south-western end of the line was the Metropolitan main line, over which the Great Western line ran, and which was parallel with the Regent's Canal line. The new railway would have to compete for traffic with those lines, and, after entering into competition with them, did the House think it likely, looking at past experience and at the large outlay upon the metropolitan railways, that the proposed railway would be able to pay 4 per cent. on the shares? The sole object of the Bill was to create £660,000, to be drawn from the shareholders subscribing the money, and then it was to be returned to them during the time the works were in progress; and this was called interest on capital. He could not conceive any advantage whatever accruing to any class of shareholders from such a process. There might be some advantage to the directors; but, as far as he could see, it was absolutely without any advantage to the most deluded innocent who imagined he was going to get his money back out of capital. There seemed to be but very few shareholders in connection with this undertaking, and it seemed to him that the real object of bringing the Bill before the House was in order to obtain shareholders. In 1883 the House declined to pass a Bill brought in on behalf of the Hull and Barnsley Railway. There were special reasons for passing this Bill, but the House declined to pass it, because it thought that the principle was a bad one; and he was of opinion that the circumstances of that railway had justified the decision which the House came to at the time. Looking at this question as one of principle, he found that all our great financiers had objected to the principle of paying interest out of capital. Hume, Ricardo, Sir Charles Wood, Sir James Graham, and Sir Robert Peel were all against the principle. The Marquis of Salisbury, a man of a singularly astute mind, and well acquainted with railway matters, had described it as a "proposal for enabling a number of innocent investors to practise upon themselves a not wholly innocent deceit." Lord Granville and Lord Kimberley were also of opinion that the payment of interest out of capital was an unsound principle. The laws dealing with this matter ought to be maintained as they were, and to repeal them, unless in very special circumstances, was to give countenance to a plan dangerous for the credit of the commercial community. Whenever this plan was resorted to, the House might be certain of two things—the rich and the knowing investor did not take up those securities, while the poor and the ignorant did take them up. He maintained that this Bill was not in accordance with the Standing Orders at present existing before the House, and he hoped the House would affirm, as in 1883, that this principle was commercially unsound.

Sir G. GOLDNEY said he could not support the proposition of the honourable member. He considered it to be a monstrous thing that people should not be allowed to take care of their own money, and should not be allowed to invest it in those concerns which they thought desirable. That line, he understood, was designed for the purpose of facilitating the conveyance of the working-classes who were employed in the metropolis to and from their homes at a cheap rate—an object of great importance in connection with the problem of how to house the labouring population properly; and the only argument against the line was that there were certain other railways with which it would run in competition. He trusted that Parliament would not consent to stifle a Bill which he held ought to be inquired into through the ordinary tribunal established by the House.

Colonel SMITH urged that the Bill should be allowed to go before a Select Committee, instead of being disposed of on the second reading.

Sir J. ELLIS opposed the motion of the honourable member for South Durham, contending that most undertakings in this country paid interest during the execution of their works. If the Board of Works, in making a new street, were not to pay interest until the new street was open, they would have either to pay a higher interest on their bonds or to issue their bonds at a much lower rate. Moreover, with the provisions that were contained in the amended Standing Order No. 167, there was no reason whatever why that or any other railway should not be allowed to pay a reasonable rate of interest while it was being constructed; and it would be a great injustice if the line were not permitted to be made.

Mr. CHAMBERLAIN rather regretted that his honourable friend had thought it necessary to move that amendment. The course proposed by his honourable friend was inconvenient, and would be attended with considerable disadvantage. They were not now dealing with one of those bogus companies about which his honourable friend was so anxious. That was a very large and important concern, involving a capital of something like £10,000,000, and it was intended to connect the whole of the docks at the east end of London with the Great Northern, the Midland, and the North-Western Railway; and therefore that was an enterprise of first-rate importance in regard to the convenience of trade. If, moreover, that capital was raised, a very large amount of employment would be given to the working-classes of London; and just now, when there existed a depression of trade, it would be a serious thing to throw any obstacle in the way of such employment being afforded. Why did his honourable friend propose to take the unusual course of refusing to allow a Select Committee to consider the provisions of that Bill? It was, as he said, because the company proposed to pay interest on capital. The honourable member, then, was proposing by a side-wind to reverse the solemn decision of the House; because the whole question of whether such companies should be allowed to pay interest out of capital was decided in June, 1883, by the House, when it passed the amended Standing Order permitting that practice. It was true that about a fortnight later the Hull and Barnsley Railway Bill was thrown out on the second reading; but that was because it proposed a larger rate of interest than was sanctioned, and did not conform to the Standing Orders. But that did not prevent the construction of the Hull and Barnsley Rail-

way, because the company obtained powers in the subsequent year that enabled it to evade the decision of the House by raising debenture and mortgage stock to attain practically the same result as paying interest out of capital. Why, as a matter of principle, should that privilege be denied to railway companies? It was not denied to numerous other undertakings. It obtained in other countries. The Indian railway companies had a guarantee from the Government for the payment of interest during construction. His honourable friend, speaking as one who represented the great established lines, was very hard on the new undertakings, which required a provision of that kind to induce their stock to be taken up. In some way or other a man who had not got a large sum of money at his bankers upon interest, but had to be enabled to live, must provide something like an annual income; and by an investment of that sort it was very convenient for him that payment of interest should go on during the construction of the line. His honourable friend said he was not now acting in the interest of the widows and orphans, but in that of high financial morality. But there was another explanation of the opposition offered by some of the other opponents of the Bill. Now, he himself happened to be a shareholder of the South-Eastern Railway Company; and in his capacity as a shareholder he had received one circular signed by the secretary of the South-Eastern Company, and in his capacity as a member of Parliament he had received another circular, both of those documents containing statements to the effect that, if the precedent set by this Bill were followed by others of a similar character, the result would be loss and ruin to a vast number of shareholders, without any compensating advantages to travellers or traders, and that therefore he would materially help the directors of the South-Eastern Railway Company, who were assisting to oppose that Bill, if he would kindly write at once to his representatives in Parliament requesting them to oppose the Bill on the second reading. He thought that circular threw a great light upon this opposition. The interest of these great lines was opposed to competition. Were the interests of the country opposed to competition? There had been a great agitation lately in favour of a reduction of railway fares; and the only chance of obtaining that reduction was in the existence of competition, actual or potential. Everything, therefore, that tended to check competition helped the companies in resisting any attempt on the part of the public to gain a reduction. He was more anxious to protect the public than the foolish investor; and he thought that the House would do wisely in passing a Bill of this kind, the proposal of which was a *bona fide* one, and one which involved a large addition to our means of communication.

Sir R. Cross said that the strong and unanimous representation of the Joint Committee of the Lords and Commons ought to have been followed in this case. That Committee, of which he had had the honour to be a member, had recommended that canals should not be allowed to fall into the hands of railway companies. That recommendation, he was sorry to say, had very seldom been acted upon when private Bills had come before the House. This clause having reference to payment of interest out of capital had been in the original Bill, and had been thrown out before the House of Commons. The railway company had tried to get the benefit of the clause, and the House had not allowed them. When asked upon this question before the House of Lords, the Chairman had said that he had no fear about being able to raise money, whether the Standing Order was binding or not. What had been the result? The company had been unable for the last three years to persuade people that this was a good undertaking, and now they wished to be allowed to pay interest out of capital during construction in order to attract investors. He had been glad to hear the honourable baronet take such strong grounds. If they held out inducements to people that they would get 4 per cent., there was a large number of people who did not understand the matter and were misled by the prospectus sent to them. He had been trustee for a great number of poor ladies, and he received many prospectuses of this kind, promising payment at the rate of 4 or 5 per cent. out of capital during construction. Those who were induced to invest in these undertakings, when they expected their incomes to be increased, found they were suddenly diminished, and that what they had received in one pocket had been taken out of another. As a matter of honesty they were bound to protect this class of people, who were so easily induced to invest their money in these undertakings.

Mr. RITCHIE thought that the question whether railway companies should or should not be allowed to take over canals was not the question now before them. He thought that the right honourable gentleman who had just spoken must have a poor idea of investors who were induced by the promise of 4 per cent. during construction to consider an investment a good one which they had previously thought bad. This was a Bill in which great interest was felt in the east end of London—upon two grounds. In the first place, it would connect the docks of the East-end with the great railways, and so prove beneficial to the interests of the east end of London. The second question was one of even greater importance. It had been pointed out to deputations of unemployed during the present distress that the Government could take no steps themselves to give work, but that there were schemes which, if carried out, would lead to work. Here was an undertaking which the House of Commons had declared to be sound, and it was now opposed because it was proposed to pay a small percentage during construction. That had nothing to do with the question whether an undertaking was good or bad—it simply meant that many could not afford to subscribe to an undertaking unless they received some interest in the meantime before the scheme was in operation. This Bill would give legitimate employment to large numbers of the working-classes, and he hoped that the House would pass it.

Sir A. OTWAY said that he did not propose to enter into the merits of the Bill, or to discuss the question of the financial morality of paying interest out of capital during construction. This question was investigated by a Committee, and, after deliberation, the existing Standing Orders were sanctioned. The honourable member for South Durham forgot the protection afforded to the public by those Standing Orders. The Select Committee before whom this Bill would come could refuse its sanction if it thought fit to the payment of interest out of capital. Moreover, a report of the Board of Trade on the case was required, and it was almost impossible for any deception to be

practised. As these Standing Orders have been sanctioned by the House after deliberation and inquiry by a Committee, he thought the House would act unwisely if it were now to reverse its previous decision, and prevent effect being given to the Standing Orders.

Mr. HICKS commented upon the antecedents of the Regent's Canal, City, and Docks Railway Company, and remarked that in 1882 a Select Committee refused to sanction the payment by it of interest out of capital. The company had since come in another guise, and, being still unable to raise the necessary capital, sought again the exceptional privilege of paying interest out of capital. Referring to the remark of the honourable member for the Tower Hamlets that the railway would give work in the east end of London, the honourable member affirmed that a tax on foreign sugar would be of more benefit to the East end, by enabling our sugar industries to compete with the bounty-supported foreign manufacturers.

Mr. GILES supported the Bill, and observed that if the motion were carried it would be a serious blow to the progress of all public companies.

The House divided, when there were—For the second reading, 187; against, 117: majority, 70.

Enclosure 8 in No. 3.

[Extract from the *Times*, Wednesday, 8th July, 1885.]

DEBATE IN THE HOUSE OF LORDS, TUESDAY, 7TH JULY.—REGENT'S CANAL, CITY, AND DOCKS RAILWAY BILL.

ON the order for the second reading of this Bill,

The Earl of RAVENSWORTH rose to move that in respect of this Bill the Standing Order No. 128 be suspended. At the outset he desired to state clearly that he did not intend to call in question the value of that Standing Order. He believed, indeed, that it contained a most salutary principle, and that it was a considerable check on reckless railway speculation. He wished, however, in passing to observe that it was not quite equal in its operation as between the old companies and the new companies that desired to raise funds. He urged that the present scheme was an exceptional one, on account of the vast interests, national, commercial, social, and financial, which it involved. The total share capital under the borrowing powers was, in round numbers, £10,500,000. As a great national and commercial undertaking the railway would be of vast importance; and it was also a very large scheme of metropolitan improvement. On these two grounds he thought it was justifiable to ask their Lordships to take an exceptional view in regard to the Standing Order No. 128. This Bill was introduced in the House of Commons, and on the 5th of May, in spite of a strenuous opposition, the second reading was carried by 187 votes against 117. It then received a searching investigation at the hands of a Select Committee, which reported unanimously in favour of it. He now wished to describe the unsatisfactory position arising from a discrepancy in the procedure of the two Houses in the matter of the prohibition of the payment of interest out of capital. At the instance of the Chairman of Committees, the other House amended its Standing Order relating to this question by adding these words: "And except such interest, if any, as the Committee on the Bill may, according to the circumstances of the case, think fit to allow." So important was this alteration that the noble Lord at the table felt it his duty to call the attention of that House to it. A debate ensued, and the noble Earl ended by moving to alter the Standing Order of their Lordships' House. That motion was negatived; and an amendment moved by a noble Lord opposite, to the effect that it was inexpedient to modify the Standing Order, was withdrawn. The result was that the question remained *in statu quo*, and he thought that was rather an inconvenient position for so important a question to remain in. He would now state why he thought this great national scheme was entitled to be dealt with exceptionally. The proposed line would follow almost exactly the present course of the Regent's Canal, with one or two divergencies at this end, near London. It would be, in fact, a continuation of the Great Western Railway as far as the Victoria and Albert Docks, and the Midland, the Great Northern, and the London and North-Western Railways would also obtain direct access to those docks. Those docks contained an area of 192 acres, and had forty miles of railway-siding and tramway-lines, while they afforded accommodation in 1881 for 6,367 ships, having a total tonnage of 2,569,000 tons. This accommodation was increasing and improving every day. One very important advantage that would result from this scheme would be that the Welsh smokeless steam coal would be brought to the steamers without transshipment, whereby great loss would be prevented, and the efficiency of the Royal Navy would be largely increased. The scheme would also involve a cheap railway service for the working-men, who would be conveyed at the rate of one farthing per mile to and from the north of London, where there were many admirable sites for the erection of workmen's dwellings. The line, in consequence of its proximity to the canal, could be constructed at a cheap rate, and it would interfere in a very slight degree with house property, streets, or roadways, or with the mysterious underground system of gas-mains, sewers, and water-pipes. The strongest argument in favour of the Bill was that there was practically no opposition to it, petitions having been signed in its favour by representatives of a population of 1,092,148. He had taken up this as a national question; and he appealed to their Lordships not to allow artificial barriers to stand in the way of carrying on such a scheme as this. It might be asked, why could not the promoters find the money? The answer simply was, because they could not. He had no hesitation in asking the House to assent to his motion.

Lord BRABOURNE said what their Lordships were asked to do was to depart from a Standing Order framed long since and supported by a large number of Parliamentary authorities, and which had for its object that commercial enterprises of this kind should be conducted on sound financial principles. He held that the proper course was that the House should be asked to assent to only what was wanted; but they were invited to make an exception. He entirely objected, and hoped that no temptation would be held out to investors. He was not going to say a word against the

importance of the undertaking—what he suggested was that the House should not alter a Standing Order simply to meet an exceptional case of this kind.

The Earl of SELBORNE thought that the Standing Order was based on a sound principle, and should not be departed from. The noble Earl had rested his case upon some special and peculiar difficulties which had arisen in this undertaking, and upon some public advantage which was to be gained by relieving it from those difficulties. The argument was that this was an undertaking of national importance, and had only to be considered for people to see how valuable it was, and that at the present time people did not like to lock up their capital for four or five years without receiving interest for it. But those were reasons for the universal abrogation of the Standing Order, and not merely in this particular case. It might be inconvenient that there should be one rule in that House and another in the other House of Parliament; but what was now proposed was not the way to remedy the matter. Let one House alter its rules; or, by a conference between the Houses or by general legislation, some approach might be made towards that uniformity of procedure which might be wished for. He objected to the present proposal as a mere delusion.

The Duke of RICHMOND and GORDON observed that in the other House of Parliament the Bill had been brought in with a provision that interest should be paid out of capital; and after some discussion the question had been referred to a Select Committee. That Committee had reported that the provision which existed was financially sound in principle, and acted as a protection to the public, but that there were special cases in which payment out of interest ought to be allowed. They accordingly recommended that, subject to certain limits of time and rate of interest, the Bill should be passed to carry out their recommendations. This, however, had not commended itself to the Government or the other House of Parliament, and the matter remained subject to the Standing Order. On the second reading of the Bill in the other House the then President of the Board of Trade had supported the Bill, and its second reading had been carried by a majority of 187 to 117. One of the special objects contemplated by those who had supported this Bill was that in the present condition of the poorer classes of the metropolis it would find employment for a considerable time for a great portion of those who were now in a very depressed condition from want of labour. He had looked into all the matters relating to this proposal of the noble Earl, and had come to the conclusion that the views taken by his predecessor on the subject were correct, and that their Lordships ought to give this measure a second reading.

Lord BALFOUR of BURLEIGH thought that no special circumstances had been shown in this case which justified the suspension of this salutary Standing Order. A large amount of extraneous matter had been introduced into the discussion, but nothing had been said in connection with this Bill which ought to lead their Lordships to suspend the Standing Order. During the three years since this Bill had been passed no attempt had been made to raise the capital in the ordinary way, and he thought that it was an extraordinary thing that they should be asked to give the promoters of this undertaking such unusual assistance as was now suggested. He had no wish that their Standing Orders should be quoted throughout the country as interfering with the possibility of relieving distress, but he could see no cause that had as yet been shown strong enough to justify the suspension of the Standing Order, and he would feel bound to vote against the proposal.

The Marquis of SALISBURY said that this was no party question, but it was one upon which he was unable to take the same view as the noble and learned Lord opposite. He confessed that he viewed with some alarm the tendency to make their Standing Orders laws of the Medes and Persians, which never must be touched, no matter how much industry might be arrested or how much misery might be caused. This matter had been carefully considered in the other House of Parliament, and, although he was not disposed to exalt the authority of the other House above that of their Lordships' House, he thought that no one would deny that it was in that House that they would find men who were most conversant with trade, commerce, and financial matters; and if they, after a considerable controversy upon the matter, had, by a large majority, come to the conclusion that that system should no longer be allowed to stand in the way of the industry of this country, were they not in their Lordships' House taking a rather large responsibility upon themselves in saying from their own knowledge that this particular rule was an absolute necessity in order to protect legitimate industry? There was no doubt that this rule discouraged the employment of capital, and that but for its existence work would go on which it now stopped. The Standing Order must justify itself. It was supposed to protect foolish investors, and to prevent persons from investing in any enterprise which would not yield them a good interest on their money. If he were asked which of two things he would choose—whether he would protect investors from the result of their own in-caution, and set up an obstacle to the expenditure of capital, in order that men might be able to invest their money without inquiring into the real character of the enterprise in which they placed it, or whether, on the other hand, he would incur the inconvenience of stopping the expenditure of money in support of labour at a time of extreme and almost unprecedented calamity and distress—he confessed that he would feel that the consciousness that he was sustaining a Standing Order of their Lordships' House would be no satisfaction to him when he reflected that by doing so he was preventing many an honest man from getting his living. He would go a step further. He did not believe in the system of protecting the foolish investor at all. In his opinion, all of their Standing-Order legislation erred grievously in that direction. It was the business of investors to protect themselves, and to examine for themselves the soundness of the enterprises in which they embarked. If they failed to do so they were generally in a condition of life in which they might fairly be expected to take the consequences. It was wholly unreasonable to provide securities for investors at the cost of stopping the flow of that capital by which alone the life and prosperity of industry could be maintained. It was a general error in the Standing Orders of both Houses of Parliament, that they had bound industry up too tight in order that improvident and careless investors should be protected. It might be said that, whatever the general rule might be, it ought not to be relaxed in any case when the rule itself had not yet been taken up for the purpose of

alteration. He believed that the general rule ought to be altered, but why should they wait until the formality and technicality of alteration were observed? A great obstacle was opposed by the rule to the action of enterprise and industry, and he believed they would do wisely in dispensing with it unless they thought it should be maintained, and that it ought to be maintained against the decision of the House of Commons, in which all the special knowledge on this subject existed. Unless their Lordships were of opinion that the rule should be permanently upheld, he thought they would do wisely by dispensing with a mere technicality for the purpose of benefiting industry and relieving the depression which existed in a particular place. The rule was not only bad in itself, but it dealt very hardly with this particular case. For two or three years past he had been informed that the capital for this enterprise could not be raised on any other terms. It seemed ridiculous that people would not subscribe except on the terms of a certain amount of their capital being given back to them in the name of interest in the first two or three years of the enterprise, during which nothing could be earned; but, as a matter of fact, in times of depression, when capital was not superabundant, they could not raise money for any great and perfectly sound enterprise except by giving this inducement to investors. No one who was conversant with business in the City of London would deny that at the present time the fact was as he had stated, and he thought their Lordships would be inflicting great harm upon a number of innocent people if they refused this motion.

The Earl of WEMYSS observed that he had every desire to forward the interests of working-people in accordance with the principles of sound commerce, and in a sound and healthy way. Certain rules had been laid down by the House to prevent bogus companies springing into existence, and the noble Lord who had brought forward this motion had admitted that they worked in a salutary manner in acting as a check upon reckless speculation. The noble Marquis who had just spoken disapproved the rule; but if it were wrong the rule should be suspended completely and as a whole. But he saw no reason why the rule should be suspended in one case only, for the purpose, as it was said, of meeting temporary distress.

After a few words from Lord ARUNDELL of WARDOUR,

Lord BRAMWELL said he wished to explain why he was going to vote against this motion. The noble Earl who made the motion was in favour of the Standing Order, while the noble Marquis opposed it altogether. There was a good deal to be said in favour of the Standing Order. One of its objects, he took it, was to prevent the statement of what was not in reality the actual fact. When people applied for an Act of Parliament, and issued a prospectus declaring that they would pay interest at 5 per cent., it was doubtless very attractive, and induced the public to think that the investment was a good one.

The Earl of RAVENSWORTH pointed out that the rate of interest in that case was confined to 4 per cent.

Lord BRAMWELL said that certainly 4 per cent. was not so tempting as 5 per cent., but he thought that if the actual truth were told to the shareholders in the prospectus—that they were to be paid interest out of their own capital—they would not be attracted in the same way. The Standing Order, he believed, tended to prevent the passing of Railway Acts which were not really wanted, but which were only contractors' Acts. He thought it was a good thing that it should have that operation, because, when a needless railway was made, so much of the national wealth was wasted. If they put two railways side by side, and the two carried no more than one of them did before, the money spent on the second railway might almost as well have been thrown into the sea. It might be said that that was not a matter for the nation, but that it only concerned the shareholders. But surely the wealth of the community was made up of the wealth of individuals. He did not believe that the Standing Order had ever prevented a line from being constructed that was really wanted. It was alleged that money could not be got for those enterprises, and it was suggested that there was a lack of capital. That must be a mistake, because he read in the newspapers that bills were discounted at $\frac{1}{4}$ to $\frac{1}{2}$ per cent., and the bank rate of interest was about 2 per cent. per annum. Capital was really seeking employment in every way; and why should it not be invested in that company, unless it was that the capitalists felt there was no probability of its being a paying concern? It was said that at present there was a great want of employment among the working-classes. He was afraid that that was so; but let them see what the argument came to. If the Standing Order was a bad one, let them get rid of it. If it was a good one, he trusted that their Lordships would adhere to it.

The Earl of REDESDALE pointed out that the vote which their Lordships were now called upon to give was not one on the second reading of the Bill, but whether they would maintain the Standing Order or not.

The Earl of KIMBERLEY observed that in the year 1883 the noble Marquis did not take the same view of that matter as he had done that evening. In 1883 a proposal was made to the House that they should adopt the same course as had been adopted in the other House; and then the noble Marquis did not show so much respect to the authority of the late President of the Board of Trade, but spoke rather hardly of his views. He said that the matter required the gravest consideration, and he thought it was not desirable to alter the Standing Order.

The Marquis of SALISBURY explained.

The Earl of KIMBERLEY.—Nobody would have supposed, then, that the noble Marquis regarded the getting-rid of that prohibition as one of high policy; and the noble Marquis then spoke of "bogus" railways, and of the injury to the main lines by bringing into existence contractors' lines, which would not otherwise be made; and he brought forward many arguments in favour of the Standing Order. That was not a question of the ordinary general law, but of granting special privileges to companies to take land for enterprises of that kind; and Parliament was not precluded from looking into the question whether lines were promoted by real investors or were only "bogus" lines. The question now before their Lordships was, whether they were to put aside the Standing Order in that particular case. The arguments of the noble Marquis were no doubt worthy of con-

sideration; but nothing could be worse than for their Lordships' House to have a Standing Order which was supposed to be for the protection of the public generally, and then, because a little popularity might be obtained thereby, to set it aside in particular cases.

The Earl of MILLTOWN remarked that the Committee to which the Bill would be sent would investigate the question whether the scheme was a sound one or a "bogus" one. If they should be satisfied that it was a good scheme, and their Lordships should then pass it, he believed that an immense benefit would be conferred on the toiling masses who were seeking employment.

The LORD CHANCELLOR then put the question, and declared that the "Not-contents" had it.

The Earl of RAVENSWORTH did not audibly challenge this ruling at the moment, but wished to do so afterwards, and, Lord BRABOURNE being understood to demur to this,

The Earl of SELBORNE said that, although the words challenging the noble and learned Lord's ruling were not spoken at the proper time by the noble Earl opposite, yet he had never found the House disposed to exercise too much strictness in such circumstances, and he thought the question might be again put.

The LORD CHANCELLOR then put the question accordingly, and his decision that the "Not-contents" had it was duly challenged.

The House divided, and the numbers were—For the motion, 46; against, 37: majority, 9.

Enclosure 9 in No. 3.

PAYMENT OF INTEREST OUT OF CAPITAL.

Copy of Clause 12 of "The Regent's Canal, City, and Docks Railway Act, 1885."

12. NOTWITHSTANDING anything contained in "The Companies Clauses Consolidation Act, 1845," the company may, out of the moneys by this Act authorized to be raised as part of the capital of any separate undertaking of the company, pay interest, at such rate, not exceeding four pounds per centum per annum, as the directors may determine, to the shareholders in such separate undertaking on the amount from time to time paid up on the shares allotted to or held by them respectively, from the respective times of such payments until the expiration of the time by the Act of 1882 limited for the completion of the works by that Act authorized and constituting such separate undertaking, or such less period as the directors may determine, subject to the following conditions (that is to say): (a.) The aggregate amount to be so paid in interest shall not exceed, as regards the City lines undertaking, two hundred and fifty thousand pounds, and, as regards the remainder of their undertaking (except the canal undertaking), four hundred and ten thousand pounds; and the last-mentioned sum shall be apportioned by the directors amongst the separate undertakings (if any) of the company, other than the City lines undertaking and the canal undertaking, in such proportions as shall be fair and equitable, having regard to the respective amounts of the separate capitals of such undertakings, and the time required for the completion of the works constituting each such separate undertaking. (b.) Any such interest due to any shareholder shall not be payable until the company have obtained a certificate of the Board of Trade to the effect that two-thirds of the share capital of the separate undertaking in respect of which such interest is to be paid have been issued and accepted and are held by the shareholders who, or whose executors, administrators, successors, or assigns, are legally liable for the same. (c.) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear. (d.) Every prospectus, advertisement, or other document of the company inviting subscriptions for shares in the separate undertaking in respect of which such interest is to be paid, and every certificate of shares in such separate undertaking, shall contain a notice that the company has power so to pay interest or dividend. (e.) The half-yearly accounts of the company shall show the amount of each separate capital on which, and the rate at which, such interest or dividend has been paid; and the company shall not, except as aforesaid, out of any money by this Act authorized to be raised, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him. But nothing in this Act shall prevent the company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with "The Companies Clauses Consolidation Act, 1845."

Enclosure 10 in No. 3.

PROPOSED AMENDMENT OF STANDING ORDER PROHIBITING THE PAYMENT OF INTEREST OUT OF CAPITAL IN THE CASE OF RAILWAY COMPANIES.

Copies of Letters to the Board of Trade Department.

SIR,— 147, Leadenhall Street, London, E.C., 20th February, 1882.

I venture respectfully to call your attention to the fact that there are nine Railway Bills introduced into Parliament this session, whereby, in addition to the usual borrowing powers, exceeding six millions sterling, it is proposed to raise the ordinary share capital of those undertakings, amounting to more than twenty millions of money, by paying interest upon calls out of capital.

The Bills to which I allude are: (1.) Regent's Canal, City, and Docks Railway, 8,100,000 shares; loan, £2,390,000; length, 18·46 miles. (2.) Hull, Barnsley, &c. (extensions), 2,400,000 shares; loan, £800,000; length, 31·12 miles. (3.) Hull, Barnsley, &c. (interest), 3,000,000 shares; loan, £1,000,000. (4.) East and West Yorkshire Union, 510,000 shares; loan, £170,000; length, 24·44 miles. (5.) Central Northumberland Railway, 930,000 shares; loan, £310,000; length, 54·37 miles. (6.) Ascot, Windsor, and Aldershot Junction, 330,000 shares; loan, £110,000; length, 10·58 miles. (7.) Waterloo and City Railway, 2,700,000 shares; loan, £900,000; length, 2·79 miles. (8.) Mid-

Metropolitan Railway, 3,000,000 shares; loan, £1,000,000; length, 10·36 miles. (9.) Metropolitan District, 1,250,000 shares.

For many years past a clause has been inserted in every Railway Bill, pursuant to a Standing Order of each House, prohibiting the payment of interest upon calls out of capital.

The Standing Order (167) of the House of Commons is as follows: "A clause shall be inserted in every Railway Bill prohibiting the payment of any interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him, except such interest or 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." The Standing Order (128) of the House of Lords is still more explicit and stringent.

The nine Bills above mentioned not only omit such clause required by Standing Orders, but, so far as the first eight are concerned, distinctly authorize the payment of interest out of capital, while the Bill of the District Railway Company authorizes such payment out of capital or any surplus or reserve fund.

Should Parliament sanction this attempt to override a Standing Order and to repeal a well-known clause, the immediate effect will be to encourage rash and improvident railway speculative enterprises, and will occasion serious loss to small shareholders, who will be attracted by the immediate payment of a large rate of interest charged to capital, and will not understand that, by a carefully-concealed arrangement with contractors, or by means of inflated schedules of prices, they are receiving their dividends out of their own capital, which thus becomes depreciated.

The repeal of the legislation of past years in the case of the above-named companies, all of which are new enterprises excepting that of the District Company, will give to new and speculative companies an unfair advantage over established railway companies, who are prevented from paying interest upon their incomplete and unproductive extensions and branches out of capital, but are required and do charge such interest to revenue.

If the law which requires railway companies to pay their interest, if at all, out of revenue, and prohibits their charging it to capital, is unsound, and needs reconsideration, it should be reconsidered in the interest of all companies alike, and exceptional advantages should not be granted to individual undertakings which were not enjoyed, and are not enjoyed, by the companies with whom such new enterprises seek to compete. But I would submit that the law in question is a sound one, and needs no repeal, and that the repeal of the clause in question would be disastrous to the holders of railway property.

You are doubtless aware that the prohibition, hitherto applicable, as above stated, in the case of railway companies, is, by "The Companies Act, 1862," applied to all joint-stock companies.

Art. 73, Table A, of the Act of 1862 is as follows: "No dividend shall be payable except out of the profits arising from the business of the company." This principle has been frequently maintained by the Courts of law in cases where Table A was not adopted.

For these reasons I venture to hope—and I make this application on behalf of several large holders of railway stock—that before sanctioning so radical a change in railway legislation the President of the Board of Trade may see his way to call the attention of the House of Commons to the subject.

I have, &c.,

ROBERT WILLIAM PERKS.

Henry G. Calcraft, Esq., Assistant Secretary, Board of Trade.

SIR,—

147, Leadenhall Street, London, E.C., 23rd March, 1882.

I gather from the answer given by the President of the Board of Trade on the 20th instant to a deputation of the Railway Association that a proposal is now being favourably considered by your department to amend the Standing Order which has hitherto required the insertion in every Railway Bill of a clause prohibiting the payment of interest upon calls out of capital, and to authorize the payment of such interest, at a rate not exceeding $4\frac{1}{2}$ per cent., for a limited term of four or five years, in cases where two-thirds of the capital has been *bonâ fide* subscribed.

I perceive that the reasons alleged by the President of the Board of Trade for this radical change in railway financial legislation are that the existing railway interests are regarded in the light of a monopoly; and that, while it is to be deplored that investors should be induced to subscribe to undertakings upon a promise of receiving a high rate of interest paid out of their own capital, and that they thus suffer considerable loss, yet the advantages supposed to be derived by the public by the construction of competing lines of railway are said to outweigh such considerations. It is also alleged that, because the payment of interest out of capital by means of arrangements with contractors, or inflated schedules of prices, is difficult of detection, and has in some cases not been challenged, that therefore the Standing Order which prohibits such payment—an Order which was adopted by Parliament, upon the advice of the Railway Commission, to stop the evils arising out of the railway mania of 1845—should be repealed. It is not pretended that this serious change in the law is demanded by the public. It is made chiefly, if not solely, by professional railway promoters.

May I point out, in the first place, that there is no legitimate necessity for such a change. Railway companies whose credit is not good enough to issue their capital at par may already issue new stock, although they cannot make a first issue at a discount; and I would submit that it is a more honest course to issue stock at a discount, say at £80, without interest for four years, during construction, rather than issue such stock at £100 and return to the shareholders 5 per cent. interest per annum for four years out of their own capital. In the former case shareholders can see clearly what they are doing, and in the latter it has been proved in scores of cases that they do not. It is impossible to read the list of Bills set out in my letter of the 20th February without seeing the

class of projects with which the country will next year probably be flooded should the Standing Order be repealed. One of these Bills has already been withdrawn, a second has failed to pass Committee, and in the case of a third the deposit was not found. It will probably be found that in the case of most of these projects the deposit has been borrowed.

I venture, however, respectfully to suggest that, if facilities are thus to be granted for the promotion of speculative railway enterprises, it is more than ever necessary that steps should be taken to prevent the present abuse of the Standing Order which regulates the parliamentary deposit. One of the chief objects of such deposit is to afford Parliament some guarantee that the promoters are persons of sufficient financial means to exercise the powers which Parliament may grant. In a well-known case in which Parliament granted powers a few years ago to a company with a capital of several millions sterling, and in which the fact of the parliamentary deposit having been made was urged to the Committee as a proof of the financial means of the company, it was subsequently found, when the project proved abortive, that the deposit had been borrowed, that even the commission upon such deposit had also been borrowed, that there were no shareholders in the company, and no capital, and that the professional men engaged had signed undertakings not to hold the promoters responsible for any of their charges, but to look to the capital for their remuneration if it could be raised. The custom now in the case of speculative railway companies is either for a contractor to advance the amount of the deposit upon an arrangement being made with him that if the scheme is authorized by Parliament he shall have the contract, or the deposit is borrowed from a bank or financial house. In each case it is customary for the promoters to enter into an agreement with the persons who lend the deposit not to take the Royal assent to their Bill, should it pass Committee, without the consent of the lenders. In this way one of the chief objects of the Standing Order is constantly defeated. This evil might, I would submit, be at once obviated—(a) by a requirement that persons promoting a railway company should be required to show that they are responsible for and are personally providing the parliamentary deposit, and are shareholders in the proposed undertaking to at least that extent; and (b) by providing that the deposit shall become impounded at an earlier stage of the parliamentary proceedings—say, when the Bill is approved by Committee of both Houses.

There is one other point to which I would call the attention of your department. The present Government has recently affirmed the principle, which has frequently been upheld by former Governments, not to grant State aid by public taxation to railways and other public works, but to leave such undertakings to private enterprise. In the year 1880, the Hull, Barnsley, &c. Railway obtained power from the Corporation of Hull to invest £100,000 in their railway, and to raise the money by local taxation. The £100,000 in question was subscribed. The loss sustained on this transaction is shown by the fact that £100 of Hull and Barnsley share capital will now realize about £33. The same company is applying for power in its Bill of this session to authorize the Corporations of Halifax and Huddersfield to subscribe to their proposed extensions. The fact of the Corporation of Hull having subscribed to the Hull and Barnsley Railway and appointed two directors on the Board was made a prominent feature in the prospectus of the company; and that fact, together with the promised payment of 5 per cent. during construction, and 8½ per cent. afterwards, doubtless induced many of the shareholders to subscribe to that undertaking. The promoters of the Regent's Canal, City, and Docks Railway propose to authorize the parish vestries, local boards, as well as other public authorities, to raise money and invest it in their undertaking; so that it would appear that the railway companies with whom the Regent's Canal scheme directly competes, and who are large ratepayers, are positively to be taxed in order to provide capital for their competitors. The promoters of this scheme also propose to empower the Metropolitan Board of Works to construct and manage portions of the railway. I must apologize for thus trespassing upon your time. The interests I represent are very large. The danger to which they are exposed is very great. I would briefly submit that the payment of interest out of capital is opposed to all principles of sound finance, is at variance with the whole course of railway legislation, is distinctly prohibited by joint-stock legislation and judicial decisions, is not demanded by the public, and cannot fail again to produce the financial disorder and reckless speculation which the adoption of the present Standing Order was intended to and did prevent.

I have, &c.,

ROBERT WILLIAM PERKS.

H. G. Calcraft, Esq.; Assistant Secretary, Board of Trade.

No. 4.

The COLONIAL TREASURER to the AGENT-GENERAL.

Agent-General, London.

Waiwera, 21st January, 1886.

YOUR letter twentieth November received. Hope you will refer copy my letter September twenty-sixth to Gladstone, Iddesleigh; they will reply readily. Debates *re* companies not quite applicable, principle somewhat different.

No. 5.

The AGENT GENERAL to the COLONIAL TREASURER.

Treasurer, New Zealand.

(Received, 23rd January.)

YOURS to-day. Shall address Gladstone, Iddesleigh immediately. Sent you fuller letter December thirty. London, 22nd.

No. 6.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 27th January, 1886.

I received in due course your telegram of the 22nd instant, stating that my letter of the 20th November had reached you, and instructing me to send a copy of your letter of the 26th September to Mr. Gladstone and Lord Iddesleigh; and I telegraphed to you, in reply, that I should address those statesmen immediately. The defeat of the Ministry last night will now, however, make me postpone doing so for a little while.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

Copies of Telegrams referred to in No. 6.

The COLONIAL TREASURER to the AGENT-GENERAL.

Agent-General, London.

(Received, 22nd January, 1886.)

Your letter twentieth November received. Hope you will refer copy my letter September twenty-sixth to Gladstone, Iddesleigh; they will reply readily. Debates *re* companies not quite applicable, principle somewhat different.

Waiwera, 22nd.

The AGENT-GENERAL to the COLONIAL TREASURER.

Treasurer, New Zealand.

London, 22nd January.

Yours to-day. Shall address Gladstone, Iddesleigh immediately. Sent you fuller letter December thirty.

No. 7.

The COLONIAL TREASURER to the AGENT-GENERAL.

SIR,—

The Treasury, Wellington, 10th March, 1886.

Your letter No. 1,606, dated the 30th December last, going at length into the subject of charging interest to capital account during construction of works reached me in due course, and I have read it and its enclosures with much interest.

I thank you very heartily for the able and comprehensive manner in which you narrate the action of the Imperial Parliament in dealing with the question in the case of railway and canal companies, and for the interesting selection of papers and pamphlets relating to the subject which accompanied your letter. I await with interest the further communications you have kindly promised.

I have, &c.,

The Agent-General for New Zealand, London.

JULIUS VOGEL.

No. 8.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 18th February, 1886.

In my letter of the 30th December last, No. 1,606, on the subject of charging interest to capital during the construction of public works, I briefly referred to what had been done in the case of the Indian railways. I now beg to send you the following further particulars:—

In the debates to which I referred in that letter, the question did not arise whether the principle of charging interest to capital during construction could be as legitimately applied in the case of Government railways as in the case of lines constructed by the private enterprise of companies; and, although the debates brought out clearly enough the arguments on both sides so far as the principle affected shareholders in such companies, the safeguards insisted upon by the House of Commons in Standing Order 167 were really devised for the protection of the shareholders only. But the principle itself had long been sanctioned in the case of the Indian Slate railways; and in a new and elaborate scheme proposed by the Government of India in 1883, for a large extension of the railway system in that country, a further application of the principle to taxpayers was expressly involved, for the interest allowed to be paid during construction was a charge on the public revenues of India.

In the session of 1878–79 a Select Committee of the House of Commons had inquired into the expediency of constructing public works in India by money raised on loan, with especial reference to the probable financial results, as well as to the larger political question of preventing the recurrence of famines. That Committee had recommended that the construction of new works with borrowed money should be limited to schemes which, upon the responsibility of the Indian Government, were capable of yielding an annual income equal to the interest on the capital expended, including in such capital the payment of interest during construction; and the Committee had proposed that an outlay of £2,500,000 a year should be made, in addition to the then existing liabilities connected with the guaranteed railway companies.

In 1881 the Secretary of State, in communicating to the Government of India his general concurrence with the Select Committee of 1878–79, had laid down the rule that no railway should be considered to be a “productive” work—that is to say, one for which it was legitimate to borrow money, unless it could fairly be estimated that in five years from the line being opened for traffic it would pay 4 per cent. on the capital invested, including all arrears of simple interest incurred up to that time.

In the session of 1884 a Select Committee of the House of Commons was appointed to inquire into the general question of extending the railway system in India. The Committee took a mass of evidence, and made an elaborate report in July of that year. I will now mention some of the points in the report affecting the matter of charging interest to capital.

The question of a large extension of the railway system of India had been brought into special prominence, as a means of preventing the recurrence of the periodical famines which had so often desolated the country. The Government of India had established an annual Famine Insurance Fund of a million and a half, this sum being based upon the calculation that famine relief would cost in every ten years fifteen millions sterling; and the new taxation required to provide the fund had been sanctioned on condition of its being applied to the construction of works likely to avert famines. It had been more than once proposed to devote a portion of this fund to the payment of interest on money borrowed for the construction of railways, but the Secretary of State had refused his consent. It had been shown in 1880 that for the million square miles that were in question twenty thousand miles of railway were needed, of which about half, or ten thousand miles, had been either completed or put under construction. Taking the cost at £6,000 a mile, the remaining ten thousand miles were estimated to cost £60,000,000; but for various reasons it was believed that about five thousand miles ought to remove future danger of destructive famines. At the beginning of 1884 there were about eleven thousand miles open, and more than three thousand under construction, making a total of nearly fifteen thousand miles; and the Viceroy in Council proposed a scheme for a large extension of the railway system, of which the following is a summary:—

The policy of the Indian Government was to leave to private enterprise lines which were commercially most attractive, and to construct, either directly by the State or indirectly through the agency of companies, only lines which, although they might be called unproductive, were indispensable for protection against famine. With this object, a programme was sketched of the railways with which India must sooner or later be supplied. They were divided into two classes. The first class comprised thirty-four lines, with a total of about three thousand four hundred miles, which were estimated to cost a little over £24,000,000; these lines were all thought likely to be remunerative, and were to be left for private companies, without any aid from the Government except the grant of land free of cost. The other class comprised thirty lines, many of which were already being built, and their cost was estimated at about £28,000,000; of which it was proposed that about £13,000,000 should be borrowed by the Government, £2,000,000 by the constructing companies receiving a permanent guarantee of interest, and the balance by companies working on their own account with a guarantee of advances of interest for a limited term of years. In order to provide for the means of defraying the charge for interest on the capital to be raised for the construction of lines belonging to the second of these classes, the Indian Government proposed to appropriate about £200,000 a year out of the Famine Fund; and the outlay for the new lines of this class was all to be made in about six years.

The Select Committee, however, pointed out that this scheme implied a complete reversal of the rules up to that time in force; for the money was admittedly to be applied to unproductive works, and the Famine Fund was to be partly used for interest charged to capital. Strong arguments in favour of the scheme were advanced before the Committee by official witnesses specially sent from India; and, in addition to the official evidence, the Committee examined representatives of various Chambers of Commerce, and other people specially acquainted with the Indian trade. The Committee explained clearly in their report the grounds on which a more rapid construction of railways had been pressed on the one hand, and caution in the incurring of great expenditure urged on the other. They themselves thought the evidence in favour of a rapid extension of the railway system was conclusive; and, in considering the means by which this might be accomplished, they compared the State operations with those of the companies, and were of opinion that it was desirable to employ both agencies.

The following are the terms on which companies had undertaken railways in India, receiving in all cases the land free of cost:—

- (1.) "Bengal and North-Western" terms: The company made the line on its own responsibility, receiving the whole profits of the undertaking; but the line reverted to the State in ninety-nine years, with a right of purchase by the Government after thirty or fifty years, at twenty-five years' purchase of the annual net earnings for the previous five years.
- (2.) "Bengal Central" terms: The company received a guarantee of 4 per cent. on its paid-up capital during construction, which advance was to be repaid with simple interest by a contribution of half its net earnings above 5 per cent., the Government having the right of purchase after thirty or fifty years at £125 for every £100 of stock.
- (3.) "Southern Mahratta" terms: The company was practically the agent of the Government, receiving a guarantee of $3\frac{1}{2}$ per cent., plus one-fourth of the net receipts during its agency; and this agency was terminable in twenty-five years, or at subsequent intervals of ten years, at the option of the Government, the company having the right to demand the return of its capital by giving a year's notice.

In the case of lines expected to give a considerable immediate return, the Bengal and North-Western terms were held to be reasonable. Where the prospect was not so well assured, the Bengal Central terms offered a greater inducement to the investor by the guarantee of interest on capital during construction. And the Southern Mahratta terms offered a permanent security to investors, equal to the security of the Government of India, with the addition of a quarter of the net receipts of the line.

A technical distinction had been made up to that time between what were called "productive" and "protective" lines; but the Committee were of opinion that the distinction could no longer be maintained. They recommended, therefore, that railways really required, whether for protection from famine or for the development of the country, should be made as wanted, to whichever class they were technically considered to belong. Above all, they called attention to the mischief occasioned by constant fluctuations of policy in the construction of railways, and urged that, a careful forecast having been first made of all future requirements for public works, such a scale of

expenditure on railways should be adopted as could be steadily maintained. Lastly, they emphatically indorsed the declaration of the Government of India, that the proposed extension of the railway system must not involve additional taxation.

It would not be possible for me, within the limits of a letter, to describe in any detail the mass of evidence and official papers bearing on the question of charging interest to capital during construction. I may, however, refer to a few points. The Indian Government laid before the Committee a large number of statements illustrating the reasons for the policy they proposed. It was a question whether the net charge to the Indian taxpayer on account of maintenance and working of the existing public works was increasing or decreasing, and how much interest was being paid upon public works which were not then open. The evidence showed that the charge to the taxpayer was not being really increased. The total ordinary receipts of revenue, for instance, in 1882-83, were £70,125,231, and the total expenditure out of current taxation was £69,403,384, leaving a surplus of about £721,847; but in addition to the ordinary expenditure, £1,665,000 had been expended on productive public works for the general improvement of the country. There was, as a general rule, a surplus from the current taxation, but this surplus was not sufficient to cover the further expenditure required for works for the development of the country, and the balance had to be made up by borrowing. If the Government had stopped laying out any further money in developing India, and had ceased to make any further new roads or railways, confining themselves to carrying on the ordinary business of governing, and to working and maintaining the existing public works, there would have been a surplus of nearly five millions; but the expenditure of nearly four millions on works supposed not to be productive, besides nearly five millions more upon works estimated to earn more than 4 per cent., had caused a large deficit. Outside of the Government expenditure there was the capital invested by companies in the guaranteed lines, the subsidized lines, and the limited guarantee lines; but as the Government did not provide the capital expended by these companies, the expenditure made through their agency only affected India to the extent of the interest which the Government had to pay on that capital. The point really at issue was, that as the existing orders of the Secretary of State, prohibiting the expenditure of borrowed money on lines which could not be estimated to yield 4 per cent. in five years, made it impossible for the Government of India to invest borrowed money on "protective" lines, they now considered it necessary that the prohibition should be relaxed. It was not denied that the prohibition was the outcome of a policy intended to arrest further expenditure on public works; and the Government of India now said that if they were to carry on a public works policy at all, the restrictions must to some extent be removed. It was a question whether, under the new system of accounting proposed, the payment of interest during construction would be charged expressly to capital account; but it was represented that in cases where railways were constructed directly by the State, charging interest to capital would practically make no difference whatever in the total amount that would have to be paid. Charging interest to capital, in the case of a guaranteed railway, was, in fact, claimed as an advantage to the Government, because more money was got in that way out of the guaranteed company; but as regarded the Government themselves and their own State railways, it was contended that there was no real difference whatever. The interest actually paid instead of being carried, as it was under the existing system, to revenue account, would be carried to capital account, but there would be no difference whatever as regarded the total expenditure of the Government.

The principle of charging interest to capital during construction has therefore been expressly recognized by Her Majesty's Government, the Imperial Parliament, and the Government of India, alike in the case of shareholders in companies, and in that of the Indian taxpayers.

I am now in communication with the India Office for the purpose of obtaining exact particulars of the extent to which the principle has been actually applied, and is intended to be applied in future. When I am in possession of these details I will address you again.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

No. 9.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,— 7, Westminster Chambers, London, S.W., 24th February, 1886.

The letters I have written to you on the subject of charging interest to capital during construction of public works, have described what has been done in this country and in India. I now beg permission to add some particulars of what has taken place in Canada.

Under the Consolidated Railways Act of Canada, passed in 1879, railway companies may pay interest during construction at the rate of 6 per cent. The following is an extract from the Act (section 21, subsection 4): "The directors may, in their discretion, until the railway is completed and opened to the public, pay interest at any rate not exceeding six dollars per one hundred dollars per annum, on all sums called up in respect of the shares, from the respective days on which the same have been paid; such interest to accrue and be paid at such times and places as the directors may appoint for that purpose."

The Canadian Pacific Railway Company, which has just constructed the line across the continent through the Dominion territory, took advantage of this provision. The company was incorporated in February, 1881. The Dominion Government gave the company (1) a subsidy of \$25,000,000 in cash; (2) 25,000,000 acres of land; (3) sections of the railway, some already made and others to be built, to the extent of 710 miles; and (4) a loan of \$30,000,000 at 4 per cent. The share capital of the company was originally \$100,000,000, but only \$65,000,000 have been issued, exclusive of the company's bonded debt of \$15,000,000. The stock was issued between 1881 and

1883. In February, 1883, a contract was executed between the Dominion Government, the company, and the Bank of Montreal, whereby the Government, in consideration of securities and cash deposited with them, bound themselves to pay into the bank every half year, until 1893, as trustees for the company's shareholders, a sum of money sufficient to pay a half-yearly dividend of $1\frac{1}{2}$ per cent. on the entire capital stock of the company, and the bank covenanted with the company to pay the dividend to the shareholders. This arrangement was confirmed by an Act of the Dominion Parliament in 1884. During the construction of the railway the company arranged to make up the guaranteed dividend to 5 per cent. The construction of the line was finished in 1885, and any dividends now declared will be in addition to the guaranteed dividend of 3 per cent. The authorized bonded debt of the company is \$35,000,000; but of this sum only \$15,000,000 have been issued. The railway is now said to be earning enough to pay its fixed charges, and the company's bonds are quoted at 104.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

No. 10.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 11th March, 1886.

I transmit herewith copy of a letter I have received from Mr. Gladstone on the subject of charging interest to capital. I have also had a note from Lord Iddesleigh, promising to send me his opinion in a few days.

I telegraphed Mr. Gladstone's opinion to you on the 4th instant, and a copy of the message is annexed.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

Copy of Telegram referred to in No. 10.

The AGENT-GENERAL to the COLONIAL TREASURER.

To Treasurer, New Zealand.

London, 4th March, 1886.

INTEREST capital. Gladstone opinion necessary practice vigilantly watched and limited, but cannot be condemned in principle.

Enclosure in No. 10.

Mr. J. M. CARMICHAEL to Sir F. D. BELL.

DEAR SIR,—

10, Downing Street, Whitehall, 4th March, 1886.

I am desired by Mr. Gladstone to acknowledge the receipt of the letter you have been good enough to address to him, by desire of Sir Julius Vogel, on the question whether, in the case of great productive works, the interest on their cost during construction may be added to the capital charge.

In reply I have to say that this is after all a matter of personal opinion; Mr. Gladstone's opinion being that the practice of charging interest to capital in the way suggested is one which should be vigilantly watched and limited, but that it is a practice which cannot be condemned in principle.

I remain, &c.,

Sir Francis D. Bell, K.C.M.G.

J. M. CARMICHAEL.

No. 11.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 12th March, 1886.

Adverting to the question of charging interest to capital, I transmit to you herewith a copy of the Manchester Ship Canal Bill, and of the report on the Bill made by the Board of Trade, together with a *Times'* report of the debate in the House of Commons on the second reading, which passed without a division. A motion to refer the Bill to a Special Committee was defeated by 375 to 61.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

Enclosures in No. 11.

[Extract from the *Times*, Tuesday, 9th March, 1886.]

MANCHESTER SHIP CANAL BILL.

THE following report on the Manchester Ship Canal Bill has been made by the Board of Trade: "It is proposed by the Manchester Ship Canal Bill to amend 'The Manchester Ship Canal Act, 1885,' by authorizing the Manchester Ship Canal Company to pay interest during the period of seven years allowed by their Act of 1885 to the shareholders of the company on the amount from time to time paid up on the shares allotted to or held by them respectively from the respective times of such payments. The application was first made to Parliament for the construction of this canal in session 1883, and subsequently in modified forms in sessions 1884 and 1885. The promoters inserted in each of their Bills a clause enabling them to pay interest during construction. In the first Bill, which began in the House of Commons, the clause was passed, but the preamble of the Bill was lost in the House of Lords. In the subsequent Bills, both of which commenced in the House of Lords, the Chairman of the Committees of that House struck out the clause as objectionable in principle, and substituted the clause (section 214) which it is now sought to repeal. It may be stated that in the session of 1882 a Select Committee of the House of Commons were appointed to consider and report whether Standing Order 167, prohibiting the payment of interest or dividend on calls during the construction of a railway, should be maintained or modified; and the Committee reported their opinion that in special cases they recommended that companies should be permitted to pay interest upon capital during the construction of railways or tramways, subject to certain conditions which were, after debate in the House of Commons, inserted in Standing Order 167 at the end of session 1883. These conditions are still in force in the House of Commons, but have not yet been inserted in the Standing Order of the House of Lords. The conditions contained in clause 3 of the present Bill are in accordance with Standing Order 167, and similar to those contained in the Regent's Canal and City and Docks Railway Act, sanctioned by Parliament in the session of 1885. The provision proposed to be made by this clause with regard to the mode of raising the capital for the construction of this canal appears to the Board of Trade to be deserving of the favourable consideration of Parliament.—T. H. FARRER.—Board of Trade, 6th March."

[Extract from the *Times*, Wednesday, 10th March, 1886.]

MANCHESTER SHIP CANAL BILL.

SIR C. FORSTER moved the second reading of this Bill.

Mr. HOULDSWORTH, in rising to support the motion, said the object of the Bill was to give effect to the Act passed last session for the construction of a ship canal between Manchester and the sea. It was felt by the promoters that the powers asked for were necessary in order to carry out the construction of the work, which was sanctioned by Parliament last year. The Bill provided for the payment of interest during construction at the rate of 4 per cent. per annum. It provided that such interest shall only be paid in respect of the time authorized by the Act of 1885 for the completion of the works therein authorized, or such less time as the directors may determine. It provided that the interest due to any shareholder shall not be payable until the company shall have obtained a certificate from the Board of Trade to the effect that two-thirds of the share capital authorized by the Act in respect of such interest has been received and accepted. The various provisions of the Bill were all in accordance with the Standing Orders of the House. It might very properly be asked why the powers in question were not asked for in the Bill of last session; but his answer was that such powers had always been asked for. The intention of the promoters last year was, upon the consideration of the report, to propose the insertion of those very powers; but, as the Bill only came down to the House on the 20th of July, to have pressed for them at that late period of the session would have been fatal to the Bill. The assertion had been made that they had failed in raising the necessary capital; but that was not the case, because it was never supposed that they would be able to raise the necessary capital, from the disability under which they now laboured. The fact was that there was no large undertaking which did not, in some way or other, pay interest during the period of construction; and in proof of that statement he pointed to the case of the Great Western Railway in connection with the Severn Tunnel, to the example of the limited liability companies, to the various Indian railways, and to what he believed was the almost universal practice abroad. Under these circumstances the House would not expect that the capitalists of Manchester would come forward and offer their capital to this great undertaking, seeing that there was a large amount to be raised, that seven years were taken by the promoters for the construction of the canal, and that there was a firm belief that the powers now asked for would ultimately be given by Parliament, and that interest during construction would be paid. He denied that the condition in the Act of last year—that seven millions of money should be raised before the work was begun—was imposed by the Committee as a substantial test of the financial merits of the scheme. That condition was originally offered by the promoters. The real reason why that condition was offered and accepted was a very natural and proper one: it was to protect those great interests which maintained that they were going to be interfered with by the action of the promoters—to protect them until there was a fair prospect of the capital being subscribed and the undertaking fairly carried out. He did not believe that prohibition of paying interest during construction had ever been laid down explicitly by Parliament. The Act of 1885—which was passed at an enormous expense after a three years' struggle—would, he believed, be inoperative if this Bill did not receive the sanction of Parliament. This enterprise was not promoted by a bogus company; it was a determined effort on the part of a great community to relieve themselves from a difficulty in regard to transit and the cost of transit which they felt to be very oppressive to the whole trade of the district. At the present time, if there was one subject exciting the minds of commercial men more than another it was the great loss that the country had sustained in allowing the waterways to be taken up and monopolized by other transit companies. In this case they were not only doing all they could to open up a new waterway, but they were endeavouring to utilize and to extend the advantages of a natural waterway now existing between Manchester and the sea. He was in a position to say that, if this Bill were passed, the capitalists not only of Lancashire and Yorkshire, but also of many other parts of the country, would come forward and find the capital for this undertaking. He knew gentlemen and bodies in Manchester who were prepared to subscribe £20,000, £30,000, and £50,000 towards the undertaking if this Bill were passed. The Salford Corporation had a Bill to enable them to take shares in it to the amount of £250,000. They had just organized a poll of the ratepayers of Salford; and the result was that, of over 19,000 who recorded their votes, there were 16,653 for the Bill and only 2,440 against it. This was not a question affecting Lancashire and Yorkshire only, but the enterprise would be of advantage to the whole country, and not least to Ireland, which would be able to bring its perishable products to the great consuming-classes in Manchester. He had only one word more to say, and that was that they did not resist the proposal that the Bill should go to a Select Committee because they were afraid of their opponents, or because they did not wish them to have fair play. They thought their opponents had fair play. This Bill did not refer to any burning question, and it would be a scandal if, after all the money that had been spent, the opponents of the Bill should prevent the commencement of this great work. No less than a quarter of a million had been spent in supporting the Bill in the last three years. He trusted the House would not sanction the opposition to this Bill.

LORD C. HAMILTON rose to move the rejection of the Bill. The people of Liverpool opposed this Bill, not because they were afraid of the canal interfering with their trade, but they did oppose it because it might interfere with the estuary of the Mersey. He was not going into the engineering evidence, and he should content himself with pointing out that the proposal to pay interest out of capital had been struck out of the Bill by the Lords. It then came down to the Commons and was passed by the Commons, and throughout the whole discussion the question of the payment of interest out of capital was not once raised. On the contrary, the counsel for the Bill dismissed the suggestion with scorn that the money required would not be raised in Lancashire and Yorkshire, and not one word was said as to paying the dividends out of capital. There was a great deal of excitement in Manchester. Champagne was flowing, and there was much tall talk; but what was the response? Out of £8,000,000, £750,000 had been subscribed. What was the cause of this? Was it that Manchester was impoverished? He could assure Manchester of the deep sympathy of Liverpool in its impoverished condition. The reason was given by a Manchester artisan, who said that "he should shout for the canal, but it should have none of his brass." The people of Manchester were a long-headed and astute people, and, knowing that this undertaking was commercially unsound, they would not invest their capital in it. Bearing in mind, however, the well-known saying that "some people have money and no brains, others have brains and no money," and that the one class was made for the other, and being unable to raise money from their own astute population, the promoters of the undertaking came to Parliament to get power to pay interest out of capital, and under this specious promise they were going to get people to invest their money in the undertaking. The principle of paying interest out of capital was unsound in itself; but what he now wished to point out to the House was, that this was a breach of a solemn agreement come to between the promoters and a Committee of the House of Commons. The present Bill proposed to pay interest out of the existing £8,000,000. That would amount to £752,000; and, in addition, it was proposed to reduce their borrowing power by £188,000—on the whole representing nearly £1,000,000 taken out of the capital, whereas last year the promoters had said that the £8,000,000 was absolutely essential to the due construction of the necessary works. He hoped that the House would reject the Bill; but, if it thought fit to pass it, then he thought that those whom he represented should have a *locus standi* before the Select Committee of that House. They had already seen a report on the subject with regard to the general principles of the Bill from the Board of Trade. The right honourable gentleman the President of the Board of Trade had a few days ago received a deputation of the promoters, to which he had very properly replied that he would give no opinion on the Bill; he had subsequently received a deputation from the petitioners, to whom he had given a similar answer; but, before the right honourable gentleman could have heard the depositions, that Bismarck of Whitehall, Sir Thomas Farrer, had sent to the Press a Board of Trade paper recommending the Bill. He hoped that, if the House did not reject the Bill, they would insist on its appearing before a Select Committee, and that the various petitioners against the Bill should have a *locus standi*.

SIR H. MEYSEY-THOMPSON, in seconding the motion for the rejection of the Bill, wished to say that he had no hostility whatever to the Manchester Ship Canal as an undertaking—his opposition was confined to the principle of paying interest out of capital; and he would impartially oppose any Bill which sanctioned such a course, which simply amounted to returning to investors a portion of their capital. Unable to get the money they wanted, the promoters now wished to offer new baits to the public. It was said that investors could not stand out of their money for so long; but the money which they received back by way of interest was their own money, and they were only receiving

with one hand what they gave with the other. The fact was, that this repayment was wholly misunderstood by many persons who put their savings into these undertakings. He took a great interest in this matter, because, when a member of this House in 1880, he sat on the Committee that inquired into the Hull and Barnsley Railway Bill, and, from the evidence then given, it appeared that the cost of the line would be so great that the chance of its ever paying any dividend was exceedingly slight. Yet all the capital was rapidly subscribed, and many of his friends who were regarded as shrewd people put their money into the undertaking and lost it. He subsequently discovered that the inducement which had led them to do so was the 5 per cent. promised. This was to be paid out of capital; but the investors had no idea that they would be merely getting back some of their own money. There was some notion that it was being paid by the contractor. No doubt they could all regard with equanimity the investor in the abstract losing his money; but when they knew that industrious men with small savings were induced by this payment of interest out of capital to invest their money in worthless undertakings, it was a very different matter.

Mr. MUNDELLA said the noble Lord the member for Liverpool had referred to the report sent to the papers for publication by Sir Thomas Farrer, whom he styled the "Bismarck of Whitehall." It was not, however, usual in the House of Commons to lay blame on permanent officials, and he, as President of the Board of Trade, took all the responsibility in connexion with that report on himself. On Tuesday the noble Lord asked him to receive a deputation of a few members of that House on the subject of the Manchester Ship Canal, and on Wednesday he telegraphed to the noble Lord fixing Friday. It was not until he had received the deputation that the report was considered by himself and the officials of the department, and it was placed in the hands of the Clerk at the table at the very latest moment.

Lord C. HAMILTON said he withdrew what he had said on this point.

Mr. MUNDELLA said he was glad to hear that. This Bill was first brought before Parliament in 1883, and it passed the House of Commons' Committee with this clause in it, but was rejected by the Committee of the House of Lords. Since that time a Standing Order had been passed to the effect that a clause should be inserted in every Railway Bill forbidding the payment of interest out of capital. But this was not a Railway Bill, but a Canal Bill, and therefore the Standing Order did not apply. The promoters of the Bill had inserted a clause taking power to pay interest out of capital. Why should they not be allowed to do so? The noble Lord had referred to the engineering difficulties and to the navigability of the Mersey; but the House had nothing to do with those questions. They had been settled once for all already. The noble Lord suggested that the Bill should be referred to a Select Committee, before which the London and North-Western Railway Company might have a *locus standi* and be represented by counsel. But this subject was one between the promoters of the Bill and the House of Commons, with which the London and North-Western Railway had nothing to do. The Standing Order had been a great restriction upon enterprise, and had done much to aid monopolists. Why should the House deal hardly with this company? It was not like a railway company, which could make its lines in sections. The whole work undertaken by this company must be completed before it could be remunerative. These were not times when men were prepared to lock up capital for seven years. In his opinion the utility of the Standing Order was doubtful, and no such rule existed in any other country. In France, in like circumstances, companies paid 4 per cent., and added that interest to the cost of the undertaking. Since the first introduction of the Bill the railway rates for the conveyance of traffic in Manchester and Liverpool and adjoining districts had been reduced 25 per cent., and he thought that the broaching of the present scheme greatly aided the Liverpool Chamber of Commerce in their efforts to secure the reduction. There were several precedents for the course which he hoped the House would take. Only the other day the noble Marquis the head of the late Government told a deputation that one of the obstacles to the development of individual enterprise was to be found in the fact that the Standing Orders of the Houses of Parliament favoured the capitalists; and he added that whenever an attempt was made to obtain a relaxation of those Standing Orders a stiff battle had to be fought with vested interests. With reference to the suggestion that the Bill should be referred to a Select Committee, he would ask the House whether enough money had not been wasted already. Was it fair to a company that was striving to succeed in an enterprise of great utility to pit it against rich railway companies which thought nothing of giving five hundred guineas for the services of one gentleman of the long robe? In conclusion he would remind the House that when the Bill was rejected in a former session the noble Lord the member for Paddington went to Manchester, and declared that there was no greater proof of the incompetence of the House of Commons than that it had rejected the Manchester Ship Canal Bill.

Sir R. PEEL hoped that every one in Manchester would feel grateful to the right honourable gentleman for the manner in which he had placed the subject before the House. He agreed that it had been submitted to too many Committees already. The House had not that afternoon had the advantage of hearing the honourable members who served on the Committee of last session, because the Chairman, Mr. W. E. Forster, half killed by his labours on the Committee, was absent from the House through illness, and because the three other members of the Committee had not been re-elected to Parliament. He denied that it would be a new thing to pay interest out of capital during the progress of works. During the continuance of the Mersey Docks and Harbour works interest was paid in that manner, and the same practice was followed in the case of all works executed by the Metropolitan Board.

Mr. BRAND, who was received with cries of "Divide," said that he was a member of the Committee to which the question of the application of Standing Order 167 was referred in 1882. At that time the Board of Trade were of opinion that interest might be paid out of capital during the construction of the works; but to the Committee the question was not so clear, and they considered that there were a great many points to be urged on both sides. There were two contentions in this matter: one was that it was necessary that Parliament should protect people who desired to make investments from the consequences of their own folly; on the other hand it was contended that the public were well able to take care of themselves, that investors should depend on their own judgment, and that speculation should be allowed to find its own level. The Committee came to a compromise between those two contentions, and decided that each case in which it was sought to pay interest out of capital should be decided by Parliament on its own merits. The Manchester Ship Canal was a large undertaking, and consequently every individual who was likely to invest money in it must have had ample opportunity of acquiring information as to the probable success of the undertaking. Therefore it could not be said that the public required protection in this case. He thought, however, that if the Bill was read a second time it should be referred to a Select Committee; for if the House gave the company a right which the Private Bill Committee did not give it, it would affect the amount of the capital of the company, and the question might arise whether, the company having got leave to pay interest out of capital, the capital ought not to be increased.

Mr. GIBSON, who was also greeted with signs of impatience, said that the matter before the House appeared to him to be of a simple character, and one upon which they might easily arrive at a conclusion. He wished simply to submit to the House the proposition that where a Select Committee, after very careful consideration, and after hearing witnesses and counsel, had given a Bill to its promoters upon certain terms, the House ought not to take upon itself the serious responsibility of saying that those terms should be varied, and that £1,000,000 of the capital which that Select Committee thought essential to the enterprise should be taken away for the payment of interest. In the Bill which came before the Committee it was proposed to provide for the payment of interest in a totally different way to that proposed by this Bill. In the Bill of 1885 it was proposed to meet the payment of interest by adding £2 to each £10 share. By that means a fund of £1,600,000 was provided for the payment of interest in addition to the £8,000,000 of share capital and £2,000,000 of loan capital. But by the Bill before the House it was proposed to take from the existing share capital for the purpose of paying interest during construction, the result of which would be to reduce the capital of the concern by the sum of £940,000. He wished to submit to the better judgment of the House that, where a Bill had been remitted to the proper tribunal—a Select Committee—and had been discussed with counsel and witnesses before that Committee, it would be a very inconvenient thing for the House, without hearing counsel and witnesses, to vary the terms at which that Select Committee had deliberately arrived.

Mr. COURTNEY said that, having no particular interest in Manchester or Liverpool, he wished to help the House in coming to a decision. He was one of those who were in favour of the policy of freedom for investors, and therefore he would go further, if called upon to do so, than the Standing Order. But he wished to call attention to the fact

that the Standing Order was very guarded, and much more restrictive than gentlemen seemed to suppose. It referred to railways, and not to canals, and provided that interest should not be paid out of capital except in such cases as the Committee on the Bill might think fit to allow. Therefore, to allow the payment of interest out of capital was, according to the Standing Order, a question to be decided by the Committee. The scheme for constructing the canal on a certain financial basis was agreed upon by the House last year, and passed through Committee. That financial basis was going to be materially altered, and the question was whether the House should commit the Bill to an ordinary Committee, but restricting their attention to this particular question of the financial basis. If the noble Lord's proposal for rejecting the motion for second reading was defeated or withdrawn, then he would move that the Bill be referred to a Committee, to be nominated by the Committee of Selection, and that all petitioners have leave to be heard before the Committee against so much of the preamble and clauses as related to the payment of interest out of capital.

Sir J. MOWBRAY said that the Chairman of Ways and Means had suggested that every one who presented a petition against the Bill should be allowed to be heard before the Committee.—(Mr. COURTNEY: Merely on the financial question.)—He did not understand how a person presenting a petition could be prevented from entering upon other questions. His right honourable friend had not at all exaggerated when he said that the illness of Mr. Forster was due to the overpowering labours of the Committee on the canal last session. Let them not have another similar Committee. It was well known that no better work was done than in the case of unopposed Bills by the Chairman of Ways and Means, assisted by some experienced persons. If that honourable gentleman invited two experienced persons to assist him in considering the financial question, an interminable inquiry might be got rid of.

Mr. L. COHEN (who rose amid cries of "Divide") said that all the House wanted to inquire into was the narrow point whether interest should or should not be paid out of capital. That was a question which the House was perfectly competent to decide for itself. They did not require a Special Committee for the purpose.

Lord C. HAMILTON said that if the Committee was allowed, as suggested by the Chairman of Ways and Means, he would agree, on behalf of the petitioners against the Bill, to exclude both the engineering and commercial questions, and to limit the inquiry to the question of finance. He would also undertake that the opposition of the Corporation of Liverpool, and that of the Dock Board, should be merged into one.

Sir W. HARCOURT pointed out that it was impossible to "remit" the question to the Committee, because the Committee was extinct, and, for aught he knew, many of its members also. Of course they might constitute a new Committee; but why should they constitute a Committee to decide the simple point of finance whether interest was to be allowed on capital? That was a question of general principle on which the House could very well form its own opinion; and he hoped the House would take that course, and not send the Bill to a Committee.

Mr. SCLATER-BOTH submitted that the Bill must go to a Committee according to the Standing Orders; and the only question was what sort of a Committee it should be. They had no security that a matter of great public policy would be fairly fought out unless the Bill went before a Committee, by which all the parties interested could be heard on that question.

Mr. FORWOOD, as bearing on the question whether this Bill technically came within the Standing Order, which applied directly to railways, quoted the following words of the right hon. gentleman the senior member for Bradford (whose absence and its cause they all deplored), uttered when the matter was under discussion before the Committee: "I think we all of us feel that, whatever were the grounds upon which Parliament has made this concession for railways, certainly if they had foreseen such a canal as this they would have made the same restrictions for that canal. It is clear it must be viewed according to its merits as a question *pari passu* with a railway." If the House did not grant the opponents the modicum of fair play they asked it would be placing a premium upon promoters coming to the House one year with clauses drawn in a certain way, and returning to get some of those clauses cancelled next year, when the opponents could not be heard in reply.

Mr. SEXTON said he held in his hand a list of fifteen members of the House, one of whom was a director of the Lancashire and Yorkshire Railway; six were directors of the London and North-Western Railway; four were directors of the Manchester, Sheffield, and Lincolnshire Railway; and four were directors of the Midland Railway. He asked the Speaker, considering the nature of the Standing Orders as to pecuniary interest, and also bearing in mind the fact that the proposal was one to facilitate the construction of a canal which would compete with all those lines of railway and affect their receipts and dividends, if any of those fifteen members were entitled to vote.

The SPEAKER.—That is entirely a matter for the individual judgment of members concerned, always bearing in mind the fact that it is a question of railway directors and their interest in the concern. The House will be a judge of the directness of that interest.

Mr. SEXTON gave notice that if he saw any of those fifteen gentlemen coming back after a division he would call attention to the subject.

On the question being put, the amendment was negatived without a division, and the Bill was read a second time.

Lord C. HAMILTON then moved, That the Manchester Ship Canal Bill be referred to a Committee to be nominated by the Committee of Selection; that all petitions against the said Bill already presented, or which may be presented not later than three clear days before the sitting of the Committee, be referred to the Committee, and that such of the petitioners as pray to be heard by themselves, their counsel, agents, and witnesses be heard upon their petitions if they think fit, and counsel heard in favour of the Bill against such petitions.

Mr. FORWOOD seconded the motion.

Sir J. FERGUSON hoped the House would not agree to the proposals of his noble friend. He submitted that the order of reference ought to be closely narrowed, so as to exclude the engineering and other questions that were debated at such length before the Committee of last session.

The SPEAKER pointed out to the honourable baronet that his amendment would come on after the amendment of the noble Lord.

Sir J. MOWBRAY said the Committee of Selection did not wish to shrink from any duty which might come before it, but he thought it would be inadvisable to pass any resolution of this kind. He wished to point out that any person having a right to present a petition would present it, and then, if it was found that there was a *locus standi*, the Bill would become an opposed Bill, and would be referred to a Select Committee. If it was found to be an unopposed Bill, then it would come before the Chairman of Committees, who would be perfectly able to deal with it.

Mr. HIBBERT said the suggestion made was to smother the Bill altogether, and he hoped therefore the Bill would not be referred to a Select Committee.

The House then divided, and there voted—For the motion, 61; against, 375: majority against, 314.

Mr. SEXTON moved that the votes of Mr. Plunket and Mr. Tipping be disallowed, on the ground that they were directors of the London and North-Western Railway Company.

Lord C. HAMILTON called attention to the fact that Mr. Houldsworth, a director of the ship canal, had been a teller in the division.

Mr. PLUNKET, while submitting himself humbly to the decision of the House, did not wish to argue the question out. This precise point had been raised against him three years ago, and a division taken, with the result of a majority in his favour of 256 to 36.

Mr. TIPPING observed that under similar circumstances he would go into the lobby again. The action of the honourable member for Sligo was simply a form of boycotting.

Sir W. HARCOURT said it might be well if he laid before the House the course that had been taken for many years on occasions of this kind. In the book to which they always referred as the authority on these questions it was stated that on the 16th June, 1846, objection was taken to the vote of a member who had voted against the Dumfries and Carlisle Railway Bill on the ground that he was a director of the Caledonian Railway, and had a pecuniary interest in protecting the latter railway from the competition of the proposed new line; yet the vote was allowed. On the 15th May, 1845, objection was taken to the vote of one of the tellers in a division against the Bristol and Gloucester Bill on the ground that he had a pecuniary interest in voting against the Bill since it would injure his property; yet the motion for disallowing the vote was withdrawn. Similar cases occurred in 1872 with regard to the Birmingham

Sewerage Bill, and in 1883, when objection was taken to Mr. Plunket's vote on similar grounds to those brought forward to-night; but in every instance the vote was allowed. The House, he thought, would not now consider that this was such a pecuniary interest as the Standing Order had in view. Of course if votes were to be disallowed on one side they would have to be disallowed on the other, and the House would probably be of opinion that the best course was to have a truce.

The House divided, and the numbers were—Ayes, 81; noes, 291: majority, 210. The vote was therefore allowed.

[Extract from the *Times*, Wednesday, 10th March, 1886.]

THE Manchester Ship Canal Bill rouses the perennial rivalry between the metropolis of the cotton industry and the great seaport on the Mersey, and, both sides being equipped with the energy and shrewdness of Lancashire men, a stubborn war is waged, no inch of ground being surrendered without a fight. The main question was decided last year, when Parliament came to the conclusion that Manchester was entitled to construct the ship canal, with due regard for the interests and the property of other people, if she could find the money. But this is the point at which a difficulty has arisen. Only a comparatively small fraction of the capital required for the undertaking as sanctioned by Parliament last year has been subscribed; and the promoters of the enterprise yesterday sought permission from the House of Commons to pay interest out of capital, contending that investors had been deterred from coming forward by the certainty that under the general rule prohibiting such payments they would receive for many years no return upon their money. It was argued with much force that the ship canal, unlike a railway, which may be completed in sections, and may begin to pay something as each section is opened, cannot be utilized at all until it is ready for the admission of ship traffic, and that the suspension of dividends for a period which cannot be less than seven years is, in fact, prohibitory. Mr. Houldsworth, one of the Conservative members for Manchester, stated the company's case, and the opposition was led by Lord Claud Hamilton, Mr. Gibson, and other representatives of Liverpool and the neighbourhood. The Government supported the claim for the relaxation of the rule, but Mr. Mundella's pleading did not win the support of the Chairman of Committees. It was pointed out by Mr. Courtney that Parliament, after the usual inquiry, had last year given its sanction to the scheme on a specific financial basis, in which it was now proposed to make a most material alteration; and he suggested that this alteration should be submitted to another Committee. The Chancellor of the Exchequer, however, maintained that the question was one not for a Committee, but for the House; and the House, being in an indulgent mood, set aside the principle which has been so often laid down solemnly in the abstract and so often assailed with success in the concrete, rejecting Lord C. Hamilton's amendment by a majority of 375 to 61. A ridiculous attempt made by Mr. Sexton to obtain the rejection of the votes of Mr. Plunket and another gentleman on the ground that they are directors of the London and North-Western Railway—a proposal rendered the more absurd by the fact that one of the ship canal directors was actually a teller in favour of the Bill—was defeated by a great majority, consistently with the uniform practice of the House, as stated by Sir William Harcourt.

[Extract from the *Times*, Friday, 12th March, 1886.]

THE MANCHESTER SHIP CANAL.

IN answer to Mr. BADEN-POWELL,

MR. MUNDELLA said he was aware that the report of the Board of Trade stated, and with perfect accuracy, that the conditions contained in clause 3 of the Manchester Ship Canal Bill were in accordance with those contained in Standing Order 167. He had no intention of proposing to extend the Standing Order to other Bills.

In reply to a further question from Mr. BADEN-POWELL,

MR. MUNDELLA said he had already stated that he did not propose to extend Standing Order 167 to other Bills. Standing Order 156 would still hold good, inasmuch as it did not appear to him to have any bearing upon the question. He had no intention of amending the Joint-stock Companies Act so as to abrogate the rule that no dividends should be payable except out of the profits arising from the business of the company.

No. 12.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,—

7, Westminster Chambers, London, S.W., 23rd March, 1886.

I transmit to you herewith copy of the correspondence which has passed between the Bank of England and myself on the subject of charging interest to capital during the construction of public works. You will perceive that the opinion of the Governor and Deputy-Governor is adverse to the adoption of the principle by the Government, and I telegraphed this to you on the 18th instant.

I have not yet heard from Lord Iddesleigh.

The Hon. the Colonial Treasurer, Wellington.

I have, &c.,

F. D. BELL.

Copies of Telegrams referred to in No. 12.

Agent-General, London.

HAVE you replied Iddesleigh Gladstone? and their nature?

(Received 5th March, 1886.)
Wellington, 5th.

Treasurer, New Zealand.

London, 18th March, 1886.

. . . Interest capital: Bank of England's opinion adverse. . . .

Enclosures in No. 12.

The AGENT-GENERAL to the BANK OF ENGLAND.

SIR,—

7, Westminster Chambers, S.W., 23rd February, 1886.

Adverting to the conversation I recently had with you respecting the principle of allowing interest to be charged to capital during the construction of large public works, I now beg permission to enclose a copy of a despatch I received from my Government some time ago, in which I was instructed to make inquiries as to the view likely to be taken in England by the Bank, and by financiers of high authority, in regard to the application of that principle to railways in the colonies.

You are familiar, as I am well aware, with the fact that the principle has received the sanction of Parliament in the case of several private companies here, as well as in the case of the Government railway system in India. It therefore appears to have been officially recognized that the payment of interest during construction may be as legitimate in the case of public works constructed with public money, and where the taxpayers are therefore concerned, as it is in the case of lines constructed entirely by private enterprise, and where private shareholders only are affected.

The question, however, is, how far the application of the principle to Government railways in New Zealand would be looked at in the City; and I need not say that my Government would attach the highest value to the view that the Bank might take upon the matter. I venture, therefore, to hope that I may be favoured with the opinion of yourself and the Deputy-Governor, for the information and assistance of my Government.

The Governor of the Bank of England.

I have, &c.,

F. D. BELL.

The BANK of ENGLAND to the AGENT-GENERAL.

SIR,— Bank of England, E.C., 16th March, 1886.
Your letter of the 23rd February arrived when the Governor was absent on account of illness; hence the reason of the delay in our replying to it.

We have read the copies of despatches you sent in reply to the letter of the Colonial Treasurer of New Zealand, dated the 26th September, 1885, and they seem to us to exhaust the subject of the principle of allowing interest to be charged to capital during the construction of large public works, so far as custom is concerned; but the cases cited by you refer to private companies, and cannot, we think, be made a precedent for a large and responsible Government to follow.

We submit that it would be very inexpedient that the Government of New Zealand, or any Colonial Government, should alter the basis on which their loans have hitherto been offered in this country. The credit of every colony must depend upon the judicious and careful administration of its finances, and the faith in the minds of the investors that the Government will not increase the indebtedness of the colony beyond the amount absolutely necessary for the development of its resources, and that the works for which the loans are made do not outrun the capacity of the colony to make them reproductive.

The indebtedness per head of the population of New Zealand is larger than that of any other colony. This fact is frequently brought into prominent notice; and we think it is important to avoid any change of system which, though it may resolve itself into merely a book entry, might, to an investor's mind, throw a doubt upon the credit of a colony which at present stands high in the estimation of the public.

Under these circumstances we are of opinion that it would not be expedient to charge interest on the capital cost of public works of New Zealand during construction, instead of defraying it, as hitherto, out of the consolidated revenue.

We are, &c.,

JAMES P. CURRIE, Governor.

M. W. COLLET, Deputy-Governor.

Sir Francis Dillon Bell, K.C.M.G., 7, Westminster Chambers, S.W.

The AGENT-GENERAL to the BANK of ENGLAND.

GENTLEMEN,—

7, Westminster Chambers, S.W., 17th March, 1886.

I have the honour to acknowledge your letter of yesterday, conveying your opinion on the subject of charging of interest to capital during construction of public works, and I beg leave to return you my thanks for this communication, which I shall at once transmit to my Government.

I have, &c.,

F. D. BELL.

The Governor and Deputy-Governor of the Bank of England.

No. 13.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,— 7, Westminster Chambers, London, S.W., 25th March, 1886.

In my letter of the 18th February, No. 221, I informed you that I was in communication with the India Office to ascertain how far the principle of charging interest to capital had been applied in the Indian railway system. I now beg permission to enclose copy of the correspondence which has taken place.

You will perceive from the India Office letter that the railway system of India, as at present in operation, is under the three heads of "State," "guaranteed," and "assisted" lines. In the case of the State lines, the required capital is found by the Government of India, who debit the undertaking with 4 per cent. interest on the sums expended until its earnings are sufficient to provide for the charge. In the case of the guaranteed and assisted lines, the contracts with the companies provide for the payment of interest during construction out of the revenues of India.

In the Financial Statement of Sir Auckland Calvin, published yesterday at Calcutta, it is stated that, while the Famine Insurance Fund for 1885-86 had amounted to the normal amount of £1,500,000, the estimate for 1886-87 is only to be for £1,361,000, the balance being assigned to the payment of interest during construction to the Indian Midland Company, whose railway forms part of the network of lines to the prosecution of which the fund is partly devoted. The objection, therefore, to which I referred in my letter of 18th February, No. 221, as having so long existed against applying any part of the fund to the payment of interest during construction has now been waived.

By next mail I shall send you, from the contracts between the Secretary of State for India and some of the railway companies, the precise terms in which the power to pay interest out of capital has been conferred.

I have, &c.,

The Hon. the Colonial Treasurer, Wellington.

F. D. BELL.

Enclosures in No. 13.

The AGENT-GENERAL to the UNDER-SECRETARY of STATE for the COLONIES.

SIR,— 7, Westminster Chambers, S.W., 18th February, 1886.

I beg permission, on behalf of the New Zealand Government, to lay before Earl Granville a request that he may be pleased to move the Secretary of State for India to favour me with information on the following subject.

In the session of 1884 a Committee of the House of Commons presented a report to the House on the subject of Indian railways, reviewing the proposals made up to that time by the Government of India for extending the railway system in that country. Those proposals involved an extended application of the principle, which had already been sanctioned in many cases, of allowing interest to be paid out of capital during construction; and I gather from the report, and the evidence given before the Committee on the part of the Indian Government, that the principle itself was entirely accepted for future railways.

A similar question is now under the consideration of my Government—as to how far the application of the same principle would be legitimate in the case of State railways constructed by a Colonial Government out of public funds; and the chief points to be determined appear to be, to some extent, analogous to those which have been so fully considered by the Imperial and Indian Governments in the case of the Indian lines. It would be of the highest value to New Zealand if the Secretary of State for India would be pleased to communicate to me, for the information of my Government, such particulars as his Lordship may think right to give as to the extent to which the principle has been actually applied in India, and will be recognized in future extensions of the Indian railway system.

I have, &c.,

F. D. BELL.

The Under-Secretary of State for the Colonies.

Mr. BRAMSTON, Colonial Office, to the AGENT-GENERAL.

SIR,— Downing Street, 23rd March, 1886.
In reply to your letter of the 18th ultimo, requesting information respecting the payment of interest out of the Capital Account during construction, as applied to the Indian railway system, I am directed by Earl Granville to transmit to you a copy of a letter from the India Office, with its enclosures, on the subject.

The Agent-General for New Zealand.

I am, &c.,
JOHN BRAMSTON.

The INDIA OFFICE to the COLONIAL OFFICE.

SIR,— India Office, S.W., 4th March, 1886.
I am directed, in reply to your letter dated the 25th ultimo, to furnish Earl Granville with the following information for communication to the Agent-General for New Zealand.

The railway system of India, as at present in operation, falls under three heads—viz., "State," "guaranteed," and "assisted" lines. In the case of the first, the required capital is found by the Government of India, who debit the undertaking with 4 per cent. interest on the sums expended on it until the earnings are sufficient to provide for this charge; and the interest charges so standing against the receipts of a railway are always shown in the accounts until the earnings finally wipe them out. With regard to guaranteed and assisted lines, the contracts made with the companies employed in constructing them provide for the payment of interest out of the revenues of India, both during construction and for longer periods. Copies of contracts are herewith forwarded for the information of the Agent-General for New Zealand, in clause 16 of which will be found a description of the course which is followed. In the case of the Bengal and North-Western Railway Company, which has undertaken operations without any help from the Government of India beyond free grants of land, the payment of interest out of capital during construction, at the rate of 4 per cent. on the capital subscribed, has been recognized by the Secretary of State for India in Council, by clause 43 of the contract, copy of which is enclosed.

The Under-Secretary of State, Colonial Office.

I have, &c.,
J. A. GODLEY.

EXTRACT from the CONTRACT with the BENGAL and NORTH-WESTERN RAILWAY COMPANY.

SECTION 43. In the Capital Account shall be entered all such of the expenditure and receipts by or on behalf of the company in respect to its general undertaking contemplated by this contract as are properly attributable to capital: Provided that the company may, during the original construction of the railway and works specified in the 3rd section of this contract, but for no period subsequent to the 31st December, 1887, if authorized so to do by its constitution, pay out of capital any sums by way of interest on the amounts from time to time *bonâ fide* paid up on the issued share-capital of the company, not amounting, with the net interim earnings of the company, to more than 4 per cent. per annum on the sums in respect of which the interest is paid; and may in like manner also pay out of capital any sums by way of interest on the capital for the time being borrowed by the company under the provisions of section 41 of this contract. The moneys paid out of capital under this section may be charged to Capital Account as part of the original cost of construction.

No. 14.

The COLONIAL TREASURER to the AGENT-GENERAL.

SIR,— Treasury, New Zealand, Wellington, 21st May, 1886.
I have the honour to acknowledge the receipt of your further letters, Nos. 302, 309, 355, and 362, of the 11th, 12th, 23rd, and 25th March respectively, containing additional information regarding the practice of charging interest to capital account during construction of works, and the opinions of eminent authorities on the subject.

I beg to thank you very heartily for your ready response to my request to you to make inquiries, and the evident pains you have taken, not only in collecting information, but also in selecting and compiling it so as to enable it to be readily seen to what extent the practice is in vogue, and how it is viewed by those persons most competent to judge of its merits and utility. I am having the papers printed, and purpose laying them before Parliament.

The Agent-General for New Zealand, London.

I have, &c.,
JULIUS VOGEL.

No. 15.

The AGENT-GENERAL to the COLONIAL TREASURER.

SIR,— 7, Westminster Chambers, London, S.W., 19th April, 1886.
In continuation of the letters I have written to you on the subject of charging interest to capital during construction, I now enclose copy of a memorandum lately written by the Earl of Redesdale upon Standing Order No. 128 of the House of Lords. I regret to say that pressure of work of various kinds prevents me from referring to the subject further by this mail.

The Hon. the Colonial Treasurer, Wellington.

I have &c.,
F. D. BELL.

Enclosure in No 15.

PRIVATE BILLS.—Memorandum respecting Standing Order No. 128. (No Interest out of Capital to be paid on Calls.)—Laid on the Table by the Chairman of Committees.

CONSIDERABLE misapprehension exists as to the effect of the clause which, in compliance with the Standing Orders, is inserted in railway and other Bills to prohibit the payment of interest out of capital. Persons whose interest it is to induce the public to subscribe to new parliamentary undertakings have attacked the Standing Order as imposing an artificial restriction on raising capital, and somewhat similar language has been used in both Houses of Parliament. As a matter of fact, the clause only declares the general law. Payment of interest out of capital is contrary to the general principles of law applicable to all trading companies.

One of the greatest of living lawyers, Lord Justice Lindley, says, in his book on Partnership (4th ed. p. 793), "With respect to companies, there are reasons why capital and money borrowed should not be applied in making payments to shareholders, even though they may all consent. In the first place, such an application of the money is calculated to deceive the public, and can hardly be used for any honest purpose; and, in the next place, capital raised or money borrowed, in order to carry on the business of the company, cannot be properly applied for such a wholly different purpose as that of paying dividends to the shareholders." Strong examples of the application of this principle of law will be found in *Re National Funds Assurance Company*, 10 C.D. 118; and *Flitcroft's case*, 21 C.D. 520.

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

amount to be prescribed, and to repay such deposit-money to the depositor, his executors, administrators, or assigns, by equal half-yearly instalments. Such deposit-money to be in addition to and independent of the shares in the company, and not to pass by a transfer of the shares unless expressly assigned.

(B.)

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

128. A clause shall be inserted in every Railway Bill prohibiting the company from paying any interest or dividend out of any capital which they 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, and except such interest (if any) as the Committee on the Bill may, according to the circumstances, think fit to allow, subject always to the following conditions, which shall be inserted in the Bill by proper clauses, as the case may require:—

- (1.) The Committee shall ascertain what amount of share-capital, together with the corresponding amount of loan-capital, is required for the purposes of the undertaking to which capital is properly applicable. Such capital shall be applied exclusively to those purposes, and shall be the only permanent capital authorized by the Bill.
- (2.) In order to provide for payment of interest on the amount from time to time paid up in respect of shares at such rate, not exceeding 4 per cent., and during such period, not extending beyond the time allowed for completion, as the Committee may prescribe, the Committee may make a temporary addition to the Company's capital by increasing rateably the nominal value of the shares. The amount so added to each share (in this Order referred to as "the added part") shall be the sole security for the payment of such interest, and shall be applied by the directors exclusively to the payment of such interest in accordance with the provisions of the Bill, and shall not be entitled to any dividend declared out of profits, and shall not be deemed to be capital within the meaning of Standing Order 112.
- (3.) The sum required from time to time for payment of interest shall be included in the calls made on the shares. Every resolution authorizing a call shall distinguish the amount to be called up on each share for the purpose of paying interest, and that amount, when paid, shall be deemed to be paid up in respect of the added part of the share.
- (4.) No person paying a call shall be bound to see to the application of the money paid, and no person shall be liable beyond the amount unpaid on the added part of his shares for any default which may be made by the Company in payment of interest.
- (5.) The company shall have a lien on all interest due or to become due to any shareholder in respect of his shares to the extent of all calls due thereon.
- (6.) At the expiration of the period prescribed for payment of interest, the permanent capital shall become and shall thenceforth be the only share-capital of the company, and the nominal amount of every share in the company's capital shall be reduced to its nominal amount in the permanent capital. At the same time all liability for future calls in respect of so much of the added part of the shares as has not been called up shall be extinguished, except so far as any interest may remain unpaid.
- (7.) In any case in which the Committee on the Bill think fit to allow interest in respect of additional capital, the foregoing rules shall *mutatis mutandis* apply, and provisions shall be made for distinguishing such additional capital until the expiration of the time prescribed for payment of interest.
- (8.) Trust funds in which two or more persons are or may be successively interested shall not, without express authority in the instrument creating the trust, be invested in any share capital in respect of which interest is payable.

Payment of interest on calls shall not be deemed for any purpose payment of dividend on ordinary capital.

- (9.) Notice of the effect of the foregoing provisions, so far as applicable, shall be indorsed on the certificates of all shares in respect of which interest is payable.
- (10.) Notice of the company having power to pay interest shall be given in every prospectus, advertisement, or other document of the company, and of any promoter, director, or agent of the company, inviting subscriptions for shares, and every such prospectus, advertisement, or other document shall distinguish the amount of capital applicable to the payment of interest, and shall state in general terms the conditions on which such capital is issued, and the mode in which it will be extinguished.
- (11.) The half-yearly accounts of the company shall show the amount on which, and the rate at which, interest has been paid;

and the company shall be authorized by the Bill to pay interest accordingly, but not further or otherwise.

There shall be inserted in every Railway Bill provisions making liable to severe penalties, recoverable summarily by any person, or by the Board of Trade, any director or officer or agent of the company who shall, directly or indirectly, pay or procure to be paid any interest or dividend contrary to the provisions of the Bill, and making illegal and void any contract entered into by the Company, or the promoters or directors or agents thereof, or any of them, under which payment of any interest or dividend shall be directly or indirectly provided for contrary to the provisions of the Bill.

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