REPORT

FROM THE

SELECT COMMITTEE

ON

STANDING ORDER 167;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

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MADRAS

Ordered, by The House of Commons, *to be Printed,*
19 *May* 1882.

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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. Salt.
Mr. H. R. Brand.	Colonel Walrond.
Mr. Shaw.	

...AT the Committee have power to send for Persons, Papers, and Rec...

THAT Three be the Quorum of the Committee.

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MADRAS

R E P O R T.

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 the 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 subjected 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 monies 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 R... way Company led to an action before the Master of the Rolls, and an injur... was issued at the suit of a shareholder of the company restraining the di... from paying interest out of capital, in accordance with the terms o... pectus issued by them.

This decision led that company and others to insert a clau... permitting payment of interest out of capital during construc... circumstances it was thought desirable to refer the matt... mittee.

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 authorised 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 authorise, according to the circumstances of the case.

(5.) The rate of interest to be fixed by the Committee, but in no case to exceed five 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.

19 *May* 1882.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 20*th April* 1882.

MEMBERS PRESENT:

Mr. Baxter.
Mr. H. R. Brand.
Mr. Salt.
Colonel Walrond.
Mr. Shaw.

Mr. BAXTER was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 25*th April* 1882.

MEMBERS PRESENT:

Mr. BAXTER in the Chair.

Mr. Shaw.
Mr. H. R. Brand.
Mr. Salt.
Colonel Walrond.

Sir *Edward William Watkin*, Bart., a Member of the House, Mr. *John Charles Rees*, and Mr. *Charles Waring*, were Examined.

[Adjourned till Friday next, at One o'clock.

Friday, 28*th April* 1882.

MEMBERS PRESENT:

Mr. BAXTER in the Chair.

Mr. Shaw.
Mr. H. R. Brand.
Mr. Salt.
Colonel Walrond.

Mr. *Samuel Laing*, a Member of the House, Mr. *Thomas Henry Farrer*, Mr. *James Staats Forbes*, and Lieutenant-Colonel *Gerald Smith*, were Examined.

Mr. *John Charles Rees* was further Examined; Mr. *R. W. Perks* and Mr. *Joseph W. Pease*, a Member of the House, were Examined.

[Adjourned till Wednesday next, at One o'clock.

Wednesday, 3rd May 1882.

MEMBERS PRESENT:

Mr. BAXTER in the Chair.

Mr. Shaw.
Mr. Salt.
Colonel Walrond.

Sir *Francis S. Reilly*, Q.C., was Examined.

[Adjourned till Wednesday next, at Two o'clock.

Wednesday, 10th May 1882.

MEMBERS PRESENT:

Mr. BAXTER in the Chair.

Mr. Salt.
Mr. Shaw.
Mr. H. R. Brand.
Colonel Walrond.

Mr. *Henry Tennant* was Examined.

Sir *Francis S. Reilly*, Q.C., was further Examined.

Mr. *Richard Withers* was Examined.

[Adjourned till Friday, 19th May, at Two o'clock.

Friday, 19th May 1882.

MEMBERS PRESENT:

Mr. BAXTER in the Chair.

Mr. Salt.
Mr. H. R. Brand.
Colonel Walrond.
Mr. Shaw.

DRAFT REPORT proposed by the *Chairman* read the first time, as follows:—

"STANDING ORDER 167, which prohibits the payment of interest out of capital in the case of railway companies, was passed with the 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 subjected 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.

"2. 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 monies 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.

"3. 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.

"4. 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.

"5. 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 can be no doubt, however, that it has been evaded by both old and new companies, and the preponderance of evidence is in favour of certain modifications which have the sanction of high authorities connected with both Houses of Parliament and the Board of Trade.

"6. Your Committee therefore 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 authorised 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 authorise, according to the circumstances of the case.

"(5.) The rate of interest to be fixed by the Committee, but in no case to exceed five 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.

"7. Considering, however, the bearing of these proposed changes upon the existing law, 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.

"8. 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."

DRAFT REPORT, proposed by the *Chairman*, read a second time, paragraph by paragraph.

Paragraphs 1—4, *agreed to.*

Paragraph 5, amended, and *agreed to.*

Paragraph 6, amended, and *agreed to.*

A new paragraph *inserted.*

Paragraph 7, amended, and *agreed to.*

Paragraph 8, *agreed to.*

Question, That this Report, as amended, be the Report of the Committee to the House, —put, and *agreed to.*

Ordered, To Report, together with the Minutes of Evidence, and an Appendix.

LIST OF WITNESSES.

MINUTES OF EVIDENCE.

Tuesday, 25th April 1882.

MEMBERS PRESENT:

Mr. Baxter.
Mr. H. R. Brand.
Mr. Salt.
Mr. Shaw.
Colonel Walrond.

THE RIGHT HONOURABLE WILLIAM EDWARD BAXTER, IN THE CHAIR.

Sir EDWARD W. WATKIN, Bart. (a Member of the House); Examined.

Chairman.

1. You have been connected with railways for some 30 or 40 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 $3\frac{1}{4}$ miles, 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 *l.*, which is 40 *l.* premium; and on the great collapse that followed I think they were sold as low as 10 *l.*, 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

Chairman—continued.

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 *l.*, 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

Chairman—continued.

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 *l.* during the time it is laid out, to pay butcher's 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 14 or 15 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 *l.* 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 disguise 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.

Mr. Shaw.

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

Chairman.

12. 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 *l.* is on the face of the accounts the capital, and 500 *l.* of that capital has been given back, reducing it practically to 9,500 *l.*, I do not think that it should be called 10,000 *l.*; on the other hand, I do not object to adding on the 500 *l.* 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 downs 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.

Chairman—continued.

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 shareholders 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 *l.* 17 *s.* 6 *d.* per cent. in the savings bank; they rushed to the savings bank and took out their money; 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 *l.* paid have fallen to 12 *s.*, and the effect is, that what these poor men gave 2 *l.* for on allotment is worth 12 *s.* 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 *l.*; of course that 100,000 *l.* which was borrowed on the security of the rates of Hull is now at a considerable discount, and if the Corporation had to realise they would be serious losers by it. I think that 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 34 years under this Standing Order; for certainly 15 or 20 years we have known 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 34 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 dissever 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

Mr. *Salt*—continued.

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 *l.*, 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 100 miles of railway may do as well as the other, or better.

41. In 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 fool's paradise, from which he wakens 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 their 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 equalised 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 *l.* and began to improve it, and simply paid himself back so much

Mr. *Salt*—continued.

uch money which he spent in household xpenses. Obviously it is an unreal thing.

47. Now assuming that plan to be carried ut, not only in the theory of the Standing)rder, but actually in fact and in commercial ractice, would not the effect be to give the bsolute control of the country to the great ailway companies?—No, I do not think so. I hink that wherever the enterprise was really ood, money would be found to carry out the nterprise.

48. You think that the effect would be that veak enterprise would be stopped, but that trong enterprise would not be hindered?—I hink that the healthy enterprise would be ielped, and not crippled by it; and that the mly enterprise that would be fostered by paying nterest out of capital would be unhealthy enterprise.

Colonel *Walrond.*

49. 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 authorised, is there any limit of per-centage that you would recommend?—I think it should be the barest possible amount. If I wanted to minimise 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 minimising 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.

Mr. *Salt.*

53. 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.

Mr. *Brand.*

55. 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.

Mr. *Shaw.*

56. 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 Scotch 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.

Chairman.

60. 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, called in; and Examined.

Chairman.

61. WILL you inform the Committee how long you have been connected with railways?—Since the year 1855, 27 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 authorised 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 *l.*

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 of December 1884, on all amounts for the time being paid up. The 1st of 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 *l.* 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 legalise 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 legalising 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 legalising 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 *l.*, others 3,000,000 *l.*, 2,000,000 *l.*,

Chairman—continued.

2,000,000 *l.*, 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 authorising 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 legalising 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 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 300 in 1846, there was an enormous number of applications for Railway Bills, I believe running close upon 1,000; 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 of 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 authorised 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 authorised 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 authorising 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 authorised 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, authorising 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,

Chairman—continued.

1836, and obtained further powers in subsequent Sessions; in 1839 they had a Bill which did not authorise 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.

Mr. *Brand.*

78. 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.

Mr. *Salt.*

79. 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 26; and in 1846, the last year before the Standing Order was passed, there were 92. 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 authorised 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.

Chairman.

80. 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 authorised 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 30*s.* a week subscribing for 60,000*l.* or 80,000*l.*, 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 per-centage 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

Chairman—continued.

—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 *bonâ 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 that 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. Everyone 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 the 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 do 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.

Mr. *Shaw.*

95. That makes all the difference in the world?—It makes all the difference in the world.

Chairman.

96. 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 legalised, 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

Chairman—continued.

ment 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.

Colonel *Walrond.*

101. 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.

Chairman.

103. 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 might also point out that by the very passing of the Act of 1867, which in the case of additional capital authorises 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 *l.* and make it up to 60,000 *l.* by additions of interest in the course of years; or whether you start with an original capital of 60,000 *l.*, and issue it at a discount of 10,000 *l.* for 50,000 *l.* 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.

Chairman—continued.

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 three 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.

Mr. *Salt.*

115. 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 a 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 four or five per cent., with a maximum of five per cent.?—Yes.

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

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. What

Mr. *Shaw*.

130. What endorsement would you put on the certificate?—Something like for 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 above-board 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.

Mr. *Brand*.

134. 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.

Mr. *Shaw*.

138. 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 had 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.

143*. Do not you 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 per-centage 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. You

Chairman.

149. 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 development of the traffic), by investment of 100,000 *l.* 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 per-centage 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 monies actually paid to the contractor, but interest upon those monies 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.

Mr. *Shaw*.

153. Interest is added to the capital and produces interest afterwards?—Yes.

Chairman.

154. 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 of 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.

Colonel *Walrond*.

157. Do not you 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 authorised in the same way.

Mr. *Shaw*.

158. 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.

Mr. *Salt*.

161. 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.

Mr. *Shaw*.

163. 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, called in; and Examined.

Chairman.

165. 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 12 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 concessionaires 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.

Mr. Salt.

169. 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, 50 and 60 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.

Chairman.

170. 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 endorse, 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*l.* a share, if you are going

Chairman—continued.

going to issue the share which is the representative of that, 100*l.* at a discount, shall we say, of 20 per cent., and to issue it at 80*l.*, it is quite clear that you must add 20 per cent. to the capital before you can issue it at 80*l.*, because you require 100*l.* 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*l.* share, which is the representative of a railway work which has cost 100*l.*; if I pay 100*l.* for it and you call it 80*l.*, you depreciate the face value of it.

Mr. Brand.

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

Mr. Shaw.

173. 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*l.* share and you pay back 20*l.*?—But I have paid my 100*l.* during four years. If I put down 100*l.* 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*l.*; 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*l.* 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.

Mr. Brand.

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

176. Does it follow that the share is only worth 20*l.*; 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*l.* 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

Mr. Brand—continued.

I have paid for it, because you stamp it with 80*l.*, when I have paid 100*l.* for it.

Mr. Shaw.

177. It is still a 100*l.* share?—I am paying myself the discount. Whether the paper bears upon the face of it the value of 100*l.*, or upon the face of it 80*l.*, 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*l.*, my share just represents 10*l.*, 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.

Mr. Salt.

178. 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,

Mr. Salt—continued.

allowed, the expedients to make up the difference 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.

Chairman.

183. 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 authorised to do it, or not prohibited for 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.

MEMBERS PRESENT:

Mr. Baxter.
Mr. H. R. Brand.
Mr. Salt.
Mr. Shaw.
Colonel Walrond.

THE RIGHT HONOURABLE WILLIAM EDWARD BAXTER, IN THE CHAIR.

Mr. SAMUEL LAING (a Member of the House); Examined.

Chairman.

185. 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 recognise 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 15 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 15 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 10 *s.* or 15 *s.* 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

Chairman—continued.

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 recognised 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 10 or 15 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.

Chairman—continued.

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 ensure 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 10 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 *l.*; in the ordinary course of things, with 300,000 *l.* issued at par, they would have 100,000 *l.* debenture powers; whereas, if instead of that, they were to make their share capital 400,000 *l.* and issue it at 300,000 *l.*, issuing it at a discount, they must not have 133,000 *l.* debenture powers instead of the 100,000 *l.* 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.

Mr. *Shaw.*

197. 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.

Mr. *Brand.*

202. You have stated what happened in the case of the Brighton Company 15 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 clergymen and widow

Mr. *Brand*—continued.

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, called in; and Examined.

Chairman.

204. 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 know 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 authorises 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 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.

Mr. *Salt.*

216. 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

Mr. *Salt*—continued.

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.

Chairman.

219. 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 exceeding sensible man, who understands these questions thoroughly.

Mr. *Salt.*

221. 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 30 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.

Colonel *Walrond.*

233. 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, 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

Colonel Walrond—continued.

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.

Chairman.

236. 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.

Mr. Brand.

238. 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 *l.* and to get their 50 *l.* a year from it at once; and if they are not to have their 50 *l.* 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.

Mr. Shaw.

243. 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.

Chairman.

246. 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.

Mr. Shaw.

247. Do not you think that 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

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Mr. Shaw—continued.

facilitate their getting capital; or that, in the case of any company putting that on the front, except they had unmistakeable 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.

Mr. Brand.

256. 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.

Chairman.

257. 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 the leave to get their deposit back again 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, called in; and Examined.

Chairman.

260. 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 as 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

Chairman—continued.

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 40 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 recognise 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 recognised 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 summarise 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 now-a-days 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 going 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 monied 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

Chairman—continued.

out that over and above the price at which you could get the work done if you had the money at command, you must pay a very large additional sum, not an outrageous or 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. Farrer, 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, 13 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 12, and we have to put our hands into our pockets and find 350,000*l.* 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 obstructions 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*l.* in hand of ordinary stock), the five per cent. preference stock, to the shareholders, and out of 1,500,000*l.* they took 250,000*l.*, just enough to spoil the value of the rest. They took that at 70*l.*, or 30 per cent. discount, and there 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*l.* 10*s.*, and, of course, in order to be quite fair and square with those people who had subscribed the 250,000*l.*, we had to return them the 30*s.* difference; therefore the whole of that preference stock of 1,500,000*l.* on a railway like the District was issued at that 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 five 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*l.* 17*s.* 8*d.* per cent. per annum for ever. That is the most improvident thing you can conceive.

Mr. *Shaw*.

279. 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

Mr. *Shaw*—continued.

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 has 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 *l.* 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 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 realise 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 authorised by the Act of 1879 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 authorised by the Act of 1879, and therein called the joint undertaking." Now that is a means of evading the Standing Order. That is a distinct payment out of capital.

Chairman.

280. 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 *l.* 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

Chairman—continued.

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 five to seven 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 *l.* New Ordinary Stock; 750,000 *l.* and 500,000 *l.* make the 1,200,000 *l.*, 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.

Mr. *Shaw.*

281. 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.

Chairman.

283. 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 not you 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.

Mr. *Shaw.*

285. 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 *l.* what is worth 120 *l.*, 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 not you 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 *l.*, 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 ventured 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 five 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.

Mr. *Shaw*—continued.

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.

Chairman.

300. 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.

Mr. *Brand.*

301. Then I understand that even in the case of this Standing Order being repealed, you, in promoting a railway, or anyone 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 *l.*, and I will give you a half 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 *l.* to your undertaking and getting back in the course of five years 20 *l.* during construction, and on the other hand my paying 80 *l.* and getting back nothing during those five years, except this, that I shall have 20 *l.* 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 *l.* at 80 *l.*), it follows you for ever. Take a case in point, the District Railway. If they had borrowed the money for three years at 30 *l.* 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 *l.* 17 *s.* 8 *d.* out of the earnings of the company, instead of 5 *l.*

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 1¼.

Mr. *Brand*—continued.

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 *l.*, issued at 68 *l.* 10 *s.*, now takes out of the profits 7 *l.* 17 *s.* 8 *d.* per cent., instead of 5 *l.*

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

307. And upon that you are paying really 7 *l.* 17 *s.* 8 *d.*?—Yes, for ever.

308. But supposing that you had obtained that at 100 *l.*, and you had spent the same amount in construction, say 70 *l.*, and you returned the 30 *l.* to the investor, that is to say during construction, you would 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 625,000 *l.* worth of stock; 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 another 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 *l.* to 98 *l.*; payment deferred for two years (the date of the assumed completion of the railway), 90 *l.*; 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 this 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 *l.* 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.

Mr. *Shaw.*

310. 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 10 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 hence, 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

Mr. *Shaw*—continued.

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 more 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.

Mr. *Brand.*

313. 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.

Mr. *Salt.*

315. 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 *l.*?—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 *l.*?—No, the price now would be par, or over; it would have been 98 *l.* 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 *l.* from your 103 *l.*?—Yes.

321. Therefore, the loss upon the transaction is the difference between 90 *l.* and 95 *l.*; 5 per cent.?—Yes. I have got to place within a few months of this time 1,250,000 *l.* 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 cognisance, 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

Mr. *Salt*—continued.

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 offhand, 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 landowners 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.

Mr. *Salt*—continued.

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 *bonâ fide* issued and accepted." Now that is a thing which at once clashes with practice. In this very important public 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 *l.* of capital we may proceed to raise 400,000 *l.* 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 authorised, notwithstanding any clauses or anything of the kind, to pay interest during construction not exceeding 5 per cent.

Chairman.

332. 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 4½ per cent. when it might be easy to raise it at five. During the last four months, almost on a sudden, the state of the market was so altered that you could not raise money at 4½ per cent. I should think myself, therefore, that this suggestion as to 4½ per cent. would want a little modification.

Mr. *Salt.*

333. 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.

Lieutenant Colonel GERARD SMITH, called in; and Examined.

Chairman.

337. 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 authorises certain railways to be made, and gentleman 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.

Chairman—continued.

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

Chairman—continued.

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, that, if a new company was to attempt to issue its 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 their names 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 100 *l.* worth of stock allotted to him, and he pays 80 *l.* 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 *l.*, the face value of it being 80 *l.*; you will not instil into his mind the idea that it is worth 100 *l.* 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 *l.*, and not 100 *l.*

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 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.

Colonel *Walrond.*

350. 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 per-centage, 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 the 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 4½ 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

Colonel *Walrond*—continued.

them to raise it with a limit of 3 per cent.?—You would never raise a shilling.

Mr. *Brand.*

353. 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 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 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*l.*, 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.

Chairman.

356. 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 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

Chairman—continued.

evasion, and we thought that the simplest and the 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 the 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 2 *d.*, or 2,000 *l.*, or 200,000 *l.* to make; if it is to cost 2 *d.* to make, you must not take 1 *d.* 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.

Mr. *Salt.*

359. 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, re-called; and further Examined.

Chairman.

361. 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

Chairman—continued.

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, called in; and Examined.

Chairman.

362. 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 authorise 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*l.* in Hull and Barnsley stock would not be familiar with the fact that his 20*l.*, 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

Chairman—continued.

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 *l.* 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 *l.* was recently raised in that 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 *l.* issued, and in the other case that I have referred to it is simply 60,000 *l.*

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

Chairman—continued.

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.

Mr. Brand.

373. I gather from your evidence that your view is that if the law is changed and Parliament authorises 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 realised out of capital or borrowed monies, even though made in pursuance of a resolution at a general meeting, was *ultrà 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 authorised 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 this 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.

Mr. Salt.

376. 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.

Chairman.

378. 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 payments 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 *l.* 8 *s.* per cent. owing to the addition to 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' 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

Chairman—continued.

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 shareolders. 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 *l.* was drawn for the Hull and Barnsley Railway from that savings bank at one time; that means 100,000 *l.* 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 divided, 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 repitition: 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 *l.* and 350,000 *l.* 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 profits 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 *l.* a year.

Chairman—continued.

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 800 millions was not practically more than, I suppose, 580 millions to the State.

Chairman—continued.

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.

Mr. *Salt.*

383. I understand you are in favour of retaining Standing Order 167 as it is?—I am.

Wednesday, 3rd May 1882.

MEMBERS PRESENT:

Mr. Baxter.	Mr. Shaw.
Mr. Salt.	Colonel Walrond.

THE RIGHT HONOURABLE WILLIAM EDWARD BAXTER, IN THE CHAIR.

Sir FRANCIS S. REILLY, Q.C. (Mr. Speaker's Counsel), called in; and Examined.

Chairman.

384. 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.

Mr. *Shaw.*

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

Mr. *Shaw*—continued.

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.

Chairman.

388. 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 legisla- tion.

Chairman—continued.

tion. 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.

Mr. *Shaw*.

390. 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 been already 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,

Mr. *Shaw*—continued.

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 in 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 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 or 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.

Mr. *Salt*.

393. 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. And

Chairman.

394. 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 authorising 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.

Mr. *Shaw*.

396. 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

Mr. *Shaw*—continued.

of being restrained by injunction, just as the Hull and Barnsley Company were.

Mr. *Salt*.

397. 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.

Chairman.

399. 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, 10*th May* 1882.

MEMBERS PRESENT:

Mr. Baxter.
Mr. Brand.
Mr. Salt.
Mr. Shaw.
Colonel Walrond.

THE RIGHT HONOURABLE W. E. BAXTER, IN THE CHAIR.

Mr. HENRY TENNANT, was called in; and Examined.

Chairman.

400. 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 to 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

Chairman—continued.

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

Chairman—continued.

nbodied in their Acts, have been in effect, that pay any interest out of any fund except profits, as an illegitimate proceeding: it was so set out in e Act of 1862, the Companies Act. Table A.; at Act clearly declared the mind of Parament on the subject. In 1864, two Acts of arliament were passed relating to railways; e was for the purpose of facilitating the conruction of railways, and for facilitating the rmation of companies for that purpose, and though this Act was thus specially designed to cilitate the construction of railways, there is a ause in it prohibiting the payment of interest; e other Act of 1864, the Railway Companies' owers Act, passed with the same object, viz., cilitating the operations of railway companies, ntains the same clause prohibiting the payment interest or dividend out of capital. If I were ked whether the repeal of a clause so sanctioned y the action of Parliament ought to take place, should beg leave to refer to what was done in the ears 1866, 1867, and 1868 in relation to railways. e all know that the power of borrowing on the art of any company is limited to one-third of s share capital. Prior to 1866, one notable insance, and probably others, took place, where mpanies did not adhere to that rule; Parliaent did not propose—no one proposed—to ter the restriction as to borrowing powers, but, n the contrary, Parliament passed an Act, entled the Railway Companies' Securities Act, y which the representatives of the Companies ere obliged to make certain returns and declaations: and it was also stipulated that if false eclarations as regards their borrowing powers ere made, the parties making them should be unishable by fine or imprisonment. In 1867, an et was passed strengthening the Audit Department of Railways. Previous to 1868, several companies had paid dividends which were not legitiate: their stock had assumed a fictitious value, d the investor was injured, and Parliament lopted more stringent measures. The Railways egulations Act was passed, by which a form of count is prescribed: the chairman and the acuntant or secretary are required by that Act sign the accounts, the engineers are required give certificates, and if any of the parties conrned make any declarations which are not coret, they are liable to fine and imprisonment. othing has been of more use to railway comnies than the making of them stable, by these ets: the old railway companies have been moved from what I would call the region of eculation, and the effect has been good for the mpanies, and beneficial for the public. The fect on the companies has been, that their ock has stood better in the market, they have en enabled to raise money on easier terms, d by having to pay less interest for their money, ey have had a surplus revenue with which ey could do one of two things, either reduce the tes, fares, and charges, or extend railways in stricts that were not of themselves remunerative.

410. We were considering the question of ese evasions; you admit, as I understand, that e Standing Order has been evaded recently, t you think that the decision of the Master of e 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 byé 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, that 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

Chairman—continued.

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 *l.* 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 five per cent. for a period of five years, I am quite sure of this, that whilst the people in Northumberand 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 *l.*, yet, under the most favourable circumstances, they would not be able to get more than two 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 *l.* (I give all the figures in round figures). They have gone on adding every year up to 1880, until in 1880 the amount was 728,000,000 *l.*, which is an average expenditure on railways of 19,000,000 *l.* per annum for the last 20 years. The bulk of that, of course, has been spent by the old companies. (*The Paper was handed in.*)

Mr. *Salt.*

414. 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 20 years nearly 400,000,000 *l.* sterling, has practically kept the net receipts in proportion to the capital as nearly as possible the same as it was 20 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.*)

Chairman.

415. 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.

Mr. *Salt.*

416. 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

Mr. *Salt*—continued.

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 *l.*; and at the end of 1881 they were committed to 26,000,000 *l.* more for the expenditure in the future half-years; so that the expenditure on railways may be taken at about 770,000,000 *l.*, 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.

Chairman.

417. How many are there?—I did not count them, but these are the figures which I have been quoting from. Summarised, it comes to this: that from the Board of Trade Returns for the year 1880 there are nearly 38,000,000 *l.* 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 *l.*; 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 was 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 shew 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 *l.* of ordinary capital. I do not mean to say that they received 11,000,000 *l.*, because I suppose they did not, but the nominal amount is 11,000,000 *l.*, 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

Chairman—continued.

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?

Chairman.

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.

Mr. *Brand.*

421. 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

Mr. *Brand*—continued.

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.

Chairman.

425. Do you believe that even were this Committee to recommend an alteration or repeal of Standing Order 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.

Mr. *Salt.*

426. 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 30 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 38 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), called in; and further Examined.

Chairman.

436-7. 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.

Chairman—continued.

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

Mr. *Brand.*

440. 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 that 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.

Chairman.

441. 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, was called in; and Examined.

Chairman.

442. 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 upon the matter?—I should like to give my own opinion upon the matter, based upon my experience of 46 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 re-act 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 an 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 pooh-poohed 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-bye 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

Chairman—continued.

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 *l.* 10*s.* or 32 *l.* per 100 *l.* 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 stock, 100 *l.* paid up, at 15 *l.* 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 re-acted 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 *l.* paid up, say 50 *l.* shares, and every call that was made of 5 *l.*, 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 *l.* 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 this 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 name of *bonâ fide* directors published to the public in prospectuses, hopeful people will go on taking shares, ar thos have no doubt that very wide spreaumber of carl the consequence.

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Chairman—continued.

things?—I do not think that the violation of the Order has been to any very large extent. There are about 700,000,000 *l.* of railway capital which we may take has been raised by the public. This has an average of about 14,000,000 *l.* a year, supposing it to have been obtained in the average way. It is not quite that, but for the last 20 years the expenditure has been equal to 19,000,000 *l.* 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 *l.* 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.

Mr. *Salt.*

451. 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 or 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 per-centage 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 we were

Mr. *Salt*—continued.

vere held up in two kinds of cases: one is he want of success in the schemes themelves, which generally have been of a very nferior character, and have not paid any lividend at all, and they form part of the 0,000,000 *l.* of railway ordinary stock which ays no dividend; and the other is the danger o directors and promoters of evasions of the Act f Parliament; and now that the courts of law ave pronounced it a positive evasion, those entlemen will not be found to take seats at oards, or even to promote companies, through he evasion of an Act of Parliament which may ring down upon them very serious personal iabilities.

452. You think that whether the Standing Order 167 has been evaded largely, or whether t has not, still it has been of use so far that the ase would have been infinitely worse if that Standing Order had not existed?—Tenfold or wentyfold worse, because you would then tap he savings of the whole country, whereas by the vasions that have taken place the tapping of the apital of the country has been to a very trifling xtent, because the great public are not misled y these sort of evasions. They do not like hem, but they would be misled by an Act of Parliament authorising this to be done. They ould then say that it was under the authority f an Act of Parliament. They would say cerin respectable names are the promoters of this cheme; they will pay a certain five per cent. for ve years, and we will go into it.

453. Even if the Standing Order were altered, nd very careful modification were introduced, ou still think that it would be better to remain s we are?—Decidedly; in fact all the modificaon of the Act of Parliament in connection with e Standing Order that I would suggest would e this, that the deposit which now has to be aid of five per cent. should be a *bonâ fide* deosit, and not a deposit borrowed from loan comanies or from banks under these conditions, at if the Bill is to be granted by Parliament

Mr. *Salt*—continued.

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.

Chairman.

455. 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.

LIST OF APPENDIX.

Appendix, No. 1.

Appendix, No. 2.

Appendix, No. 3.

APPENDIX.

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 authorised 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. Interest on capital.

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 Com.*]
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. —

Board of Trade to the Chairman of Ways and Means.

Board of Trade (Railway Department), London, S.W., 23 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:—	Shares.
1. Regent's Canal, City, and Docks Railway - - - - -	8,100,000
2. Hull, Barnsley, &c. (Extensions) - - - - - - -	2,400,000
3. ,, ,, (Interest) - - - - - - -	3,000,000
4. East and West Yorkshire Union - - - - - - -	510,000
5. Central Northumberland Railway - - - - - - -	930,000
6. Ascot, Windsor, and Aldershot Junction - - - - -	330,000
7. Waterloo and City Railway - - - - - - - -	2,700,000
8. Metropolitan District - - - - - - - - -	1,250,000

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 authorise the payment of interest out of capital, while the Bill of the District Railway Company authorises such payment out of capital or any surplus or reserve fund.

It is unnecessary to discuss the policy of the Standing Orders 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.

I am, &c.
(signed) *Henry G. Calcraft.*

The Right Hon. Lyon Playfair, M.P.

— No. 3. —

Chairman of Ways and Means to Board of Trade.

Sir, 24 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.
(signed) *Lyon Playfair.*

Henry G. Calcraft, Esq.

— No. 4. —

Mr. *Rees* to Mr. *Warner.*

13, Great George-street, Westminster,
Sir, 20 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 authorised 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 contributor insists upon a rebate guarantee, or other agreement, with one of the larger companies, which will ensure 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 authorised, subject to the following conditions:—

1st. That it should be of moderate amount only, say $4\frac{1}{2}$ or 5 per cent.

2ndly. 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.

3rdly. 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.

4thly. 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 per-centage 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

tion of the works, the engineers' 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 remain, &c.
(signed) *John Charles Rees.*

Joseph H. Warner, Esq.

— No. 5. —

Board of Trade to Chairman of Ways and Means.

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

Sir,

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 *primâ facie* to be reasonable, and such as might probably be observed.

I am, &c.
(signed) *Henry G. Calcraft.*

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

— No. 6 —

PROPOSALS for altering Standing Order 167 by Chairman of Ways and Means.

THE Chairman of Ways and Means—Standing Orders.

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 authorising 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 authorised by the Bill has been subscribed, and is *bonâ 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, not 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 authorised, to provide that no interest or dividend shall be paid out of such capital to any shareholder, or money paid by him upon calls, except upon the following conditions, viz.:

1. That the rate of interest or dividend shall not exceed 4½ 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 *bonâ 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 authorised, 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*, 28 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.

DIRECTORS.	TITLE OF BILL.
Sir Charles Edward Trevelyan	Central Northumberland Railway.
Sir John Swinburne	
Ralph Carr Ellison	
Hon. Fredk. William Lambton	
John Robinson	
William Forster the younger	
Charles Macartney Swarbrick	
Joseph Charlesworth	East and West Yorkshire Union Railways.
Henry Bentley	
Humphrey Brooke Firman	
Edward Bower	
Hon. Fitzroy Stewart	
The Right Hon. Victor Albert George Child Villiers Earl of Jersey	Rhondda and Swansea Bay Railway.
Charles Bath	
Thomas Cory	
John Richardson Francis	
Thomas Joseph	
Morgan Bransby Williams	
John Jones Jenkins	
John Crow Richardson	
William Williams	
Sir George Henry Chambers	Regent's Canal, City and Dock Railway.
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	
Lieut. Colonel Gerard Smith, Chairman	Hull, Barnsley, and West Riding Junction Railway and Dock Company.
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 authorising 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 authorised 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, authorised 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. These 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.

5 May 1882. *Francis S. Reilly.*

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