



The Law Commission

(LAW COM. No. 135)

STATUTE LAW REVISION: ELEVENTH REPORT

**OBSOLETE PROVISIONS
IN THE COMPANIES ACT 1948**

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*As from 1 May 1984

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*To the Right Honourable the Lord Hailsham of Saint Marylebone, C.H.,
Lord High Chancellor of Great Britain*

Introduction

1. In this report we recommend the repeal of certain provisions of the Companies Act 1948 which research and consultation have shown to be obsolete, unnecessary or otherwise not of practical utility. We have not prepared a separate draft Bill because we envisage that our repeal proposals would be implemented by the legislation which consolidates the Companies Acts 1948 to 1983. In our view it would be both undesirable and misleading to re-enact these provisions in a modern consolidation of the current law relating to companies.

2. The proposals in this report relate only to a local jurisdiction in England. The Law Commission and the Scottish Law Commission, in a joint report,¹ recommended a number of amendments of a general nature which are desirable to enable a satisfactory consolidation of the Companies Acts 1948 to 1983 to be produced. That report has been implemented by an Order in Council² made under section 116 of the Companies Act 1981.

3. The provisions concerned have been in the companies legislation for a long time. They occur in all three of the consolidations of company law undertaken this century, namely the Companies (Consolidation) Act 1908, the Companies Act 1929 and the Companies Act 1948. The table in Appendix 1 traces the main sources of the various provisions. As that table indicates, many of them reach back to the Companies Act 1862 and the Stannaries Acts 1869 and 1887 (which regulated cost book companies) and have been repeated since then by successive consolidations. The substantive effect of the provisions as a whole has not been examined by Parliament since the 19th century.

Background: Cost Book Companies and the Vice-Warden's Court

4. The historical background³ to these provisions explains how they came to be in the companies legislation. During the 19th century tin mining was carried on in the stannaries⁴ of Cornwall on an extensive scale by companies organised on the cost book principle, and known therefore as cost book companies. These companies were subject to the jurisdiction of a specialised mining court, the Court of the Vice-Warden of the Stannaries, until its abolition at the end of the

¹*Amendment of the Companies Acts 1948-1983: Report under Section 116 of the Companies Act 1981*, Law Com. No. 126, Scot Law Com. No. 83, Cmnd. 9114.

²Companies Acts (Pre-Consolidation Amendments) Order 1984, S.I. 1984 No. 134.

³See Holdsworth, *A History of English Law* (7th ed. 1956), i, 151-165; D. B. Barton, *A History of Tin Mining and Smelting in Cornwall* (1967); Robert R. Pennington, *Stannary Law, A History of the Mining Law of Cornwall and Devon* (1973).

⁴The stannaries were districts in Cornwall (and Devon) where tin mining was carried on. Their exact extent has always been uncertain.

19th century. In 1887 the major mines in Cornwall were still cost book companies and the law relating to them was discussed at length by a Parliamentary Select Committee.⁵

5. The cost book company was originally a simple partnership between a small group of working miners. From a modern point of view its most significant feature was that the liability of the adventurers was unlimited. Its other basic features, in particular the monthly cycle of the company, were described as follows by an expert legal witness before the Select Committee of 1887⁶:—

“In the first place, it is assumed that a cost-book mine is to be worked upon the monthly principle; that all the accounts are to be kept by the month, everything is to be charged every month, and until the Act of 1869 (comparatively a recent Act) no money could be called up from shareholders for any future expense whatever. Every month the company met (that is, the few proprietors to begin with met), they made up their minds whether they would erect an engine, or what they would do; they ordered the goods; and you can fancy how primitive the entire thing was, because in a month nearly everything they wanted could be delivered. This was before the days of the steam engine, and Boulton and Watt. I am talking of a time when the machinery was of the most simple kind. At the end of a month the adventurers met; they made up the costs in the most simple way; everything that had been paid for labour, everything that had been paid for machinery, was charged in what they call the cost-book; hence the name of the cost-book principle; and the amount so laid out was divided between the different shareholders in proportion to their different interests in the concern. No call for any future expenditure could be made, but the amount so charged in the book was divided between the parties, and if, in the course of three or four months’ working or twelve months’ working, they were lucky enough to make a profit, that is to say, to get a profit upon the face of the cost-book, that profit was divided in the same simple way . . . There you have the common law partnership with the first variation, namely that everything was to be charged monthly; no money was to be borrowed from a banker; no debt of any kind was to be incurred, but the amount, such as it was, every month would be divided amongst the different proprietors. The next variation was this, that any man at the end of a month could go out. . . . At the end of the month, if I was one of the adventurers and got tired of the matter, I had only to hand, at the next monthly meeting to the purser, who is the financial manager, and who is generally a man at a small salary, who keeps the accounts, a notice in writing in the most simple form of words imaginable.”

6. By the 18th century cost book companies had ceased to be personal associations of working partners and the adventurers were a numerous and fluctuating body of investors, many of them from the merchant class. The controlling organs of the company were the general meeting of adventurers and the purser or, in some cases, an elected committee of management. During the 18th

⁵Minutes of Evidence appended to the Report of the Select Committee on the Stannaries Act (1869) Amendment Bill (1887) H.C. 245, 252.

⁶Minutes of Evidence, 4 May 1887, Q.4 (Mr. Samuel Downing).

and 19th centuries many aspects of the law relating to these companies were developed and reformed, partly through decisions of the courts and partly by statute. Much of the litigation concerned efforts to modify the principle that a company had to be managed without recourse to credit and the working of cost book mines was facilitated by two special suits—the creditor's suit⁷ and the purser's suit⁸—which had been developed by the Vice-Warden's Court. The monthly accounting period was extended in practice to several months and the maximum period was finally fixed by statute⁹ at 16 weeks. The principle that an adventurer could give up his participation in the enterprise developed into a standard procedure for transferring the ownership of shares; and to save stamp duty the instrument of transfer was replaced during the 19th century by a written notice to the purser signed by the transferor and the transferee. Provision was made by statute for preventing fraudulent transfers,¹⁰ for altering the cost book regulations by resolution of the majority of shareholders,¹¹ for obtaining a list of shareholders¹² and for filing cost book regulations with the registrar of the Vice-Warden's Court.¹³

7. These and other reforms adapted the original cost book principles to the changing needs of the 19th century and enabled the cost book company to survive for longer than it would otherwise have done. The reforms also produced a form of association which resembled the joint stock company, but without its advantages. Outside investors distrusted, or did not understand, the workings of the cost book system and the principle of unlimited liability left them particularly exposed when mines collapsed as a result of a fall in the price of tin. For these reasons Dolcoath, the premier Cornish mine, found it necessary to register as a limited liability company under the Companies Act 1862 during the last decade of the century and the remaining mines followed suit. When the Companies (Consolidation) Act 1908 was passed there were still three old cost book mines left, but they had all been converted by 1920,¹⁴ when the era of the cost book company ended.

8. In 1825 the foundation of the Vice-Warden's jurisdiction was seriously challenged by a decision of the Court of King's Bench¹⁵ and in 1836 the Vice-Warden's Court was reconstituted¹⁶ as a court of record having jurisdiction at

⁷The creditor's suit in effect enabled a mine creditor to enforce his claims against the mining assets by an order for the sale of ore and materials. It developed into a form of winding-up procedure in which all creditors took part.

⁸The purser's suit provided a means of enforcing the obligations of adventurers to the company. It became extinct in consequence of the simpler, and cheaper, statutory procedure introduced by the Stannaries Act 1869, s. 13.

⁹Stannaries Act 1887, ss. 23, 25.

¹⁰Stannaries Act 1869, s. 35.

¹¹Stannaries Act, 1869, ss. 4-7. The procedure could not be used to enable a company formed before 1869 to borrow money.

¹²Stannaries Act 1855, s. 22.

¹³Stannaries Act 1869, s. 9.

¹⁴Levant Tin Mines Ltd took over from its cost book predecessor on 1 January 1920. The other two cost book mines, West Wheal Kitty and East Pool & Agar, were converted in 1911 and 1912 respectively.

¹⁵*Hall v. Vivian*. Damages were awarded against Vice-Warden John Vivian (1817-1826) for making a decree for the sale of ores and mining materials.

¹⁶Stannaries Act 1836. This Act also abolished the moribund stewards' courts.

common law and in equity. The court was given jurisdiction in respect of mines worked for lead, copper or other metals or metallic minerals, as well as tin. In 1855¹⁷ its procedure was modernised to bring it into line with the contemporary reforms of the courts of chancery and common law and the jurisdiction was extended to the Devonshire stannaries and to mines containing a mixture of metallic and non-metallic minerals. Appeals from the Vice-Warden lay to the Court of the Lord Warden,¹⁸ assisted by three members of the Judicial Committee of the Privy Council. The reforming legislation of 1836 and 1855 did not finally resolve the jurisdictional problems of the Vice-Warden's Court but under Vice-Wardens John Dampier (1834–1853) and Edward Smirke (1853–1870) the court was an important tribunal for settling mining disputes. Thereafter the business of the court declined and it became mainly concerned with winding up petitions and summary applications for the payment of miners' wages. In 1890 the expenses of the court exceeded its receipts by more than £900 and in 1892 the decision was taken to abolish it. The decision was implemented by the Stannaries Court (Abolition) Act 1896, which transferred pending cases, and the jurisdiction of the court, to the county court.

Repeal Proposals and Consultation

9. The repeals which we recommend are of the following provisions in the Companies Act 1948:—

In section 218 (jurisdiction to wind up companies), subsection (4) and, in subsection (5), the words from “An order made under this provision” to “1896”.

Section 357 (attachment of debt due to contributory on winding up in stannaries court).

Section 358 (preferential payments in stannaries cases).

Section 359 (provisions as to mine club funds).

In section 382 (companies capable of being registered), in subsection (1)(b), the words “or being a company within the stannaries”.

In section 384(b) and section 385(b) (documents required for registration of such companies), the words “cost-book regulations” in each paragraph.

In section 394(7) (definition of “instrument” for purposes of the section), the words “cost-book regulations”.

In section 424 (registration offices), subsection (4).

In section 434 (prohibition of partnerships with more than 20 members), in subsection (1), the words from “or is a company” to the end of the subsection.

Section 450 (jurisdiction of stannaries court).

In section 455(1) (interpretation) the definition of “the court exercising the stannaries jurisdiction” and, in the definition of “the registrar of companies”, the words “or in the stannaries”.

10. In section 218 (jurisdiction to wind up companies), the provisions proposed for repeal deal with a special winding up jurisdiction of the Truro County Court, being the county court to which the residual jurisdiction of the

¹⁷Stannaries Act 1855.

¹⁸The Court of the Lord Warden was merged in the Court of Appeal by the Supreme Court of Judicature Act 1873, s. 18(3).

Court of the Vice-Warden of the Stannaries has been transferred¹⁹. Sections 357, 358, and 450 contain further special provisions in connection with the winding up of companies in the stannaries and section 359 contains winding up provisions relating to a system of sickness benefit which operated during the 19th century. Apart from section 455(1) (definitions), the other provisions concern either the registration of companies under the Companies Acts or the operation of an unregistered company exceeding 20 persons. In Appendix 2 we explain the provisions in greater detail. We are satisfied that all the provisions concerned have been obsolete, unnecessary or otherwise not of practical utility for a long period of time.

11. Our proposals do not affect the general stannary jurisdiction in civil proceedings²⁰ which is now vested in the Truro County Court or arbitration proceedings in that court.²¹ They also do not touch on the Cornish custom of tin bounding.

12. The general stannary jurisdiction is dealt with in separate statutes of 1836 and 1855.²² During the 19th century²³ the Vice-Warden was regarded as having equitable jurisdiction to entertain any suit which could be entertained by the Court of Chancery provided that the subject matter of the suit was a mine or mining adventure within the stannaries. The test of the common law jurisdiction was the status of the person; the jurisdiction was defined²⁴ as extending to all personal actions in which one or both parties are miners under the following circumstances and conditions:—

- “1. Where the plaintiff, being a miner, sues a person not a miner for any cause of action arising within the Stannaries, or touching mines of metallic minerals within the Stannaries, or adventurers in such mines;
2. Where the plaintiff, not being a miner, sues a miner for any such cause of action above described;
3. Where a miner sues another miner for any transitory cause of action, whether arising within or out of the Stannaries, and whether it relates to such mines and adventurers or not”.

13. These descriptions of the old stannary jurisdiction are unrealistic now, but the jurisdiction is still invoked in the context of litigation involving notices of bounding for tin. Our inquiries show that, apart from the registration of mining grants under section 20 of the Stannaries Act 1887,²⁵ the stannary juris-

¹⁹Stannaries Court (Abolition) Act 1896; S.R. & O. 1896 No. 1106.

²⁰There is no jurisdiction in criminal proceedings. See *R v. East Powder Justices, Ex parte Lampshire* [1979] Q.B. 616.

²¹See section 4 of the Stannaries Court (Abolition) Act 1896. The section was added during the progress of the Bill through Parliament.

²²Stannaries Act 1836, ss. 4, 6, 7; Stannaries Act 1855, s. 1.

²³Minutes of Evidence before the Select Committee of 1887, 22 June 1887, Q. 4442-3 (Vice-Warden Fisher).

²⁴*Procedure in the Court of the Vice-Warden of the Stannaries* (1856) Introductory Notice. The author of the Introductory Notice is known to have been Vice-Warden Smirke.

²⁵Section 20 of the Stannaries Act 1887, as read with S.R. & O. 1896 No. 1106, still provides that a lease, grant or licence to work mineral property within the stannaries shall not be enforceable unless a copy of the document has been filed at Truro. We are informed by the Registrar of the Truro County Court that 92 documents were filed between 1924 and 1934, 10 in 1974 and 10 in 1975. We understand that no mortgages of mining plant have been registered under section 19 of the Stannaries Act 1887 for many years.

diction has in modern times been confined to this matter. The Registrar of the Truro County Court, in a letter dated 30 December 1983, said:—

“Since 1924, 112 mining documents (leases, licences and assignments thereof) have been registered in Truro County Court under its Stannary jurisdiction. Since 1924 so far as I am aware the only other proceedings in Truro County Court under its Stannary jurisdiction have been notices of bounding for tin. In 1976 a notice of bounding, filed in 1975, was proclaimed in the requisite three open sittings of this Court, but no writ of possession under that notice was ever applied for. From and including 1976 up to and including 1983 about 20 other notices of bounding were submitted to the Court but none was accepted by the Court because of some defects therein. For instance, in 1976 five notices of bounding were filed but proclamation of these notices was objected to by various landowners and, after three lengthy hearings before him, His Honour Judge Chope held that the notices were defective and proclamation was refused.

So far as I am aware there has not been for many years any successful bounding following proclamation but from the above-mentioned figures you will see that bounding is by no means obsolete.”

14. Before preparing this report, we circulated a consultative paper²⁶ explaining our provisional proposals and inviting comments. We also asked those whom we initially consulted to suggest the names of other appropriate consultees. Appendix 3 contains a list of the bodies and persons who have been consulted.

15. In the consultative paper we provisionally proposed that no change should be made to the provisions of section 218(4) or (5) of the Companies Act 1948, dealing with the extended winding up jurisdiction of the Truro County Court. It is fair to say that such support as emerged on consultation for the retention of the extended jurisdiction was coupled with reservations as to its utility in practice. Our subsequent inquiries have established that this special jurisdiction fell into disuse many years ago and it is plain that it is not now of practical utility. We are therefore recommending that the provisions concerned should be repealed.

16. Apart from the matter mentioned above, our consultations have shown general agreement to the recommendations in this report and we are not aware of any objections to them. We gratefully acknowledge the co-operation and helpful assistance of commentators.

(Signed) RALPH GIBSON, *Chairman*
BRIAN DAVENPORT
PETER NORTH

J.G.H. GASSON, *Secretary*
30 March 1984

²⁶*Consolidation of the Companies Acts: Provisional Proposals relating to Cost Book Companies in the Stannaries* (1983).

APPENDIX 1

DERIVATION OF ENACTMENTS

Abbreviations

- 1948: Companies Act 1948 (c.38).
1947: Companies Act 1947 (c.47).
1929: Companies Act 1929 (c.23).
1928: Companies Act 1928 (c.45).
1908: Companies (Consolidation) Act 1908 (c.69).
1906: Workmen's Compensation Act 1906 (c.58).
1890: Companies (Winding up) Act 1890 (c.63).
1887: Stannaries Act 1887 (c.43).
1869: Stannaries Act 1869 (c.19).
1862: Companies Act 1862 (c.89).

Derivation Table

- 1948 s.218(4)=1929 s.163(4)= $\left\{ \begin{array}{l} 1908 \text{ s.131(4)} \\ 1928 \text{ s.56(4)} \end{array} \right.$ =1890 s.1(4)= $\left\{ \begin{array}{l} 1862 \text{ s.81} \\ 1887 \text{ s.28} \end{array} \right.$
- 1948 s.218(5)=1929 s.163(5)=1908 s.131(5)=1890 s.1(5)
- 1948 s.357 =1929 s.297 =1908 s.239 =1869 s.34
- 1948 s.358 = $\left\{ \begin{array}{l} 1929 \text{ s.298} \\ 1947 \text{ s.91} \end{array} \right.$ = $\left\{ \begin{array}{l} 1908 \text{ s.240} \\ 1928 \text{ Sch.2} \end{array} \right.$ = $\left\{ \begin{array}{l} 1869 \text{ s.26} \\ 1887 \text{ ss.2, 4, 9, 10} \\ 1906 \text{ s.5(4)} \end{array} \right.$
- 1948 s.359 =1929 s.299 =1908 s.241 =1887 s.13(2)
- 1948 s.382(1)(b)=1929 s.321(1)(b)=1908 s.249(1)(ii)=1862 s.180
- 1948 s.384(b)=1929 s.323(2)=1908 s.252(2)=1862 s.183(2)
- 1948 s.385(b)=1929 s.324(2)=1908 s.253(2)=1862 s.184
- 1948 s.394(7)=1929 s.333(7)=1908 s.264(4)=1862 s.196
- 1948 s.424(4)=1929 s.312(4)=1908 s.243(4)=1862 s.174(3)
- 1948 s.434(1)=1929 s.357 =1908 s.1(2) =1862 s.4
- 1948 s.450 =1929 s.375 =1908 s.280 = $\left\{ \begin{array}{l} 1862 \text{ s.68} \\ 1869 \text{ s.31} \end{array} \right.$

APPENDIX 2

Provisions of the Companies Act 1948 proposed for repeal

Section 218(4) and (5) (Winding up Jurisdiction)

1. Section 218 provides generally that the High Court has jurisdiction to wind up any company in England and Wales and that the county court of the district in which the company's registered office is situated has concurrent jurisdiction in cases where the share capital does not exceed £120,000.¹ In addition, subsection (4) provides that in relation to a company within the stannaries jurisdiction the court exercising that jurisdiction (now the Truro County Court) has concurrent jurisdiction with the High Court to wind it up, whatever the amount of the capital of the company may be and wherever the registered office of the company is situated. In subsection (5), which makes general provision enabling the Lord Chancellor by order to re-arrange the business of county courts in winding up matters, the words proposed for repeal (from "An order made under this provision" to "1896") are a saving of any jurisdiction or powers vested in a county court by virtue of the Stannaries Court (Abolition) Act 1896.

2. Section 218(4) was enacted in its present form by the Companies Act 1928, s. 56, which conferred jurisdiction on the High Court to wind up any company in England. Before then the winding up jurisdiction was divided between the High Court, the chancery courts of the counties palatine of Lancaster and Durham, the county courts and the court exercising the stannaries jurisdiction; and the law required a winding up petition to be presented to the court having jurisdiction.² In 1926 the Greene Committee reported³ that the arrangements with regard to the jurisdiction of the various courts had not worked satisfactorily and that under these arrangements questions were liable to arise in county courts which would obviously be more suitable for the determination of the High Court. They therefore recommended that the High Court should be given jurisdiction to wind up all companies registered in England, such jurisdiction being concurrent with that of any other court having jurisdiction. When this recommendation was implemented the other courts, including the county court exercising the stannaries jurisdiction, lost their exclusive jurisdiction in winding up matters.

3. At present the Truro County Court has, in winding up matters, two separate jurisdictions, each concurrent with that of the High Court: first as a county court in cases where the share capital of the company does not exceed the statutory limit and secondly as the successor to the old stannaries jurisdiction, whatever the amount of the share capital. The special stannaries jurisdiction, however, has not been used for very many years and our inquiries indicate that for practical purposes it has been a dead letter since the change

¹Insolvency Act 1976, s. 1 and Sch. 1. The monetary limit is subject to variation by statutory instrument.

²Companies (Consolidation) Act 1908, s. 131.

³*Company Law Amendment Committee 1925-26: Report* (1926) Cmd. 2657, Observations and Recommendations, paras. 76, 80.

in the law made by the Companies Act 1928, s. 56. The jurisdiction, which is dealt with by section 218(4) of the Companies Act 1948, is plainly not needed or of practical utility now. We therefore recommend the repeal of section 218(4). The repeal proposed to section 218(5) is consequential.

Section 357 (Winding up Procedure in Stannaries Court)

4. This section is derived from the Stannaries Act 1869, s. 34. As originally enacted, it provided an unusual procedure in cases where several companies were in liquidation under the superintendence of the Vice-Warden's Court and a contributory of one of the companies was also a creditor claiming a debt against one of the other companies. In these cases the Vice-Warden was empowered, after due inquiry into the facts, to direct the attachment of the creditor's debt as security for the payment of any calls which might become due from him to the company of which he was a contributory and its application to that payment in due course.

5. Section 357 dates from a time when the Vice-Warden's Court undertook a considerable amount of winding up business, and dealt mainly with cost book companies. A Parliamentary return made by Vice-Warden Smirke in 1866⁴ listed 77 winding up petitions which had been filed between 1862 and 1866, of which 65 related to cost book companies. Nowadays the county court concerned has, on a winding up, all the powers of the High Court by virtue of section 218 of the Companies Act 1948 and it would be concerned with the same types of company as any other county court having winding up jurisdiction. The procedure is not available to the High Court, which has concurrent jurisdiction, or to any other county court, and has not been used for many years. In our view the section has become a procedural anomaly which serves no useful purpose.

Section 358 (Preferential Payments in Stannaries Cases)

6. Section 358 contains complex provisions regarding preferential payments in relation to the winding up of companies within the stannaries jurisdiction. The section, as originally consolidated in 1908, was derived from several enactments, namely, the Stannaries Act 1869, s. 26, the Stannaries Act 1887, ss. 2, 4, 9 and 10 and the Workmen's Compensation Act 1906, s. 5(4). Amendments of the general law made since then have increased its complexity; for instance, there are several references in subsections (1) and (2) to "accrued holiday remuneration", a concept which was introduced by the Companies Act 1947, s. 91.⁵ Subsection (3) is a spent transitional provision concerning a winding up which began before 30 June 1948.

7. The position in 1887 regarding the priority of wages on the winding up of a company in the stannaries was explained in evidence given to the Select Committee on the Stannaries Act (1869) Amendment Bill.⁶ Section 26 of the Stannaries Act 1869, which accorded priority to the wages of miners, artisans

⁴*Mines: Return of the Mines Ordered to be Wound up in the Stannaries Court under the Provisions of "The Companies Act 1862"* (1866) H.C. 396.

⁵Similarly the priority accorded to workmen's compensation payments merely reflected the general law in 1906.

⁶Minutes of Evidence, 4 May 1887, Q. 30-58 (Mr. Samuel Downing); 22 June 1887, Q. 4484-4574 (Vice-Warden Fisher).

and labourers in respect of a maximum period of three months, was in advance of the general law. General provision for the preferential treatment of wages on a winding up was only made by the Companies Act 1883, which gave priority to the wages or salary of a clerk or servant during the previous four months up to £50 and to the wages of a labourer or workman during the previous two months (without limit as to amount). In due course the question arose in the Vice-Warden's Court (but according to the Vice-Warden was not decided) as to whether section 26 of the Stannaries Act 1869 had been repealed by implication and the priority of Cornish miners' wages reduced to two months. An expert legal witness maintained that this was the position, that it had been made worse by a decision of the High Court⁷ on analogous provisions of the Bankruptcy Act 1883 and that in practice, because of the way in which the cost book system worked, miners would be likely to qualify for the payment of only one month's earnings on a winding up.

8. The basic objective of the 1887 legislation was to reassert and restore the period of three months' priority provided for by the Stannaries Act 1869, s. 26 and to ensure that miners would be paid for their services in respect of that period. This raised other issues which were not then covered by the general law or which arose from the nature of the 19th century cost book system. For instance, it was thought desirable to clarify, in the light of the Companies Act 1883, the different priorities to be accorded to various categories of persons working on a mine, distinguishing between the purser and other officials of the cost book company; miners, artisans or labourers; and clerks or servants. Other issues concerned the use of the term "wages" to describe payments under a system related to piece work,⁸ and the desirability of enabling the liquidator, at the commencement of the winding up, to make an immediate payment of any wages due out of money borrowed for this purpose and which would itself be accorded priority in the winding up.

9. Section 358 has long outlived its purpose, having been overtaken by changes and developments of the general law. Thus, since 1888⁹ there has been general provision that wages payable for piece work, as well as for time, qualifies for priority on a winding up and in 1928¹⁰ provision was made that persons who have advanced money to pay wages should have the same preference as the persons paid would have had. Although the general law in section 319 still refers quaintly to the Victorian classifications of "workman or labourer" and "clerk or servant", the formerly important distinctions between them were removed in 1947,¹¹ following a recommendation by the Cohen Committee.¹²

⁷*Ex parte Fox. In re Smith* (1886) 17 Q.B.D. 4.

⁸A miner would be advanced a sum by way of "subsist" for tools, explosives and candles, but thereafter worked his ground for so much of the value of the ore as he was able to raise. The Stannaries Act 1887, s. 11 enacted detailed rules for the payment of miners' wages at regular intervals.

⁹Preferential Payments in Bankruptcy Act 1888, s. 1(1)(c).

¹⁰Companies Act 1928, Schedule 2.

¹¹Companies Act 1947, s. 91.

¹²*Report of the Committee on Company Law Amendment* (1945) Cmd. 6659, para. 153. The Committee recommended that "the differentiation between clerks or servants, on the one hand, and workmen or labourers, on the other hand, should be removed and in the case of both clerks or servants and workmen or labourers, all wages or salaries not exceeding £100, whether payable for time or for piece work, in respect of services rendered to the company during four months next before the relevant date . . . should rank as preferential debts".

Both categories of employee now enjoy priority up to a maximum amount of £800 in respect of services rendered during a standard period of 4 months and a body of case law, technically related to the term "clerk or servant", determines the extent to which a manager, secretary, etc. can be regarded as an employee for the purpose of priority on a winding up. Under the modern law there is no need for separate provision in relation to stannary cases and section 358 does not serve a useful purpose.

Section 359 (Mine Club Funds)

10. Section 359 is derived from section 13(2) of the Stannaries Act 1887 and deals with the winding up aspects of certain 19th century "mine club funds". It has to be read in conjunction with sections 13(1) and 14 of the Stannaries Act 1887, which provided that the funds should be deemed to belong to the miners and not the company (unless a majority of the miners decided otherwise) and that the funds could, with the agreement of the miners and the company, be transferred to a registered friendly society.

11. The 19th century system of mine clubs in Cornwall was discussed by the Select Committee of 1887 in some detail. The system was colloquially known as "doctor and club" and was a feature of cost book mines. An expert legal witness explained¹³ that "a certain sum, three pence a week I think it is, is deducted from the miner for his club and three pence a week for his doctor. In exchange for that the 'mine' undertake that the men shall be supplied with doctors, and if they are injured, if there is an accident in the mine, they are carefully looked after, and get a 'pay' every week". In 1887 there was acute dissatisfaction with this system: on the part of the men because club funds were not accounted for separately by pursers but treated as part of the assets of the mine; and on the part of the companies because the deductions were insufficient to cover the costs incurred.

12. In a Special Report¹⁴ the Select Committee of 1887 explained that the objective of their legislative proposals on the subject of mine clubs in Cornwall was "to facilitate the promotion of a system more likely than the present to ensure permanent and adequate benefit to the miner". The report went on to describe the system and its defects:—

"The present system is that certain deductions, varying in different mines, are made from the men's wages, and are devoted to the relief of miners suffering from the results of accidents in or about the mine.

But no separate account generally is, as a rule, kept of the fund thus raised, and though in many cases the payments made nominally from this fund are really to a large extent derived from the adventurers, it is not possible under the present system to state definitely what proportion the contributions made by the deductions from the miners' wages bear in each case to the total sum paid by the adventurers.

Several defects are complained of as resulting from this system. The first is that the miners are not necessarily made aware of the fact that their own

¹³Minutes of Evidence, 4 May 1887, Q. 128 (Mr. Samuel Downing).

¹⁴Special Report from the Select Committee on the Stannaries Act (1869) Amendment Bill (1887) H.C. 245, 252, pp. iii-iv.

contributions are not in all cases adequate for the purpose they are intended to meet; secondly, they have no control over the management of the fund, and the distribution of the relief; thirdly, the adventurers also may not be made aware of the proportion which they contribute, and they may in consequence be deprived of a slight stimulus, which might be supplied by a knowledge of the cost they thus incur, to give their special attention to precautions for the safety and health of the miners.

Another ill effect may be traced in the circulation of rumours and suspicions among the miners as to the administration of the funds to which the deductions from their wages are devoted.

Further, there is always the possibility of the cessation of the relief being caused by the closing of the mine or the winding up of the company.

The Committee are, for these and other reasons, of opinion that the present system of mine clubs in Cornwall is very unsatisfactory; but it might be advantageous that a Permanent Miners' Relief Association for the whole or part of the Stannaries district should be formed by voluntary association as in other mining districts, and they hope that Clause 14 of the Bill as reported will give sufficient elasticity to the present system to allow of the development of such an association, not dependent upon or connected solely with individual miners or companies, but spread over large districts, and managed chiefly by the miners themselves. (Emphasis added).

It must be borne in mind that the provision against accident, hurt, or disablement is different, and ought to be carefully distinguished, from permanent pension for sickness or old age. Mine clubs in the Stannaries provide against accidents, and in some cases provide burial expenses, but do not give maintenance in case of sickness or old age, and often are unable to provide against permanent disablement. They are also precarious, being dependent upon the continuance of the mine. In the large friendly societies these contingencies are provided for by the scale of payments being graduated according to age and other considerations."

13. It is therefore clear that the provisions enacted in 1887 concerning mine club funds were intended to be a temporary expedient pending the making of better arrangements to replace the unsatisfactory and outmoded mine club system of sickness benefits which operated during the 19th century in Cornish mines. None of our consultees suggested that there is any continuing need for section 359 of the Companies Act 1948 and we are satisfied that the section is obsolete and unnecessary. The last 100 years has seen the development of a formidable body of law relating to workmen's compensation and industrial injuries, health and safety at work, the National Health Service and welfare benefits generally. There are many alternatives to the unsatisfactory arrangements complained of in 1887, including subscriptions to friendly societies, private health insurance schemes and the maintenance of separate trust funds. The section has no relevance to modern schemes.

Sections 382(1)(b), 384(b), 385(b) and 394(7) (Registration of Companies)

14. These provisions, derived from the Companies Act 1862, provide amongst other things for the registration under the Companies Acts of a company within the stannaries, consisting of seven or more members, which was formed after the commencement of the Companies Act 1862. They reflect the

legislative policy of encouraging companies formed on the cost book principle to convert themselves into registered companies. By 1920 all the 19th century cost book companies had disappeared, having either been dissolved or converted into registered companies. The words “or being a company within the stannaries”, which occur in section 382(1)(b), are now unnecessary, as are the references to cost book regulations in sections 384(b), 385(b) and 394(7).

Section 424(4) (Offices for Registration of Companies)

15. Section 424(4) is derived from section 174(3) of the Companies Act 1862, which made special provision enabling the Board of Trade to require the Registrar's Office of the Vice-Warden of the Stannaries to be one of the offices for the registration of companies under the Companies Acts. The power was exercised by an order of the Board of Trade dated 1 December 1862 which established an office at Truro for the registration of joint stock companies formed for working mines. In 1887 a system of duplicate registration of companies in London and Truro was instituted by section 31 of the Stannaries Act 1887.

16. The Vice-Warden's Court, together with the office of registrar, ceased to exist on 1 January 1897.¹⁵ For this reason, and because a separate registry at Truro was no longer required, the Board of Trade by an order dated 22 March 1897¹⁶ revoked the order of 1862 and abolished the office at Truro. By the same order the duties previously performed at Truro were transferred to the Registrar of Joint Stock Companies in London. Section 31 of the Stannaries Act 1887 was formally repealed in 1908.

17. Section 424(4) of the Companies Act 1948, as originally enacted in 1862, accordingly ceased to serve any useful purpose after 1897. There is no practical likelihood now of the power being used to establish a separate office for the registration of companies at Truro and in any event section 424(1) provides generally for the establishment of offices for the registration of companies in Great Britain.

Section 434(1) (Unregistered Companies)

18. Section 434(1) prohibits the formation of an unregistered company, association or partnership consisting of more than 20 persons for the purpose of carrying on business for gain unless, amongst other things, it is a company engaged in working mines within the stannaries and subject to the stannaries jurisdiction. The provision goes back to the Companies Act 1862, s.4 (re-enacting the Joint Stock Companies Act 1856, s.4). The exemption for companies within the stannaries was designed to take account of the 19th century cost book mines: in 1869 it was said¹⁷ that there were sometimes 5,000 or 6,000 shares in a mine. The exemption is obsolete and unnecessary.

Section 450 (Jurisdiction of Stannaries Court)

19. Section 450 provides for the jurisdiction of the stannaries court in relation to companies registered under the Companies Acts, and deals with

¹⁵Stannaries Court (Abolition) Act 1896.

¹⁶See *The London Gazette*, March 23, 1897, col. 1678.

¹⁷*Hansard* (3rd series) vol. 194, 26 February 1869, col. 402 (Mr. St. Aubyn),

the service of process and enforcement of judgments in relation to both registered and unregistered companies. It is derived from section 68 of the Companies Act 1862 (which extended earlier provisions of the Joint Stock Companies Act 1856) but the proviso to subsection (2) is taken from section 31 of the Stannaries Act 1869.¹⁸

20. In the mid 19th century all mining companies subject to the stannaries jurisdiction were unincorporated cost book companies having unlimited liability and even as late as 1887 the major mines, such as Dolcoath, were still operated on the cost book principle. It was therefore logical, and convenient, to apply to registered companies operating in the stannaries the body of case law which had been developed in the Vice-Warden's Court in relation to cost book companies; and similarly to extend the powers of the Vice-Warden's Court regarding the service of process and the enforcement of judgments to such companies. The objective would have been to achieve a broad uniformity of practice in the Vice-Warden's Court as between the two types of company.

21. This objective, desirable as it was in the 19th century, lost its point with the disappearance of the Vice-Warden's Court and the ending of the cost book era. It makes even less sense now, having regard to 20th century developments in the field of company law and the extensive jurisprudence which has grown up around it. There are two particularly unrealistic aspects of section 450. One is that it applies a body of law relating to an obsolete form of company to modern companies registered under the Companies Acts. The other is that it freezes that law in the condition which it happened to have reached in 1897. The section has long outlived its purpose.

22. In practice section 450 is obsolete. Our inquiries indicate that there has been no litigation for very many years involving its application. The section is also unnecessary, since the court on which the old stannary jurisdiction devolved has available to it all the jurisdiction and powers of a county court under the general law relating to companies and county courts.

Section 455(1) (Definitions)

23. Section 455(1) defines "the court exercising the stannaries jurisdiction" for the purposes of the Act. This term is used only in the provisions proposed for repeal and its repeal is therefore consequential.

24. Section 455(1) also defines "the registrar of companies" as the registrar or other officer performing under the Act the duty of registration of companies in England or Scotland, or in the stannaries. The repeal of the reference to the stannaries is consequential on the proposed repeal of section 424(4) of the Act.

¹⁸Section 31 of the Stannaries Act 1869 restricted the power to serve process of the Vice-Warden's Court out of the limits of the stannaries on the grounds that the procedure had been found inconvenient and in some cases liable to abuse. The section was repealed in 1896 in consequence of the abolition of the Vice-Warden's Court. Its inclusion in the consolidation of 1908 may have been due to a mistake but it is also possible that the draftsman took the view that it would have been misleading to omit a reference to the restriction.

APPENDIX 3

CONSULTEES

His Honour Judge Chope, Truro County Court
Mr. J. D. Cooper, Legal Department, Cornwall County Council
Cornish Chamber of Mines
Cornwall Law Society
Department of Trade and Industry
Duchy of Cornwall
Mr. Justin Brooke, Chymorvah Vean, Marazion
Mr. A. J. Lyne, Registrar, Truro County Court
Professor Robert R. Pennington, Faculty of Law, University of Birmingham
Mr. Frederick R. A. Trull,¹⁹ Gün Hengeston, Gunnislake
Mr. Ian C. Waite, Stephens & Scown, Solicitors, St. Austell
Mr. W. H. Ward, Glanville, Hamilton & Ward, Chartered Surveyors, Truro

¹⁹Mr. Trull submitted comments in a personal capacity as a tinner and also under what he described as his other "hats", namely, Secretary/Founder of The Stannary Law Society and Adviser in Stannary Law; Stannator and Clerk of the Cornish Stannary Parliament; Clerk of the Stannary Court of Blackmore.

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