

# **THE SALE AND TRANSFER OF SHARES IN COMPANIES**

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The Sale and Transfer of Shares in Companies by Kenelm Edward Digby

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SALE AND TRANSFER  
OF  
SHARES IN COMPANIES,

WITH SPECIAL REFERENCE TO

THE EFFECT OF THE WINDING UP UNDER THE  
COMPANIES ACT, 1862,

UPON UNCOMPLETED TRANSFERS.

BY

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OXFORD.



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## PREFACE.

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THE transfer of shares in companies forms a curious and instructive chapter in the history of English mercantile law. Prohibited at one time by the Legislature, and denounced by the Judges, the practice in this as in many other cases proved too strong for the law, and the limits of legal restriction having been gradually narrowed by judicial decisions, transfers were first facilitated, and then openly sanctioned by statute. Thus the requisites and the incidents of a complete transfer of shares are mainly created by special statutory provisions, working upon and modifying the common law of partnership. A treatise on the transfer of shares must therefore mainly consist of a commentary upon the special provisions of the Acts affecting the question.

The inquiry as to the sale of shares is different. It is open to individuals (within certain limits) to bind themselves by any contract they please for the transfer of shares. It is a question of fact in each case what that contract is. Usage has attached certain incidents to the ordinary contract, or, to speak more accurately, the ordinary contract embodies a certain established practice, which must necessarily be known, in order to ascertain what the contract



is, and what are the legal rights to which it gives rise. Accordingly in the following pages an attempt has been made to state the rules and practice of the Stock Exchange, so far as they affect the usual transactions of purchase and sale.

Part II. treats of the effect of the bargain for or incomplete transfer of shares in a company, when the company in question has ceased to be a living and continuing concern, and has entered upon the first stage of dissolution by the commencement of the winding-up. Can shares in such a company be transferred? Can transfers already bargained for be completed? Who is to be considered the member of the company, the proposed transferor, or the proposed transferee? To what rights does the contract of sale and purchase give rise? These are questions upon which the law is in all probability in a state of transition. And perhaps, if the view taken in the following pages be correct, the diverging tendencies of the Courts of Law and Equity, dealing as they do with questions closely allied from points of view somewhat different, will before long render further legislation necessary.

KENELM EDWARD DIGBY.

1, PAPER BUILDINGS, TEMPLE,  
*January, 1868.*

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