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# REPORT ON THE LAWS OF INSURANCE

By

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*Officer on Special Duty*  
in the Department of Commerce,  
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LETTER FROM SUSIL C. SEN, ESQUIRE, M.Sc., B.L., ATTORNEY-AT-LAW,  
OFFICER ON SPECIAL DUTY, DEPARTMENT OF COMMERCE, DATED THE  
20TH NOVEMBER, 1935.

I beg to send you herewith my report on the subject of the Amendments of the Insurance Laws in British India.

2. The materials available to me were (a) the representations made to the Government of India from time to time by public bodies, individuals and local Governments, (b) the papers used in connection with the bill on the subject drafted by the Government of India in 1924, and (c) the suggestions received in the Department since my appointment was announced from most of the local Governments and public bodies in India.

3. I have dealt separately with the Indian Companies, the Non-Indian Companies and the Provident Insurance Societies, and my recommendations with regard to them are contained in three separate chapters. Changes in the law relating to Provident Insurance Societies are very urgently needed and I would suggest that if there is any risk of the consideration of the whole matter being delayed the Provident Insurance Societies might be separately dealt with and taken up first.

4. In making my recommendations I have tried to meet with the suggestions made by the commercial bodies as far as possible and I have only differed from them on points which, in my view, would be impolitic to accept at the present time. I have also had regard to the very valuable recommendations of the Clauson Committee in England and except with regard to matters peculiar to this country, I have tried to follow the English Law as far as practicable.

5. It is hardly possible to frame a report which could be acceptable to all shades of opinion, but I have tried to tackle to the best of my ability all the important questions arising on the subject.

6. I cannot conclude without acknowledging the very considerable help which has been given to me by Mr. N. Mukerjee, M.A., B.L., A.I.A. (London), the present Actuary to the Government of India and his department, specially in the compilation of statistics.

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## CHAPTER 1.

### INTRODUCTION.

The statutory law in British India with regard to insurance is of a comparatively recent growth. It is now contained in three statutes, namely, (i) the Indian Life Assurance Companies Act (Act VI of 1912), (ii) the Indian Insurance Companies Act (Act XX of 1928), and (iii) Provident Insurance Societies Act (Act V of 1912). The first one contains the provisions with regard to life insurance in British India; the second relates to other kinds of insurance in British India; and the third one governs the concerns carrying on Provident Insurance business in British India.

2. Prior to the incorporation of the Acts V and VI of 1912 there was no legislation exclusively applicable to insurance companies carrying on business in British India and they were governed by the provisions of the Indian Companies Act (Act VI of 1882).

3. In 1912 the Government of India came to the conclusion that the provisions of the Indian Companies Act were insufficient for the proper control of Life Assurance Companies in view of the growth of Life Assurance business in the country, and that they were also insufficient to control the undesirable tendencies of the very large number of Provident Insurance Societies which had come into existence in the different parts of India, and they decided to introduce two separate pieces of legislation to provide for the better control of the two classes of business. In consequence the two Acts, *vis.*, Act V of 1912 (The Provident Insurance Societies Act) and Act VI of 1912 (The Indian Life Assurance Companies Act) were passed. The former Act dealt with societies which transact life insurance within certain prescribed limits and undertake insurance on marriage, sickness and other cognate classes of insurance business on a small scale and was to be administered by the local Governments while the latter Act as the name shows dealt only with life insurance companies and was to be administered by the Central Government.

4. The Provident Insurance Societies Act was framed on the basis of the Friendly Societies Acts in England while Act VI of 1912 was framed upon the model of and follows as closely as possible the English Insurance Companies Act of 1909 which repealed the older Acts of 1870-72 and consolidated the law of Insurance of all descriptions then in vogue. The Indian Life Assurance Companies Act is limited only to provisions relating to life insurance and does not deal with the other forms of insurance. The reason given for omitting the other classes of business as at the time was that there were very few Indian concerns carrying on business other than life insurance in India and that the conditions of insurance in India did not call for any further legislation as to these. Thus even in 1912 no provisions were made with regard to Fire, Marine or other miscellaneous kinds of insurance. The result of the absence of any legislation governing business in other than Life Insurance was to give the foreign companies which had practically a monopoly at the

time in this class of business complete freedom in their business.

5. With the growth of the insurance habit, there has grown up Indian concerns formed with the object of carrying on business in Fire, Marine and other kinds of insurance and the incentive came after the Great War of 1914-18. It then became necessary to bring in the law in the country on a line with the law in force in other countries and to provide for the class of insurance business which had been omitted from the Act.

6. The experience gathered from the working of the Indian Life Assurance Companies Act also showed that amendments were required in the existing statute in several directions.

7. Persistent demands were made by various important public bodies in the country for statutory provisions which would provide for disclosure and publication of the business carried on in India by non-Indian Insurance companies doing business principally in Fire and Marine Insurance and other forms of miscellaneous insurance, and in 1924 the Government of India decided to amend the existing law in the country and to make provisions with regard to the other classes of insurance. The Government of India went ahead and in 1925 a draft bill of the proposed new Act intended to provide one comprehensive piece of legislation applicable to all insurance companies working in British India was prepared. It was intended to name the new Act as the Indian Insurance Companies Act.

8. The draft bill was duly introduced in the Legislative Assembly and was sent out and circulated for opinions. Opinions were received with regard to the provisions of the proposed bill from all shades of people, including the local Governments, public bodies and other persons having technical knowledge in the subject, and sufficient materials were collected together to enable the bill to be pushed through.

9. In the meantime, however, the English Act of 1909 on which the Indian Statute of 1912 was based was found to be unsatisfactory and a Committee was appointed in England in 1925 to enquire and report what amendments were desirable in the Assurance Companies Act of 1909. The Committee was presided over by Mr. A. C. Clauson, K.C. In view of the possibilities of the English Act being amended and with the object of taking advantage of the findings and the report of the Clauson Committee, the Government of India decided to keep the matter of the new legislation in abeyance. The bill drafted by the Government of India in 1925 was therefore dropped.

10. The Clauson Committee examined numerous witnesses and ultimately made a report in February 1927. In the report they made various recommendations and in order to obviate any delay they annexed to their Report a draft Bill drafted according to their recommendations.

11. The Government of India, as I have stated, decided to wait to see what shape the legislation in England took, but in order to usefully utilise the intervening period of time they decided to collect information necessary

to enable them to decide as to the provisions to be applied to non-Indian companies—not only those which carried on Life Insurance business but also those which carried on other forms of Insurance business. There was no statute which provided for the collection of such materials and as a sort of stop-gap legislation, Act XX of 1928 was passed. The Act deals mainly with what may be called miscellaneous forms of insurance and provisions for the furnishing of statistical information in respect of business carried on by non-Indian companies. It also deals with certain matters connected with Life Insurance which required immediate attention. The main idea underlying the legislation was, however, that while the British Parliament would be considering the Clauson Committee's report, there would be collected in India, data which would be found to be useful at the time when the proposed legislation would be revived.

12. Unfortunately, however, although the said Report was presented to the Parliament in March 1927, no legislation has yet been undertaken in respect thereof and there is no knowing as to when the matter is likely to be taken up in England. The failure on the part of the Government in the United Kingdom to take up the question of the amendment of the Insurance laws in England for 8 years has led to the renewal of the agitation in this country (not unreasonable in the circumstances) for amendments of the law of insurance in this country independently of the English Statute.

13. Various defects have been brought to light and pretty strong case has been made out for the speedy amendment of the existing laws in the country. Representations have been made from time to time by the commercial bodies to the Government of India as to the necessity of a speedy legislation—and assurances have also been given from time to time by the Government. In my own view it is impossible to delay the legislation any further.

14. Since the passing of the Act of 1912 insurance business in general has increased very considerably owing to the growth of insurance habit in the country. The most notable increase however, has been in the business of Life Insurance. The extent of such increase will appear from the following statement:—

#### Life Insurance.

Year.	No. of companies in existence.	Capital.	Premium income.
		Rs.	Rs.
1914 . . .	48	35,70,000	1,17,37,000 <sup>2</sup>
1933 . . .	194	2,43,59,000	5,76,93,000

The progress has been steady and further increases have taken place in 1934 and 28 new companies have been formed.

15. As regards other classes of insurance business no records are available prior to 1928, when the Indian Insurance Companies Act XX of 1928 came into force. The figures available since 1928 show also a steady increase but

nothing compared to Life Insurance. The reason for this comparatively slow growth I have been told is due mainly to the antagonism of the trade and the Exchange Banks towards Indian companies and I have been told that Exchange Banks have persistently refused to accept policies issued by Indian companies. If what I have been told is true, then all I can say is that the perverse attitude of the Banks is unfortunate.

16. A statement showing the comparative conditions in 1928 and 1933 is given below:—

#### Miscellaneous Insurance.

Year.	Nature of business.	No. of companies.	Premium income.
1928 .	Fire .	10	In India— Outside India— 40,59,000 90,66,000
	Marine.	7	
	Miscellaneous.	9	
1933 .	Fire .	19	In India— Outside India— 52,34,000 92,77,000
	Marine.	11	
	Miscellaneous.	17	

In view of the expansion of business, as also the experience gained during the last 22 years, the provisions of the statute require a thorough overhauling and I will have occasion hereafter to refer to some of the principal questions which will have to be so considered.

17. Next in order of importance comes the Provident Insurance Societies. The Provident Insurance Societies Act V of 1912 governs all institutions which carry on what is known in India as Provident Insurance. As appears from the Act itself it applies to all person or persons whether corporate or unincorporate who receive premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of such other contingency or class of contingency as may be prescribed by the rules framed by the local Governments. This Act was incorporated by way of recognition of the necessity of having associations which would undertake insurance on a smaller scale and would cater to the needs of people who could not afford to have recourse to the case of insurance companies proper. This Act was based more or less on the analogy of the Friendly Societies Act of 1869 in England, and as in the case of the Life Assurance Companies Act followed the principle of minimum interference and maximum publicity.

18. The growth of a very large number of provident insurance societies, the questionable character of the business carried on by a considerable number of them and a very large number of failures during recent years has, however, made it necessary to have a speedy amendment of the law relating to Provident Insurance Societies and a reconsideration of the principle to be followed hereafter.

19. Before, however, I go into the question of the changes which in my opinion are necessary to be made, there are two preliminary but rather



important questions which have got to be discussed, *vis.* :—

- (1) Whether the new Act should govern all kinds of insurance;
- (2) What should be the principle to be followed by the Government—whether it should be a policy of “minimum interference with maximum publicity” as in England, or a policy of “direct control” as in Canada.

On the question as to whether there should be one piece of comprehensive legislation for all kinds of insurance, it is interesting to note that in England the existing Statute, *vis.*, The Assurance Companies Act of 1909 purports to deal with all classes of insurance other than what is akin to what we call Provident Insurance. The Clauson Committee in their recommendations have also recommended the continuation of the same system and the draft Bill which has been annexed to their report proceeds upon that basis. It has left untouched the Friendly Societies which will continue to be governed by the Acts governing them at present. This question was also specifically considered by the Government of India when the proposal to amend the law was made in 1925. The Government of India drafted a bill which was to be a comprehensive piece of legislation to govern insurance of all kinds. Opinions were invited from the local Governments and the public bodies. The opinions received showed that except the Government of Bombay and the Bombay Chamber of Commerce (who suggested that there should be a separate statute for Marine Insurance), every body supported the views of the Government of India. The question as to whether Marine Insurance should be separately dealt with was also considered by the Clauson Committee who after considering the question carefully came to the conclusion that Marine Insurance should also be brought in within the purview of the new legislation.

20. After considering the arguments which have been advanced for and against Marine Insurance being dealt with by the same Act, I am also of the opinion that Marine Insurance should be dealt with under the Act.

21. The question of the Lloyd's Underwriters requires to be considered specially and I propose to do so in some place of this report. I must, however, say that I am not prepared to recommend Lloyd's being kept outside the scope of the new Act, and subject to the special recommendations which I intend to make relating to Lloyd's, I recommend that they be brought in within the Act.

22. I would also like to refer to the question of Motor Vehicles Insurance and Accident Insurance specifically in view of the rapid increase in business in these two classes and to deal with the question as to whether these should be brought in within the scope of the new Act. As regards motor vehicles insurance, it came in for consideration in England also rather late. Prior to 1930 insurance companies carrying on business in motor vehicles insurance in England were not subject to the Assurance Companies Act of 1909. The question of this class of insurance was considered by the Clauson Committee and was dealt with by them in paragraphs

24 and 25 of their report. The Clauson Committee very rightly observed that the enormous increase in motor vehicles insurance business made it essential that it should be brought within the purview of the existing legislation and they accordingly suggested that it should be included in the Bill which they recommended for all classes of insurance.

23. As I have stated, the Clauson Committee's Report, although it was placed before the Parliament in the year 1927, has not yet been taken up. In the meantime the Road Traffic Act came to be passed in 1930 in the United Kingdom and by section 42 of the Act the Government declared that motor vehicles insurance business would thenceforth be governed by the Assurance Companies Act. The result was that companies carrying on business in motor vehicles insurance became liable since the passing of the Road Traffic Act to make a deposit and to submit returns in respect of their business just as the other companies governed by the Assurance Companies Act of 1909. The reasons which prompted the Clauson Committee to recommend that motor vehicles insurance should be brought in within the purview of insurance legislation apply with equal force in India and I have no doubts that it should be brought within the pale of the Act.

24. The passing of the Workmen's Compensation Act in India has given rise to a considerable amount of insurance in the nature of accident insurance and in my opinion this branch must also be brought in within the purview of the Act.

25. The only question which one would have to consider specially with regard to these two classes of insurance is, whether by reason of the nature of the liabilities undertaken by insurance companies carrying on business in motor vehicles and accident insurance, any special provisions should be made regarding them and I will refer to this shortly at the end of this my report.

26. As to Provident Insurance Societies, I am of the opinion that they should continue to be governed by a separate Act—as at present and I am influenced in my decision mainly by the facts (a) that it would be impossible to look after these companies properly and efficiently from an office under the Central Government—and (b) that the nature of the business carried on by them makes it undesirable to apply to them all the provisions applicable to other insurance concerns. I am therefore of the opinion that there should be one comprehensive piece of legislation to govern all kinds of insurance other than Provident Insurance Societies. So far as Provident Insurance Societies are concerned, in my opinion they should continue to be governed by a separate Act as at present.

27. The other question which must be discussed before questions of detail are gone into is as to whether there should be a change in the policy of the Government with regard to Insurance companies. The law of insurance has been dealt with in various countries in the world on one or other of the following principles:—

- (i) Minimum interference by the Government coupled with the maximum amount of publicity.
- (ii) Direct control by the Government,

In countries which follow the first principle all that the Government does is to insist upon a certain amount of deposit being paid in, not with the object so much of protecting the policy holders as of preventing the formation of mushroom companies, and subject to that to leave practically everything to the public by providing for publications by companies of all material facts with regard to (1) the volume of business, (2) the income and expenditure, and (3) the investments.

28. In countries which follow the second principle the Government controls the companies directly by (1) issuing licences authorising the carrying on of business in the country, (2) keeping in its custody or control an amount sufficient to meet the liability of the company, and (3) controlling the investments of the funds of the company. The second principle is observed in America, Canada and some other European countries while the first principle is observed in the United Kingdom, and has hitherto been followed in India.

29. The Indian Act was based upon the English Statute of 1909 and followed the policy of "minimum interference coupled with maximum publicity." When, however, the Life Insurance Act of 1912 was passed there was a considerable body of opinion favouring the view that the provisions of the Act were much too moderate, and that it would be imprudent to apply to India the principle of "minimum interference and maximum publicity" as in England. It was said, and in my opinion very pertinently, that publicity in the English sense does not and cannot exist in India, firstly, because of the difficulty arising from the variety of languages and in the next place owing to the ignorance of the principles of joint stock concerns and insurance and the inability to follow Accounts. It was also pointed out that the mere publication of the accounts and the reports of the companies by themselves would not be sufficient specially in the absence of a thorough criticism of published accounts in the country. The Government of India was, however, of the opinion that it was better to give the English principle a trial in India specially because they felt that the people had no sufficient experience of the principles of insurance and that it would be premature in the circumstances to say which would be the best principle to adopt so far as India is concerned.

30. Since then 23 years have passed and the experience of the last 23 years shows that the time has arrived when the matter should be thoroughly investigated and reconsidered. Since the Act of 1912 came into effect there has been a considerable increase in the number of companies carrying on business in insurance in India as indicated before. During this time only 29 companies have failed. The following statement made up from the records in the possession of the Department will show the number of new floatations, the number of failure, and reasons for their failure so far as can be ascertained from the papers available.

31. It must, however, be admitted that although they have not actually failed, quite a number of the new companies are not in what may be called financially sound position. Some of them are dragging on what may be called a very miserable existence. While admitting

generally that in India we have not yet got people well equipped with technical knowledge at the helm of insurance companies and that the average member of the public in this country is not so well informed as in England yet it must be said to the credit of the dozen or so of insurance journals which have come into existence during recent years that there is a genuine attempt to educate the public in insurance matters. It must also be admitted that as the result of their publications and the frank criticisms which are now made of the affairs of the various insurance companies, a certain amount of interest has been created in matters of insurance and the tone of insurance business has been considerably improved. I sincerely believe that times are not far off when publicity in India will as in England serve the useful purpose of preventing abuses in insurance business in this country.

32. I am not unmindful of the argument advanced in support of the demand for a change in the policy of the Government in insurance matters from one of "freedom with publicity" to one of "direct control" *vis.*, that there are abuses which require prompt remedies and that the adoption of a system of direct control in India will have the desirable effect of introducing a system of wholesome supervision over unsound companies. This is undoubtedly true but I cannot help thinking that the advocates of this change completely overlook the danger which such a change would create of causing unnecessary harrassment to sound companies as well.

33. Taking all circumstances into existence and in view of the rapid growth of public opinion on insurance matters in this country, I am of the opinion that so far as this country is concerned, the policy of the Legislature should be to follow, as before, the principle of minimum interference and maximum publication. I must, however, say at once that the extent and nature of Government control will have to be considerably modified. I will have occasion to refer to the question in much greater detail hereafter, and subject to the recommendations which I shall make in this direction, I would not recommend a change in the main principle to be followed in the new Act.

34. Provident Insurance Societies cater to the needs of people of very moderate means. During recent years a very large number of these companies have grown up all over the country, but the number of failures have been very great as well. These failures have affected a very large number of these poor investors. The following statement will show the way these companies have grown and died during the last 10 years:—

Year.	No. of companies in existence.	No. of failures during the 10 years.
1924 . . .	31	} 47 companies failed during this period.
1933 . . .	369	

Investigations have shown that most of these failures have been due to (a) want of proper working capital, (b) irresponsible schemes, and (c) mismanagement and misapplication of funds. In

my opinion, it is necessary to reconsider the provisions applicable to these companies and to introduce provisions which will make them carry on business on sound lines. While therefore considerable changes in the existing Act may be rendered necessary, yet I must, however, say that even with regard to these societies I cannot on grounds which I have already indicated, recommend the introduction of a system of direct control by the Government.

35. Having indicated my views on what I consider to be the two main preliminary questions I will now proceed to indicate the matters which from the materials at my disposal appear to be matters for the consideration of the Legislature. In my opinion the matters which have to be considered, so far as Indian companies are concerned, must be divided under the following main heading, *viz.* :—

- (a) Provisions to prevent growth of mushroom companies.
- (b) Provisions to enforce working on sound principles.

(c) Provisions to prevent misapplication of funds, and

(d) Provisions for the protection of assets.

In the case of foreign companies (and I intend to treat all non-Indian companies as foreign companies) the matters which in my opinion have to be considered are:—

- (a) Whether any restrictions are to be placed on the right of foreign companies to work in British India, and
- (b) On what terms should foreign companies be allowed to work in British India.

This represents the broad point of view from which I propose to deal with the subjects in this my report. As the Provident Insurance Societies stand on a somewhat different footing, I propose to deal with it separately. The matters which require consideration in their case are, however, practically the same as those enumerated in the case of Indian Insurance companies.

## CHAPTER II.

## INDIAN COMPANIES.

36. I propose to deal with the question of Indian Companies first. As I have already said the main questions to be discussed in connection with the Indian Companies may be classified as hereunder, *vis.*:—

- (a) Provisions necessary to prevent the formation and continuation of mushroom companies.
- (b) Provisions to enforce business being carried on on sound principles.
- (c) Provisions to prevent misapplication of funds
- (d) Provisions necessary for the preservation of assets;

and I intend to discuss these questions in the order in which I have set them out and make my recommendations thereon.

I will therefore take up the case of mushroom companies first.

## PREVENTION OF MUSHROOM COMPANIES.

37. While it is no doubt desirable that the insurance habit should grow in the country, it is equally desirable that the companies which are formed should be capable of doing business on sound progressive lines and that the growth of mushroom companies should be prevented. Unless this is done, there is every chance of unhealthy competition with the resulting degradation of the insurance business as a whole. I have already stated that there has been a remarkable increase in the number of insurance companies during recent years. The extent thereof will appear from the following statement:—

Year.	Nature of business			
	Life.	Fire.	Marine.	Miscellaneous, <i>i.e.</i> , more than one class.
1928	6	...	...	3
1929	11	...	...	3
1930	10	...	...	1
1931	14	...	...	7
1932	12	...	...	3
1933	15	...	...	6
1934	28	...	...	2

It is impossible, however, to ignore the fact that quite a number of these companies can legitimately be called mushroom companies and are at present in a moribund condition though they have not been actually wound up.

38. At the present time, most of the Indian Insurance Companies are companies incorporated under the Indian Companies Act. As such

they will be governed by the provisions of that statute, which is also undergoing an examination with a view to amendments being made in order to bring it up to date. I have dealt with the question of mushroom companies at some length in the report which I have submitted in connection with the Indian Companies Act and it is my firm belief that my recommendations if given effect to will substantially prevent the incorporation of mushroom companies.

39. Insurance companies like Banking companies have, however, certain peculiar features, *vis.*, they afford ample facility to the persons in charge of the management to dabble with moneys contributed mainly by persons who are not shareholders of the companies. From this point of view certain special recommendations will have to be made, and although at the first sight, they may appear to be stringent, I have no doubts that on a closer examination, they will be found to be not only necessary but beneficial from the point of view of the public.

40. In my opinion, so far as Insurance Companies are concerned it is essentially necessary in order to effectually control them and prevent the formation of mushroom companies, that there should be provisions in the statute for—

- (a) Registration of companies under the Act;
- (b) Substantial deposits to be made; and
- (c) Substantial working capital to be collected.

41. *Registration.*—In my opinion the Act should provide that every company intending to carry on business in Insurance in British India must register itself under the Act, and that no company should be allowed to do business unless it obtains a certificate of registration from the Governor General in Council.

42. It should, in my opinion, be further provided that no such certificates will be issued unless the company applying for registration has already complied with the following conditions, *vis.*:—

- (i) Filed with the Insurance Department of the Government of India or the Superintendent (if my recommendations in that behalf are accepted) a copy of the Memorandum and Articles of Association (in cases where the company is one incorporated under the Indian Companies Act) or in other cases a deed of partnership or other deed relating to its constitution.
- (ii) The names, addresses and description of the directors and manager.
- (iii) A certificate from the Controller that the necessary deposits have been made.
- (iv) A declaration on oath by the directors or the proprietors that the sum mentioned hereafter has been got together and is available as the working capital.

42. *Deposits.*—I will deal with the question of the deposits next. In connection with the subject of deposits, I propose to consider the following matters, *vis.*:—

- (a) The amount and how it is to be furnished.

- (b) Preservation of deposit.
- (c) Withdrawal and refund of deposit.
- (d) Substitution of deposit.
- (e) Application of deposit in the case of failure or winding up.

43. In the United States of America, Canada and in other countries where the State exercises direct control over insurance business it is usual to provide for deposits equivalent to the amount of the liabilities. This is worked out by providing for a substantial deposit at the beginning as also for recurring deposits subsequently out of the premium income sufficient to cover the liabilities in the country. In the United Kingdom, where the State does not exercise direct control and where the principle is one of minimum State interference, the idea is not to have any deposits with the object of creating a security fund for distribution amongst the policy holders in the event of the company coming to grief but it is taken in order to make sure that the company which starts business in insurance is not a mushroom company. The amount to be deposited therefore has nothing to do with the amount of the liabilities incurred by the company. It merely represents a sum which will show that the company has amongst its members substantial people and that it is not a bogus company.

44. *Deposits by Life Insurance Companies.*— In India, so far as Life Insurance companies are concerned, we have been following English system, with this difference that in place of £20,000 which is the amount of the deposit to be made in England, we begin with a sum of Rs. 25,000 or what is roughly equivalent to £2,000. Any company which can get together funds sufficient to procure G. P. notes (carrying interest at 3 per cent.) of the face value of Rs. 25,000 can commence business in life insurance. There is, however, a provision requiring further securities to be put in as the business goes on until securities of the aggregate face value of Rs. 2 lakhs is reached. No deposit is at present required to be made before starting any other class of insurance business.

45. Complaints have been made from some time past that the provisions for deposits in the case of Life Insurance Companies are much too moderate and that unless the amount of the deposit is substantially increased, there is no chance of preventing mushroom companies from coming into existence and various suggestions have been made from time to time for the increasing of the amount of the initial deposit as also of the aggregate amount thereof. Whatever may be the popular point of view, the Government has, however, in my opinion, a very heavy responsibility in the matter. The Government has got to see in the first place that there is no provision made in the statute as to deposits which will, by reason of the largeness of the amount, have the effect of injuring sound companies which are working on a small capital.

46. It has been rightly pointed out by those who are against any change in this direction that the size of a company is not necessarily a criterion of its financial stability and there may, and in fact there are, companies which are unable to deposit a large sum all at once, but which are yet working on sound lines. It is

therefore pointed out that the effect of making a provision for a very large initial deposit would not only be to eliminate immediately unsound companies that are carrying on assurance business of a doubtful and unsubstantial character, but also to squeeze out of existence small but sound companies. In my opinion it is highly undesirable that small but sound companies should be crushed out of existence merely on the ground that their business is small or that their capital is such as would not enable them to make an initial deposit of a very large sum of money. In these circumstances, I cannot recommend the adoption of any proposal which would entail the making of an initial deposit of a very high amount. At the same time I am decidedly of the view that the existing provisions, in view of the experience gained during the last 23 years, are really too moderate and that they require considerable modification.

47. In my opinion, the provision in the existing Act for an initial deposit of Government Securities of the face value of Rs. 25,000 and for progressive payments to be made until the securities deposited come up to the face value of Rs. 2 lakhs does not serve the purpose of preventing mushroom companies being formed. The figure of Rs. 25,000 which occurs in the existing statute was not based upon any fixed data, but was inserted as and by way of an experiment and it was openly stated at the time the Act was passed that it was so. The subsequent events have shown that the figure was hopelessly inordinate and was not sufficient to prevent the ushering in of mushroom companies. During recent years owing to circumstances which could not be foreseen at the time of the passing of the Act in 1912 the market value of Government Securities depreciated to such an amount that it became possible for any concern the promoters of which could scrape together a sum of Rs. 15,000 or thereabouts (which was sufficient to procure 3 per cent. Government Securities of the face value of Rs. 25,000) to commence business. The result was that in substance the object for which those deposits were provided for failed to some extent and it became thus possible for a very large number of companies with doubtful financial stability to be formed.

48. As can be well appreciated the formation of a number of these companies of doubtful financial standing has in effect retarded rather than advanced the growth of insurance business in the country to a considerable extent and has led to representations for a substantial modification of the provisions relating to deposits in the existing Act.

49. The justice of this demand for enhanced deposits was admitted by the insertion of a clause in the draft Bill of 1925 providing for an initial deposit of securities of the face value of Rs. 200,000 with liberty to the Government in deserving cases to change it to an initial deposit of Rs. 1 lakh and the deposit of further securities of the face value of Rs. 100,000 in the course of four years.

50. The opinions received in answer to invitations issued by the Government with regard to this provision, however, showed that the majority of the public bodies and individuals were of opinion (a) that the maximum amount of the securities to be deposited should not be

less than 2 lakhs in any event, and (b) that the provision for an initial deposit of securities of the face value of Rs. 2 lakhs was rather too hard for indigenous Indian companies. In my opinion also it would be difficult for indigenous Indian concerns to put in Government securities of the face value of Rs. 200,000 as an initial deposit. I am also of the opinion that the aggregate amount of the deposits to be made should be substantially increased.

51. Having considered the matter carefully, I am of the opinion (a) that the amount of the initial deposit should be raised to Rs. 100,000 and (b) that the companies should be required as at present to continue depositing 1/3rd of their premium income until the sum of Rs. 250,000 in the aggregate is deposited.

52. I should in this connection like to refer to the provisions for deposits now prevalent in other parts of the British Empire. The following statement will give an idea of the amounts required to be deposited in other parts of the Empire.

Statement showing amounts necessary to be deposited by Life Insurance Companies in different parts of the British Empire.

Name of country.	Amount of deposit.
United Kingdom . . . . .	£20,000
Canada . . . . .	\$50,000
Union of South Africa . . . . .	£10,000
Commonwealth of Australia . . . . .	£50,000
New Zealand . . . . .	5,000 rising to £50,000
Hong Kong . . . . .	\$100,000
Strait Settlements . . . . .	\$100,000

A reference to these figures will show that in recommending an initial deposit of Rs. 100,000 I have taken a rather moderate view. I have done so because I am convinced that the provision for an initial deposit of Rs. 200,000 as was proposed in the Act of 1925 would be undesirable in the interest of genuine insurance business in India.

53. In the case of existing Indian companies, I would suggest that such of them as have not already deposited Government securities worth Rs. 100,000 should within a period of six months from the date of the Amended Act coming into force deposit Government securities of such amounts as with the amount already deposited will make up securities of the total market value of Rs. 100,000. Similarly in the case of the companies which have deposited the

maximum amount of securities under the existing Act, they should within a similar period of time put in such additional securities as will bring up the value of the securities to Rs. 250,000 calculated at the market rate on the date of the further deposit.

54. I am quite aware of the fact that this may operate as a hardship on some of the existing companies, and as a special case, I would suggest that with regard to existing companies the Act should provide that the Government of India may in the case of any particular existing concern extend the time for the making of the deposit to such period not exceeding one year from the date of the Act coming into operation as it may think fit and proper to complete the deposit.

55. It has been suggested in some quarters that there should be a provision in the Act for life insurance companies to make further deposits amounting to a percentage of the premium income every year with the idea of creating a fund which will be really in the nature of a security for the policy holders. I am, however, unable to accept the suggestion mainly on the ground (a) that the amount to be deposited would be unlimited, and (b) that it would afford no real protection to the policy holders.

56. *Deposits to be made by companies doing business in Fire Insurance, Marine Insurance, Workmen's Compensation Insurance, Accident Insurance, Miscellaneous Insurance other than Provident Insurance.*—I now pass to the question of deposits to be made by companies carrying on business in other branches of insurance. Prior to 1925, there was no statute in India applicable to companies carrying on other branches of Insurance. In the Bill of 1925, which was never proceeded with, provisions were made for the first time relating to these companies. The said Bill provided *inter alia* that in the case of these companies they would have to make an initial deposit of securities of the face value of Rs. 100,000 subject to a maximum of securities of the face value of Rs. 200,000 being deposited where a company carried on business of more than one kind. The desirability of making a provision for deposits by companies carrying on business other than life insurance was accepted almost unanimously in the opinions expressed by all shades of people when the Bill of 1925 was circulated for opinions. The Bill, however, was not proceeded with under the circumstances already stated by me, and as the result thereof no provisions were made.

57. In or about 1928, pending the consideration of the Clauson Committee Report in England, the Indian Insurance Companies Act (No. XX of 1928) was passed with regard to companies which did business other than life insurance. The said Act, however, as I have already said was passed mainly with the object of collecting data which would enable the Government to decide about the provisions to be made with regard to them, and did not provide for any deposits to be made by these companies.

58. In my opinion a provision for deposits in the case of all companies carrying on insurance business of any kind must be made in the statute. The question, however, is as to the

amount of the deposit. The following statement will show the amounts required to be deposited in other parts of the Empire:—

Name of country.	Amount of deposit.
United Kingdom . . . . .	£20,000 for each class of business done.
Canada . . . . .	Such sum as the Treasury Board may fix.
Australia . . . . .	£20,000.
South Africa . . . . .	Fire and Marine—£10,000 each. Other classes—£5,000 for each class.
New Zealand . . . . .	Fire and Employers Liability—£15,000. All other classes—£5,000.

The Clauson Committee went into the question of the deposits to be made by these companies in England and recommended that the following deposits should be required of companies carrying on business in insurance other than life insurance, *vis* :—

Fire and Marine . . . . .	£20,000 each.
Annuity Continuous disability Employers liability Capital redemption . . . . .	£20,000 „
Motor vehicles personal accident . . . . .	£15,000 „
Miscellaneous Insurance . . . . .	£10,000 „

These recommendations afford a valuable basis for consideration and considering all these, I am of the opinion that the Act should provide that every Indian company doing business in Fire or Marine Insurance will have to deposit Rs. 200,000 in respect of each class of business done and that in the case of companies doing business in insurance of any class other than life, fire or marine insurance they will have to deposit for each class of business a sum of Rs. 100,000.

59. As, however, business in insurance other than life insurance is still in its infancy, I recommend that the total amounts of Rs. 200,000 and Rs. 100,000 be allowed to be paid in the following instalments, *vis* :—

(A) *In case of Fire and Marine Companies—*

- Rs. 100,000—on or before the commencement of business.
- Rs. 10,000—within 1 year and a further sum of.
- Rs. 20,000—within 2 years and a further sum of.
- Rs. 30,000—within 3 years and a further sum of.
- Rs. 40,000—within 4 years.

(B) *In case of other companies.*

- Rs. 50,000—on or before the commencement of business.
- Rs. 10,000—within one year and a further sum of.
- Rs. 20,000—within two years and a further sum of.
- Rs. 20,000—within three years.

In order, however, to encourage insurance habits in the country I would also recommend that in the case of companies which carry on business in more than two classes of insurance (life insurance being always excluded) deposits at this rate would have to be made at this scale for each class of business, subject, however, to a maximum of Rs. 300,000 in all payable in the following instalments, *vis* :—

- Rs. 150,000—as an initial deposit.
- Rs. 20,000—within one year and a further sum of.
- Rs. 40,000—within 2 years and a further sum of.
- Rs. 50,000—within 3 years.

The balance within 4 years.

Existing Indian companies should be ordinarily allowed six months time within which to make the deposits, but the Governor General in Council should have the power of extending this time by a further period of 6 months in deserving cases.

(C) *Mutual Companies.*—In my opinion mutual companies should be treated on a different footing so far as the question of deposits is concerned. The distinguishing feature of these companies is the provision made for the distribution of the profits amongst the policy holders who are deemed to be members and it would be unfair to place them in the same category as the other companies. In the Bill which was drafted in 1925 this distinction was conceded and it was provided that in the case of such companies the Governor General in Council would be entitled at his discretion to exempt such companies from the obligation to put in any deposits wholly or in part and subject to such conditions as he might think fit, having regard to the circumstances of each case. In my opinion it is desirable that similar provisions should be adopted in the New Statute and the matter allowed to rest, as was proposed in the said Bill of 1925, on the discretion of the Governor General in Council.

60. *How deposits are to be made.*—Having indicated my view on the question of the deposits to be made by companies carrying on business in different classes of insurance, I will now shortly indicate my views on the question as to how such deposits should be made, *vis.*, whether in Government securities as has been hitherto done or in cash as is done in various other countries.

61. There is no unanimity of procedure in the matter of deposits. In some countries securities are deposited while in other countries the amount of the deposit is paid in cash, and the Government invests the amount in particular

classes of securities. Thus in the United Kingdom the deposit is made in cash but it is kept invested in securities of a particular kind. In Canada the depositing companies are given the option of depositing securities of a certain denomination. In the United States of America where each State has its own law, the usual provision is for deposits to be made in the shape of public stocks or bonds or in mortgages on unencumbered real property within the State. In Hongkong the deposit has to be made in securities approved by the Government.

62. In India the practice has been hitherto to allow insurance companies to put in Government securities and although it would avoid many complications if the Government was prepared to accept the deposits in cash and either pay interest to the depositors at some rate to be fixed say by the Reserve Bank of India or otherwise take upon itself the obligation of investing the same in suitable securities, yet for the present and until and unless the Government is prepared to change the procedure, I would as and by way of continuation of the old system recommend that the deposits be made in the shape of Government securities, the market value of which on the date of the deposit will come up to the amount required under the statute.

63. *Provision for further deposits if the value of the securities depreciates.*—Having regard to the fact that the value of Government securities fluctuates it would be essential as a necessary corollary to make a provision in the statute enabling the Government to call for a further deposits of securities if by reason of the depreciation in the market rates of the securities already deposited the value thereof goes below the amount fixed in the statute. I am quite aware of the fact that this would necessarily involve a periodical examination of the market value of Government securities in order to find out if the amount of the deposit calculated on the basis of the market value has gone below the amounts specified in the statute, but as I have said until and unless the Government is prepared to accept deposits in cash, and undertakes either to pay interest thereon or to keep invested in income yielding securities this procedure will have to be continued.

64. I would therefore recommend that a provision be made in the Act to the following effect:—

- (a) If the market value of the securities deposited by any company declines below that at which they were deposited, the Controller may notify the company to make such further deposit as will ensure the value of all the securities deposited by the company calculated at the prevailing market value being equal to the amount which is required by the Act to be deposited.
- (b) Thirty days' time should be given to the companies to comply with this requisition of the Controller and in case of failure by any company to make a further deposit of securities in terms of the requisition, powers should be given to the Governor General in Council to have the company wound up.

- (c) In all matters relating to the value of the securities deposited under the Act the decision of the Controller shall be binding and conclusive.

65. *Refund of Securities.*—While investigating a case which recently came up in this department from Sindh it was found that there is no provision in the Life Insurance Companies Act governing the case of refund of securities and as it is, it is doubtful if under the present Act an order for refund can be obtained except when the company is being wound up. It is, however, reasonable that securities should be retained by the Government only so long as the company carries on business and so long as any liability in respect of that class of business for which the deposit was made is outstanding and that when these contingencies are fulfilled the securities deposited should be refunded to the depositor. This defect in the Act was also noticed when the proposed Insurance Bill was being considered in 1925 and it was suggested in order to meet this contingency that the statute should provide that where an insurance company has ceased to carry on in British India any class of insurance business in respect of which securities have been deposited and the liabilities in British India in respect of business of that class have been satisfied or otherwise fully provided for, an order for refund of the securities deposited may be made. I recommend the adoption of the same provision in the statute with a slight modification as indicated hereafter. In the Bill of 1925 the proposed provision contemplated an application to Court for the return of the deposits. In my view, however, this is a matter which the Governor General in Council can easily dispose of on an application to be made to him by the company, and I would accordingly suggest that the orders should be given by the Governor General in Council. As an additional safeguard, I would give a right of appeal in case of refusal to the Court. Subject as above, I would recommend that the same provisions be made in the Act. I would also recommend that the Act should provide that the securities should be made over by the Controller to the Liquidator where a company goes into liquidation on an order to be obtained by the Liquidator from the Court which should have the power of imposing such terms and conditions as it shall think as to its application.

66. *Preservation of deposits for the benefit of policy holders.*—Although it is true that the deposits which will have to be made in India by companies carrying on business in insurance will not be sufficient to serve in any sense as adequate security for the policy holders yet it is necessary in my view to earmark it for the benefit of the policy holders and to prevent it from being alienated or charged or assigned by the company.

67. Cases have happened from time to time in which attempts have been made by ordinary creditors (as distinguished from policy holders) of insurance companies to get at the securities lying with the Controller in satisfaction of the debts due to them. Charges have also been created some times on the securities lying in the hands of the Controller and in my view it is necessary to make provisions in the statute whereby these will be rendered impossible.



68. The present Life Insurance Companies Act (which is the only statute under which deposits are provided for) provides that the deposits made by Life Insurance Companies are to be treated as part of the Life Insurance Fund of the company, and as such will be deemed to be as absolutely the security of the life policy holders as though it belonged to a company carrying on no other business than life assurance business and that it shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance and that it is not to be applied directly or indirectly for any purpose other than life assurance.

69. This provision in the existing Life Insurance Companies Act is a verbatim copy of section 8 of the English Assurance Companies Act of 1909, and was construed by Mr. Justice Neville in a case reported in (1917) 1 Ch. at page 198 (In Re. National Standard Life Assurance Corporation). One of the questions which came up for the consideration of the learned Judge was as to whether this provision was sufficient to create a charge in favour of the policy holders over the statutory deposit so as to oust the general creditors of the company in respect of liabilities incurred in connection with the life insurance business, and I cannot do better than quote a portion of the judgment. At page 197 the learned Judge while construing this provision expressed himself thus:—

“What is the position of that fund with reference to the holders of life policies? [His Lordship read section 3, subsection (2) and continued].

If the Legislature had intended to put the policy holders of a particular class with regard to their fund in the position of debenture holders having a charge given by the company on that particular part of the assets, nothing would have been easier than to have said so. It seems to me that that is not the intention of the Act.”

In the said case the learned Judge had also to deal with the rights of a mortgagee and he held that there was nothing in the Act which prevented a company from creating a mortgage over the statutory deposit so as to enable the mortgagee from obtaining priority over the policy holders.

70. The same section also came up for consideration by the English Courts in another case (In Re. British Union and National Insurance Company Limited) reported in (1914) 1 Ch. 724, and Mr. Justice Astbury in the course of his judgment held that the statutory deposit made in respect of life insurance business by a company, which did business in life, fire and accident insurance, was (subject to the claims of the life policy holders) liable to be treated as the general assets of the company and as such equally accessible to creditors whose claims arose not only out of the life insurance business but out of the other classes of insurance business as well.

71. This being the view of the law as it now stands it is essentially necessary in my view to make it clear in the statute that the deposits made under the statute (and I have already recommended that deposits be made by all

companies) are primarily to be applied for discharging the obligations to the policy holders and that it will not be liable to be charged or assigned. As to attachments, I propose to adopt what I consider to be a salutary provision in the Insurance Act in force in the Union of South Africa and the Commonwealth of Australia whereby such a deposit is immune from attachments generally but is available to satisfy judgments obtained by policy holders of a company in respect of amounts due under policy.

72. Lastly I would also provide that the deposit made by a company in respect of any particular class of business should, subject to the claims of the policy holders of that class being met in the first instance, be available to satisfy the liabilities incurred in respect of that class of business before being made available to the general body of creditors as part of the general assets. The recommendations I would therefore make are that provisions running more or less on the following lines be inserted in the statute:—

- (i) “Securities deposited by an insurance company under the Act shall be deemed to be part of the assets of the company and shall not be capable of being assigned or charged or be liable to any attachment except as hereunder mentioned.
- (ii) All securities for the time being deposited with the Controller under the Act shall be and remain as a security of the policy holders of that class and shall not be liable for any debts or contracts of the company other than those to or with its policy holders in respect of their policies until payment in full of the value of such policies has been made.
- (iii) The securities deposited by a company under the Act with the Controller shall be available to satisfy any final judgment obtained in British India by any policy holder against the company in respect of any policy and any such judgment may be satisfied out of such securities accordingly and thereupon the deposit shall be deemed to be reduced by the amount of the payment so made.
- (iv) No part of the securities deposited with the Controller by any company in respect of any particular class of business shall, while any liabilities incurred by the company in respect of that class of business remain unsatisfied or not otherwise provided for, be available to meet any other liabilities incurred by it.

In my opinion these provisions must be made in the statute so far as deposits are concerned in order to ensure that they will be available in the first instance to meet the claims of the policy holders.

73. *Substitution of Securities.*—It is necessary in my view to have a provision in the statute for the substitution of the securities which may be lodged by an Insurance company with the Controller under the provisions of the

Act. As is well-known Government securities are issued for fixed periods and they become payable at fixed intervals. In these circumstances, it is necessary in the usual course to have some provision which will enable the Controller to call upon the Insurance companies to substitute securities which may mature owing to lapse of time and also to give powers to the Insurance companies if they think fit, for any reason whatsoever, to substitute one class of securities for another from those which may have been lodged with the Controller. So long as the value of the securities is kept intact facilities should be given to enable the substitution of one class of securities by another should any company find it necessary to do so.

74. *Provisions for sufficient working capital.*—In my opinion, however, the provision with regard to deposits are not by themselves sufficient for preventing the formation of mushroom companies. Provisions must also be made whereby companies intending to do business in insurance will not be entitled to commence their business activities until and unless a sufficient working capital has been procured. This is essentially necessary not only to ensure working on sound progressive lines but also to prevent the premium income being resorted to from the very beginning for the purpose of meeting the expenses of organisation and management of the concerns.

75. Most of the companies which have come into existence of late are companies incorporated under the Indian Companies Act, and I have already in the report which I have submitted in connection with the Indian Companies Act made certain recommendations in this direction which I believe will prove sufficient in the case of ordinary trading concerns. The case of insurance companies, however, stands on a different footing. Like Banking companies these companies by the very nature of their activities are enabled to get in and deal with moneys paid in by strangers from the very beginning. From this point of view it is essentially necessary that the Legislature should take special precautions to see that the moneys which are so received are not misapplied. To ensure this it is essentially necessary to see that these companies before they start their activities procure a decent amount from their own shareholders as working capital. In the case of ordinary trading concerns, I have left the fixing of the amount to the Directors but in the case of insurance companies I am of the opinion the minimum amount should be fixed by the statute.

76. Considering the nature of the initial expenses and the expenses of management which an insurance company is likely to incur, I think that the statute should provide that no insurance company will be entitled to commence business unless it has got together a sum of Rs. 25,000 at least for working capital out of the sale of its shares (where the company is one incorporated under the Indian Companies Act) or by contributions from the promoters (where the company is one which is a proprietary concern and is not incorporated under the Indian Companies Act). In my opinion these provisions if properly enforced will substantially prevent the formation and continuation of mushroom insurance companies in this country.

#### *Provisions for ensuring working on sound lines.*

77. Having made my recommendations on the question of mushroom companies and how to prevent their formation, I now propose to deal with the next question, viz., *what are the provisions necessary to be made in the Act in order to enforce working of companies on sound progressive lines.*

78. *Approval of schemes, Premium Tables, and Conditions of Policy by Actuary.*—The first thing which is in my opinion necessary in this connection is to have the Premium Tables and Conditions of the Policy approved by qualified actuaries. Even in the Life Insurance Companies Act there are at present no provisions in this direction. It is, however, obvious that in order to do business on sound lines it is essential that the schemes intended to be worked should have the approval of qualified actuaries. I would accordingly suggest that a specific provision should be made to the effect that:—

- (a) Every insurance company must have the Conditions of their Policy, their Premium Tables, and their Schemes approved by a duly qualified actuary before they receive any premium or issue any policies in accordance therewith.
- (b) That before working is commenced copies of the Schemes intended to be worked, the Premium Tables and copies of the Policy duly certified by the actuary must be filed with the Government Actuary.

79. *Separation of Funds and Accounts.*—The next thing in my view which is necessary to consider is as to whether the funds, the investments and accounts in respect of each class of business should be kept separately.

80. In the existing Act the only provision regarding separation of funds is with regard to life assurance funds. Section 5 of Act VI of 1912 provides that in the case of a life assurance company transacting other business besides that of life assurance a separate account shall be kept of all receipts in respect of the life assurance business and the said receipts shall be carried to and form a separate fund to be called a Life Assurance Fund.

81. The other classes of assurance business are governed by the Indian Insurance Companies Act XX of 1928, but there is no provision for keeping separate accounts or funds in the case of companies doing business in other branches of insurance.

The omission to make such a provision in this statute is due to the fact that this was enacted mainly with the object of collecting statistics for these classes of insurance business. Now that the whole law on the subject is being reconsidered the question as to whether provisions similar to those contained in the Life Insurance Companies Act VI of 1912 should be made with regard to all classes of insurance business have to be considered.

82. In the English Assurance Companies Act of 1909, section 3 provides that where an assurance company transacts more than one class of assurance business a separate account shall be

kept of all receipts in respect of the assurance business of each class, and the receipts in respect of the said business from each class shall be carried and form a separate assurance fund with an appropriate name.

83. The question as to whether the funds and the investments of each class of business should be kept separate was also very thoroughly examined by the *Clauson Committee in England* and they have stated in their report that the opinion on the question of the separation of funds and earmarking them for the different classes was practically unanimous. As was pointed out by the *Clauson Committee*, suppose a company doing business in life and fire, suffered a heavy loss in its fire department, a loss so heavy that it was impossible for it to meet the same from the funds of such business, then unless there was a separation of funds, the life policy holders might find that in spite of the fact that the life business was very successful and a large Life Fund had been built up, in the event of a winding up a large part of the Life Fund which they had helped to build up would go to meet the fire losses. The *Clauson Committee* therefore came to the conclusion that the new statute should provide for such a separation, and in the draft bill which they annexed to their report they provided for the maintenance of separate funds in respect of each class of business which they called the statutory funds.

84. The Government of India also took the same view when they considered the question of overhauling the Insurance Legislation in 1925 and they made a provision to that effect in the draft bill.

85. *Statutory Funds*.—Upon a consideration of all these facts I would recommend that provisions be made in the statute more or less on the following lines:—

- (i) Every insurance company shall keep a separate account of the receipts and payments in respect of each class of insurance business carried on by it.
- (ii) That the receipts from any class of insurance business shall, subject to the payment and application of such sums as, having regard to the contracts entered into by the company, the rights of the policy holders and to the instruments governing the constitution of the company, are properly payable or applicable as expenses of management dividend, bonus or otherwise, be carried to and form a separate statutory fund with an appropriate name.
- (iii) Subject to the provisions in the Act relating to the investments, the assets of every statutory Fund shall be kept distinct and separate from any other assets of the company and the income arising from the investment of any particular statutory Fund shall be carried on to that Fund.

To ensure the proper observance of these conditions, I would recommend the insertion of a penal provision whereby in the event of a breach of these conditions, the directors, manager, and other officers of the company responsible for the breach would be made liable to be punished with a heavy fine.

86. *Time to existing companies to create separate Funds and accounts*.—Some of the existing companies have been carrying on business in more than one class of insurance. As there were no provisions for the keeping of separate accounts, some of these companies have been keeping joint accounts and maintaining joint funds. In order to allow proper facilities to those companies which have hitherto been keeping joint accounts and maintaining joint funds, it is necessary to allow reasonable time to enable them to effect a separation and to create separate funds. The *Clauson Committee* suggested nine months within which to effect it but in my opinion, considering the conditions in India, nine months may not be sufficient and I would recommend that 12 months time be given to effect the separation and to create the separate funds. In order that there may be a record I would also suggest that every company at present carrying on insurance business of more than one class shall within a period of 1 year from the date of the Act coming into force, submit a statement to the Insurance Department of the Government of India showing the assets allocated to and held in respect of any particular statutory Fund together with a certificate from a qualified actuary that the value of the assets correctly represents the amount standing to the credit of that particular class.

87. In making this recommendation I am differing in some respects from the view which the Government of India took when they proposed overhauling the Insurance Legislation in 1925. The Government of India was inclined at that time to allow insurance companies which had been maintaining the joint system to continue that system with the leave of the Governor General in Council. In my view it is most necessary for the proper conduct of the business that separate funds and accounts should be maintained and I am unable to recommend any exception to any company.

88. *Dividends to Shareholders*.—In this connection I would like to say something about the question of the declaration of dividends to shareholders of insurance companies. It is well known as a matter of prudent management that dividends to shareholders should not be declared unless there are profits. As a matter of fact, notwithstanding any provisions contained in the articles, or any directions given by the shareholders, the payment of dividend out of the capital would be clearly *ultra-vires*. In the case of an insurance company it is impossible to say with any degree of certainty that there has been a profit unless an actuarial valuation has been made and a net clear surplus has been ascertained.

89. Although the question of the declaration of dividend is really a matter of internal management, cases have been brought to the notice of the Government where the persons in charge of the management have without waiting for any actuarial valuation proceeded to declare dividends out of funds, which can hardly be called profits due to the rise in the price of Government securities for instance. The Government Actuary, when drawing my attention to these cases, impressed upon me the necessity of making a provision in the statute whereby the declaration of dividends to shareholders would be prevented except from the surplus ascertained on a proper actuarial valuation.

90. I agree with the Government Actuary that as a matter of prudent management no dividends should be declared on shares unless there is a clear surplus ascertained as the result of an actuarial valuation. The question, however, is as to whether any specific provision should be made in that behalf in the statute.

91. While I am prepared to admit that cases of imprudent declaration of dividends are not of frequent occurrence, yet I think that no harm could result if any provision in that behalf were made in the statute. In the circumstances I would (though with some amount of hesitation) recommend that the statute should provide that notwithstanding anything contained in the Articles or the Instrument of Constitution, no insurance company would be competent to declare any dividend for payment to policy holders except out of the surplus to be ascertained as the result of an actuarial valuation of the assets and liabilities.

92. *Limitation as to rates of dividend.*—It has also been suggested that the profit which is earned by life insurance companies is generally earned with the use of monies paid in by the policy holders and that on principle the major portion of the profits should go to the policy holders and not to the shareholders. It has therefore been suggested that the statute should impose a limit upon the maximum rate of dividend which can be given to the shareholders.

93. It is no doubt true that in the case of Life Insurance Companies specially the profits are really earned with the moneys of the policy holders. It is therefore not surprising that the policy holders should demand that the administration should earmark the major portion of the profits for the policy holders.

94. In actual practice it is generally found that the major portion of the profits are paid out to the policy holders in the shape of bonus while a small portion is paid out to shareholders. The small portion which is paid out to shareholders, however, works out to a very high percentage and that is what is objected to by the policy holders.

95. The questions of appropriation of profits of any concern are really matters relating to the internal management of the company and on general principles the Government should not interfere with the same. It is true that in this matter the interest of the policy holders is antagonistic to that of the shareholders, but considering the fact that I have recommended that policy holders are to be taken in the management, I am not convinced that any restriction in the statute itself is called for. In my opinion there are no recommendations other than those I have mentioned, which I have to make on this subject.

#### PROVISIONS FOR THE PREVENTION OF MISAPPLICATION OF ASSETS.

96. As can be well appreciated in order to prevent misapplication of assets what is primarily and essentially necessary is that the assets should be kept safe and well invested, and that proper books and accounts should be kept and that sufficient details should be published to enable the public to gauge with some amount of accuracy the exact financial condition of the

company. By way of a check there should also be a periodical examination of the assets and liabilities of every company by an independent and qualified man such as an actuary.

97. *Investment of Funds.*—It is admitted on all sides that in order to ensure that the obligations undertaken by an insurance company may be promptly met—what is essential is that the funds of every insurance company should not only be safely invested but that it should also be so invested as to make it readily available and if necessary to be readily convertible into liquid funds. The question of investment of funds is therefore a very important question and needs to be carefully dealt with.

98. Suggestions have been made that the statute should impose some restrictions on the nature of investments of the funds by the companies specially life insurance companies. Attention has also been drawn to the undesirable nature of the investments made by some of the companies which have hitherto enjoyed an absolute liberty in the matter of investments and it has been said that a substantial portion of the funds of every company should be required by statute to be invested in Government and Trust Securities.

99. When the existing Life Insurance Companies Act was taken up in the year 1912 and the draft bill was circulated for opinion; the Bombay, Karachi, Bengal Chambers of Commerce, Indian Merchants Chamber, and the Bengal National Chamber of Commerce not only urged that limitations should be imposed on the class of investments in which the funds of a life insurance company could be invested but they went further and were all in favour of a provision restricting the investment of funds to what is popularly known as gilt-edged securities only. The majority of the local Governments were also of that view. As a matter of fact amendments suggesting that the life assurance fund of every life assurance company in India should be invested only in Government or Trust Securities were moved and supported in the Council by the representatives of the Commercial Bodies.

100. It was urged by those who were of that view that the money invested with the life assurance companies (which was the only business then provided for) was in the nature of trust money and that it should be treated as such. It was also pointed out that in the absence of any such restrictive provision the companies would be at liberty to employ and utilise the funds in financing speculative concerns, advancing loans to individuals including the directors and to concerns in which the directors were concerned, and that as a result there would be a likelihood of the interest of the policy holders being jeopardised and the funds being lost.

101. The Government of India did not, however, accept the amendments mainly on the grounds (a) that the acceptance of it would be tantamount to a violation of one of the main principles of English legislation which was being followed out in India and (b) that the whole thing was based upon the apprehension that Indian companies would not be careful in the matter of the investments. As there was no sufficient data available to the Government to show whether this suspicion was warranted or

not, the Government refused to accept the amendments. They, however, promised that if later on from the returns it was found that the suspicion was well founded, the question would be considered.

102. The matter was considered next in 1924 by the Government of India when they took up the question of Insurance legislation, and the figures available at the time showed that so far as the Indian Life Assurance Companies were concerned a substantial portion of their funds was invested in Government and Trust Securities, and though it was found out that some companies and specially one in the Punjab and one in Bengal had deviated from this practice and had invested most of their funds in doubtful securities, yet having regard to the figures the Government of India was definitely of the opinion that no restrictions were necessary and in the bill which was drafted in 1925 no such provision was made.

103. From an abstract of the figures up to the end of 1933 supplied by the Insurance Department, which is set out below, it appears that at the end of 1933 the total funds of the various Indian companies doing business in fire insurance come up to about Rs. 29,63,29,000 out of which about Rs. 17,70,58,000 is held invested in Government Securities and Rs. 5,02,47,000 in Trust Securities.

Nature of business.	Total funds up to the end of 1933.	Total investments in Trust and Government Securities.
Life and life + miscellaneous.	Rs. 29,63,29,000	Rs. Government securities . 17,70,58,000 Trust securities . 5,02,47,000

It is difficult to say with certainty what percentage of the total funds of non-life companies is invested in Government and Trust securities but such figures as are available would seem to show that in their case also quite a fair amount is held in Government and Trust securities.

104. In that view the question that has got to be considered is as to whether or not any statutory provision restricting the nature of the investments of the funds should be made.

105. It is said by those who are supporting the proposal for the insertion of a statutory provision that if what appears from the statements is true then no harm would result if a provision was made, that all insurance companies must invest and keep invested a substantial portion of its funds in Government securities or in Trust securities and that on the contrary it would prevent companies from going wrong, and would serve really as a protective provision for the benefit of the policy holders.

106. The case for the oppositionists on the other hand is firstly that as the result of 20 years working it has been sufficiently demonstrated that there is no warrant for the suspicion which was voiced in the Council in 1912 and that no case for the imposition of any restriction has been made out. It is also pointed out that this system has worked very satisfactorily in England and there is no ground for any statutory interference.

107. The analogy of the absence of any such provision in the English Statute is in my view of no assistance firstly because the conditions in England and in India are entirely different. In my opinion, the figures available both in India and in England show clearly that companies carrying on business in insurance admittedly are of opinion that a substantial portion of the funds should be kept invested in what are loosely called "Gilt-edged securities". There is no doubt that it would always be safe and desirable to keep a substantial portion of the funds in Government and Trust Securities both from the point of view of security and safety and from the point of view of easy convertibility. The desirability of investment of a portion of the funds in gilt-edged securities or what is tantamount to the same thing in India viz., approved Indian securities, was also pointed out by the Central Banking Enquiry Committee in paragraph 660 of their report.

108. Although I am not prepared to say that a strong case has been made out of legislative interference, it would in my opinion be harmless if the statute provides that a reasonable portion of the funds of every insurance company should be kept invested in gilt-edged Indian securities.

109. The only question is the question of the percentage. Taking the cue from the figures available in respect of the existing investments it would be quite safe in my opinion if it is provided in the statute that every Indian company should keep at least 40 per cent. of its assets invested in Government securities, and at least 20 per cent. in Trust securities as defined in the Indian Trusts Act.

110. I would therefore recommend that provisions should be made in the statute to the following effect:—

- (a) That all Indian companies should invest at least 40 per cent. of their funds in Government of India securities and at least 20 per cent. in securities as mentioned in section 20 of the Indian Trust Act.
- (b) That the companies would have freedom of investment as to the balance, subject, however, to the following general restrictions, viz.—
  - (1) As recommended by the Clauson Committee in England, that no portion of the funds shall be invested without the leave of the court directly or indirectly in any share or interest in any insurance business whether carried on within British India or elsewhere.
  - (2) That no portion of the funds of the company should be given as loans to the directors, manager or officers or managing agent of the company, and where the insurance company is a firm, to any partner of such firm except on the security of policies held in the company.
  - (3) That no loans shall be given to any company or firm in which any director or officer is directly or indirectly concerned.
- (c) That no portion of the funds of a company may be kept in the name of any officer of the company and that the

funds or investments of every company and that the funds or investments of every company shall be kept in its corporate name.

- (d) In order to ensure the due observance of these provisions, I would add a penal clause which should provide that if the assets of a company are dealt with in breach of the restrictions stated above, all directors and other officers of the company who are responsible for the same, shall be liable to make good to the company any loss which it might suffer, as the result of such dealing besides being liable to pay a heavy fine.

111. In my opinion, these recommendations will be quite sufficient to preserve a substantial portion of the assets of every company and to keep it in a condition which will enable it to be readily resorted to if the occasion for doing so arises.

112. *Books to be kept.*—The next thing to be considered is the question of the books and accounts to be kept by every company. The existing Act does not make any provision as to the books which have to be kept by every company. In my opinion specific provisions should be made as to the books to be kept by every insurance company in respect of each class of business conducted by it.

113. Having regard to the nature of the business carried on by insurance companies it is desirable that the company should keep such books as will show—

- (1) The details of the policies in force;
- (2) Income and the expenditure;
- (3) The statutory funds available in respect of each class of business;
- (4) The claims made and those which have been paid and those that are outstanding.

Every company should therefore keep the following books in respect of each class of business transacted by it at its principal place of business *vis.* :—

(A) A *Register of policies* containing the following particulars :—

- (i) The dates when the policies are effected;
- (ii) The name and address of the policy holders;
- (iii) The extent and nature of the risk insured;
- (iv) Details of any assignment or transfer of the policy, including the date of the transfer or assignment and the name and address of the transferee or assignee;
- (v) The name of the person nominated as the beneficiary.

(B) *Register of claims* giving the following particulars, *vis.* :—

- (i) The particulars of the policy in respect of which the claim is made;
- (ii) The name and address of the claimant;
- (iii) The date of payment of the claim.

(C) *Register of funds and investments*, showing particulars of the funds maintained in respect of each class of business and the investments made in respect thereof.

(D) *Cash and Ledger Books* in which shall be recorded the details of the income and the expenditure.

(E) In the case of companies which are not incorporated under the Indian Companies Act, a register containing the names and addresses of the proprietors.

In order to ensure the keeping of these books I would also provide as has been done in Canada that every company which fails or neglects to keep these books will incur a penalty in the shape of a daily fine. I would also recommend (as I have done in the case of ordinary trading concerns governed by the Indian Companies Act) that the auditors when auditing the Balance Sheets, etc., must in their certificates specially report if proper books as mentioned above have been properly kept by the company.

114. *Accounts and Statements.*—Having disposed of the question of the books to be kept by every company, I would next pass on to consider the question of the accounts to be kept and the statements to be submitted by every company.

115. *Separate Accounts for separate classes of business.*—I have already recommended that where a company carries on business in more than one class of insurance, separate funds should be maintained. I have also recommended that the investments of the respective funds should also be kept separate. As a necessary corollary it is necessary that the Act should provide that separate accounts should also be kept in respect of each class of business done by the company. The same view was also taken by the Government of India in the draft bill which was prepared in 1925 and a provision was made for the maintenance of separate accounts for each separate class of business. I would therefore recommend that in the Act a specific provision should be made accordingly for keeping of separate accounts for each separate class of business carried on by a company.

116. I have already stated that the policy of the Legislature with regard to insurance companies has been one of minimum interference with maximum publicity and I have recommended a continuance of the same policy. The policy of the Legislature accordingly must be to insist upon the greatest measure of publicity being given to the details of the working of the company and its financial condition so that the public can from the documents disclosed form a correct opinion as to the position of the company.

117. At the present time the provisions with regard to companies carrying on business in life insurance are that every such company has at the expiration of each financial year to prepare the following documents, *vis.*—

- (1) A Revenue Account;
- (2) A Profit and Loss Account;
- (3) A Balance Sheet;
- (4) A Statement containing the names of the persons in charge of the management;

- (5) A Statement of the new policies issued, giving details of the number of policies, the sum assured and the amount received by way of premium;
- (6) An Abstract showing the total number of policies in existence at the end of each year, the sum assured, and the premium income from such policies;
- (7) A Statement of claims, showing the amount of claims paid in the course of the year to claimants in India and claimants outside India; and
- (8) A Statement disclosing a summary of the Indian assets in the shape of investments in Government securities and in other Indian concerns.

This is more or less sufficient for the life insurance companies and subject to certain modifications which I will indicate hereafter, it should be continued.

118. The difficulty comes in which one has to consider the case of companies carrying on business in any other class of insurance. In the case of these companies the requirements as at present are much less stringent. They have only got to file copies of such reports on the affairs of the company, balance sheets revenue accounts, and profit and loss account, which they have submitted to their shareholders or policy holders. The result of the qualification so appended to the provisions for filing of these documents is that these companies can, if they so like, successfully withhold from the Government material particulars by so framing their constitution that no particulars are furnishable to the shareholders or to the policy holders.

119. As a matter of fact cases have already occurred in which companies have successfully withheld material particulars from the Government in this way. One of the cases which have occurred is that of the Clive Insurance Company, Limited, of which Messrs. Gillanders Arbuthnot and Company are the managing agents. They have successfully evaded complying with the requisitions of the Government for the filing of a revenue account and a statement in respect of its premium income and claims paid on the plea that under their constitution they have not to disclose any such statement to their shareholders (see in this connection File No. 221-I-8). This shows that in any event the statute should provide that the filing of such documents as may be prescribed under the Act for purposes of publicity should be made independent of any such contingency.

120. Having regard to my recommendations that the Act should henceforth apply to all classes of insurance business with the exception of only provident insurance business, it is necessary to make provisions with regard to all classes of business. As I have said the provisions now existing with regard to life insurance companies are, in my opinion, fairly exhaustive and accepting that as the basis I would recommend that every company carrying on business in British India should have the following documents prepared in respect of each class of business done by them, *vis.*—

- (1) Revenue Account, disclosing full particulars of the income and expenditure,

- (2) Balance Sheet, giving full particulars of the assets and liabilities.
- (3) Profit and Loss Account.
- (4) A statement of assets held (a) in British India, and (b) outside British India, giving details of the investments including holdings in Government securities, shares and debentures and other movable and immovable properties.
- (5) Statement of new policies effected during the year, giving details of the number of policies effected in India and outside India and the amounts thereof, the sum assured and the gross premium income received therefore stating separately (a) the amount of renewal premiums, (b) the amounts received by way of single premiums on policies in respect of which according to the terms of the contract only one premium is payable, and (c) the amount paid for reinsurance during the year.
- (6) Statement showing the total number of policies in force at the end of the year, the sum assured and the total premium received.
- (7) Statement of claims made, paid and outstanding showing separately the amount paid to claimants in India and to claimants outside India, and claims kept outstanding, as also sums received from reinsurance.
- (8) A statement showing the names of the directors and/or managers during the period.
- (9) A report by the proprietors or the directors of the company on the affairs of the company in respect of the financial year to which the balance sheet and accounts relate.
- (10) A statement of the share capital in such form as may be prescribed.

121. I will now shortly indicate some of the particulars which these various documents must contain.

(A) *Revenue Accounts.*—The revenue account must show on one side the gross income of the company giving particulars of the amounts received from premiums, interest, dividends, rents and other sources, and on the other side (i) the expenses of management, specifying separately the commissions as also the costs of reinsurance in cases of business other than life insurance specifying separately the amount of reinsurance effected with (a) Indian companies and (b) non-Indian companies, (ii) claims under policies and the opening figure of the fund and the closing figure as well and (iii) other payments made, if any, giving particulars of such payments.

122. It shall also show except in the case of Indian life insurance companies (i) the estimated liabilities for outstanding claims and (ii) the reserves for unexpired risks and other additional reserves, if any, disclosing in a note the percentage basis on which such reserve has been calculated. If credit is taken in a Balance Sheet for any sum deducted from the expenses of management relating to any class of business the sum so deducted shall be shown separately in the revenue account of that business.

123. I must in this connection shortly give the reasons which have prompted me to recommend the disclosing separately of the amounts paid for reinsurance effected with (a) Indian and (b) Non-Indian companies. Under the existing statute (The Indian Insurance Companies Act of 1928) every such company has got to show in its revenue account, a statement showing in respect of premium income for which credit is taken in the revenue account, the amount of premiums derived from business effected in India. In cases where reinsurance is effected the figures shown will naturally be the amount of the total premium income less the amount paid for reinsurance. When this question was being discussed in the Council of State, the Hon'ble Sir Pheroze Sethna raised a point, namely, that this is not sufficient inasmuch as the details about reinsurance effected by a company will not be available. He suggested, therefore, that the statute should be amended and every company should be required to show—

- (1) The gross premium income;
- (2) The amount paid for reinsurance effected in India; and
- (3) The amount paid for effecting reinsurance outside India.

Although Sir Pheroze Sethna said that his object in asking for it was that it would show what amount of the total premium income is paid out by way of reinsurance to companies outside India, I have a suspicion, however, that the real idea was to collect figures from which it would be suggested later on that, in view of the drain of Indian money to foreign countries in the shape of premiums paid to companies carrying on business outside India for reinsurance, the legislation should provide that some specified portion of the risk should be reinsured with companies carrying on business in India. Although the suggestion of Sir Pheroze Sethna was not accepted, Sir Geoffrey Corbett, on behalf of the Government, promised to consider the matter and to obtain the necessary figures.

124. It appears from the records of File No. 36-I. (13) of 1931 that certain correspondence took place thereafter between the Government Actuary and certain Insurance Institutes, and from the figures which were collected it appeared that roughly speaking about 43 per cent. of the risk was retained by the insuring offices, 35 per cent. was reassured with companies which carry on business in India and the balance was reassured with other companies. In view of these figures, the matter was not further considered. I have no reasons to believe nor any data at my disposal to justify an assumption that there has been any difference in the principle resorted to by these companies since 1932.

125. Although in the replies which were received from some of the insurance companies, objections were taken to the proposal of Sir Pheroze Sethna being acceded to, I personally have not been able to appreciate the difficulty in the way of these companies, when submitting their statements, disclosing the gross premium income received in India and the amount paid by way of reinsurance with companies operating in India and also with companies

operating outside India, especially as reinsurance is one of the recognised means of distributing the risks of insurance.

126. Taking it at its worst it would mean giving to the extremist agitators in the field of insurance a handle for an agitation that the statute should provide that in the matter of reinsurance a certain percentage must be reinsured with companies carrying on business in British India so as to prevent what is termed a heavy drain of Indian money to foreign countries. The answer to such an agitation, in my opinion, would be very simple. In the first place, it can be stated that the existing figures show that on a percentage basis the percentage of reinsurance effected with Indian companies is at least 50 per cent. more than the reinsurance effected with non-Indian companies, and that consequently there was no need for any legislative interference. In the next place it could be very properly said that it is dangerous for the Legislature to provide any hard and fast rule regarding the compulsory reinsurance of risks with Indian companies. The question would depend upon the financial solvency of the companies carrying on business in India and the Government should not, unless it is prepared to guarantee the solvency of the Indian companies with which reinsurance is to be effected, make any rules regarding the compulsory reinsurance of risks with Indian companies. In the circumstances, I have therefore recommended that every revenue account, other than a life assurance revenue account, should give particulars of the gross premium income and the amounts paid out by way of reinsurance—

- (a) With companies operating in India, and
- (b) with companies operating outside India.

In my opinion refusal to accept the demand would result in a renewal of a purposeless agitation.

127. (B) *Balance Sheet*.—It should disclose full particulars of the assets, including and specifying separately the assets held in British India and in any foreign country by way of deposits or otherwise, and the liabilities. In valuing the assets the investments should be valued at the current market value or at the cost price, whichever, is lower. The assets must specifically show the following items, *viz.*,—

- (i) Amount deposited with the Controller.
- (ii) Indian Government Securities.
- (iii) British Government Securities.
- (iv) Colonial or other Government Securities.
- (v) Municipal or Port Trust Securities.
- (vi) Stocks or shares (specifying the amount, nature of shares, *viz.*, ordinary or preference, and name of company and the liability, if any, in respect of amounts unpaid therein).



- (vii) Debentures or Debenture Stock (giving details as to amount, nature of security and name of company).
- (viii) Immovable properties.
- (ix) Loans (secured) giving amount and nature of security.
- (x) Loans unsecured.
- (xi) Outstanding premiums, interest, dividends and rent.
- (xii) Cash in hand, and
- (xiii) If credit is taken in a Balance Sheet for any sum deducted from the expenses of management relating to any class of business, the sum so deducted shall be shown separately in the revenue account of that business.

Full particulars should be given of the charges and encumbrances on the assets, if any. On the liability side must be shown details of Statutory Fund, the General Reserve, the Depreciation Fund if any and the outstanding claims in respect of policies and the other sums due and payable by the company.

Liberty should be given to companies which carry on business in more than one class of insurance to have one balance sheet, provided that the details with regard to each class of business are separately shown in the balance sheet. Lastly when the balance sheet includes under the heading of assets any sum representing organisation expenses or expenses of extension or the purchase of any business—or goodwill or any bad debts, a statement in respect of such sums shall be appended.

128. I would also recommend the acceptance of a suggestion made in the report of the Clauson Committee to the effect that every balance sheet should be accompanied by the following certificates, namely,—

- (1) A certificate by the directors or other persons required to sign the balance sheet, explaining how the values as shown in the balance sheet have been arrived at and that the assets are in the aggregate fully of the value stated therein less any investment depreciation reserve taken into account.
- (2) A certificate signed by the directors and the other persons required to sign the balance sheet that no part of the assets and the fund in respect of any class of insurance has been directly or indirectly applied in contravention of the provisions of the Act relating to applications and investments of the funds directed to be kept under the statute.
- (3) A certificate by the auditor that he has checked and verified the cash balance and the particulars of various funds and investments.
- (4) In the case of a life insurance company a certificate by a qualified actuary that the assets have been shown in the aggregate at amounts not exceeding their realisable value and that the valuations of reversions and life interests have been correctly made; and

- (5) A certificate by a qualified valuer that the values of the immovable properties have been correctly set out.

129. Every document required to be filed shall be signed by two of the proprietors or directors (according as the company is a proprietary concern or is a company incorporated under the Indian Companies Act) and the manager or other principal officer of the company and shall be certified by the auditor of the company as being correct according to the books of the company.

130. In my opinion it is also desirable to set out specific forms of the Revenue Account, Balance Sheet, Profit and Loss Account and the Statements in respect of each class of business as also the regulations to be observed in the preparation of these statements in the Act in the form of schedules, and I recommend the adoption of the very useful form evolved by the Clauson Committee as contained in the Draft Bill annexed to the Report of the Clauson Committee.

131. *Auditing of Accounts.*—Simultaneously with the provisions recommended in relation to the accounts and statements comes in the question of the auditing of the accounts. The Life Insurance Companies Act provides that the accounts of every life insurance company should be audited at least once a year. This provision should be made applicable to the case of all companies. As to the rights and liabilities of the auditors they ought to be the same as that of auditors of companies governed by the Indian Companies Act for the purpose of the audit and their report. The auditors shall also make a report to the shareholders or members and the policy holders on the accounts and on such other matters as they shall deem necessary. The auditor should have access to all the documents belonging to the company, for the purposes of their audit and their report. Copies of these documents should be sent to the members including policy holder members within a fortnight of the same being filed with the Superintendent.

132. *Time limit for the filing of accounts and statements.*—In my opinion the Act should provide a limit as to the time within which these documents should be filed and a penalty should be prescribed in the event of the time limit not being duly observed. The absence of such a provision in the Life Insurance Companies Act and in Act XX of 1928 has resulted in documents being filed in many cases out of time. Extensions of time have been so generously granted that it is now regarded as being obtainable as a matter of course.

133. The result of irregular filing of documents has naturally resulted in considerable delay in the publication of the Insurance Year Book which enables the public to get a lot of useful information collected at one place with regard to insurance companies. Thus the Insurance Year Book published by the Government Actuary for the year 1934 was published only in October 1935. It is essential that this delay should be done away with and that the Insurance Year Book otherwise known as the Blue Book should be promptly published and contain all informations up to date. This can only be facilitated by setting down a limit of

time within which these accounts and statements should be prepared and filed by the insurance companies and bringing down this limit to a reasonable period of time from the time upto which these accounts have been brought down.

134. In my opinion, so far as Indian companies are concerned, six months' time from the end of the financial year ought to be sufficient to prepare and file these statements. Liberty may be given to the Governor General in Council to give another 3 months in cases where by reason of unforeseen circumstances it cannot be so done. In this connection I desire to mention a suggestion which has been made to the effect that the statute should provide a fixed date for closing of accounts for all companies. In my opinion, it would be extremely convenient if the accounts published could all be brought down to a certain date. It may cause some inconvenience in individual cases but it is certainly desirable in the general interest. It is difficult to suggest any date which will be acceptable to all companies but the 31st December of every year occurs to me as a date which might be acceptable to most companies, and I am inclined to recommend that as the date for the purposes of the statute. In the case of existing companies the Governor General in Council may give up to 3 years time to enable them to adjust their books so that the accounts may be submitted up to the 31st December in every year.

135. In order to ensure the carrying out of these provisions, the Act should in my opinion provide that in cases where the documents are not filed in time, (a) a heavy penalty by way of fine shall be levied on the directors and/or other persons in charge of management, unless sufficient reasons are shown to the satisfaction of the Governor General in Council, and (b) that the non-filing of the documents in time should be a ground for the Superintendent with the previous sanction of the Governor General in Council to apply for the winding up of the company in default.

136. *Actuarial Valuation.*—The provisions in the existing Act regarding actuarial valuation of the assets and liabilities of every life insurance company by a duly qualified actuary should in my opinion, be extended to the case of all companies doing business in insurance in this country, which are susceptible of actuarial valuations. Separate valuations should be made in respect of each class of business carried on by a company. The basis of the valuations has hitherto been left to the actuaries, and as can be expected there is hardly any unanimity between them as regards the basis of valuation. It has been found from the papers that are at my disposal that some actuaries are in the habit of basing their valuations upon a basis which according to the Government Actuary is hardly justified. As can be well appreciated a proper valuation is essentially necessary in the case of insurance companies in order to enable the public to form a proper idea of its financial position and it is essentially necessary that the existing Act which is wholly deficient to stop such malpractices should be properly amended

and for that purpose the following powers be given to the Government Actuary, *vis.* :—

- (i) For power from time to time and if thought necessary to prescribe the basis on which valuations are to be made.
- (ii) For power to require re-valuations to be made by a company where owing to the faulty basis of valuations made of its assets and liabilities or otherwise, he is of the opinion that the valuation does not properly indicate the condition of the company.

Subject to these I have no other recommendations to make about the provision for actuarial valuations beyond saying that the Act should incorporate in a separate Schedule the specification given in the Fifth Schedule of the draft bill annexed to the Report of the Clouston Committee with such formal alterations as may be necessary as the regulations for the preparation of the abstracts of actuaries reports etc., with regard to the different classes of insurance business. I sincerely believe that these recommendations, if substantially given effect to will go a long way to prevent the misapplication of funds.

#### GOVERNMENT CONTROL.

137. I will now proceed to discuss the question of Government control, which as I have indicated requires, in my opinion, considerable stiffening. In my view the matter is so important that I have decided to treat it separately.

138. As I have already stated the amount of Government interference under the existing statute is very small indeed because the existing statute was passed on the model of the English statute and followed the same principle, *vis.*, maximum publicity with minimum control. I have already stated that in my opinion, having regard to the experience gathered from the working of the Act during the last 22 years, it is necessary to substantially increase the amount of Government control although as I have said, I cannot recommend the acceptance of the principle of direct control as prevails in Canada.

139. Under the existing statute the Governor General in Council has powers in certain cases to appoint an Inspector while in certain other cases, he has the powers to apply to Court for the winding up of a company carrying on business in life insurance. Section 37 of the present Act provides for the appointment of Inspectors by the Governor General in Council either on the application of shareholders being in number not less than 1/5th of the total number of shareholders or of 20 or more policy holders holding policies of an aggregate value of not less than Rs. 20,000. There is also a further provision for the appointment by the Government itself of an Inspector in cases where there has been failure on the part of the Life Insurance Company to furnish statements required by the Government under the provisions of the existing section 11 or where such further statement is found to be insufficient or unsatisfactory.

140. There is also a limited power to call for a further statement and to correct inaccuracies under section 11 in cases where the documents deposited under the Act appear to be defective or inaccurate.

141. In my opinion these powers require to be considerably supplemented. The existing powers are not only inadequate but experience has shown that even such provisions as are there cannot be availed of readily as it is not possible at all times to get together the requisite number of shareholders or the requisite number of policy holders with the result that many cases of irregularities and illegalities which might be found out upon a proper scrutiny of the affairs of a company go undetected.

142. These difficulties were observed in England too, and as a result the Assurance Companies Winding up Act of 1933 was passed which enabled the Board of Trade to call for explanations, informations, and production of documents from all companies carrying on insurance business of any kind which appeared to the Board on reasonable grounds to be insolvent. The Act further provides that in cases where the company on being called upon by the Board of Trade to furnish such statements failed to do so within a time to be limited by the notice issued by the Board then the Board could apply to Court for an order for the appointment of the Inspector, and that, in spite of an order made by Court, the company refused to comply with the instructions to furnish the statements, the Board of Trade would be entitled to present a petition for the winding up of the company.

143. In 1935 this Act was further amended by what is known as the Assurance Companies Winding up Act, 1935, and the existing statute of 1933 was amended by enabling the Board of Trade to ask for explanations, informations and accounts in cases which the Board considered necessary for an enquiry as to whether the company was or is insolvent and also authorises the Board where the company fails to comply with its requisitions to make an appointment straight off instead of having to go to Court for such an order with the saving clause that in cases where the company objected to the appointment of an Inspector by the Board the matter would be taken to Court and the company would have the onus thrown on it to show that the appointment of an Inspector in the circumstances could not be reasonably required. The appointment would be sustained if the company failed to discharge the onus. The Act further gives the Inspector to be appointed powers to call for all documents, statements and explanations that might be necessary and also provides for punishing any officers or other employee of the company who would obstruct or be guilty of non-compliance with the requisitions. Under the amending Act the expenses of the Board of Trade in connection with these matters are ordinarily to be paid by the State, but authority is given to the Court if it thinks fit to do so to direct the costs to be paid by the company.

144. In my opinion, it is desirable to amend the existing Indian statute on these lines and to give wider powers to the Government to call for explanations and statements, not limited for the purpose of an enquiry as to whether the company is solvent or insolvent but on any

question arising out of a return, statement, or of any information as the result of which there may be reasonable grounds for believing either that the affairs of the company are not being carried on properly in accordance with the Act or that the company is not able to meet its obligations.

145. The principal difficulty comes in, however, when we find that there is no such institution like the Board of Trade in India which can take charge of these matters. The Government Actuary now looks after these companies but has got no statutory status. The staff which he has now got is wholly insufficient to enable him to exercise any real superintendence over the workings of the very large number of insurance companies carrying on business in India. The exigencies of the case demand that much greater time and attention should be bestowed in order to see that these companies are properly complying with the provisions of the statute. In order that this may be done it is necessary to increase the staff under the Government Actuary and to constitute him a Superintendent as in Canadian Acts with authority to supervise the workings of the insurance companies carrying on business in India.

146. I am convinced that unless and until this is done there is no probability of any effective supervision being exercised over these companies. The duty which the Government owes to the public demands that some such arrangement must be made if it is intended to afford some effective protection to the insuring public, even though such an arrangement may entail some extra expenditure.

147. Some suggestions have been received recommending the establishment of what is called an Insurance Board, and also a separate department called the Insurance Department which is to supervise the workings of all insurance companies in India. In my opinion, it is not necessary to create a new department or to launch into any expensive experiments. The employment of some additional staff (including a responsible assistant) under the Government Actuary would, in my opinion, sufficiently meet the necessities of the case.

148. I will therefore proceed to indicate the provisions which I recommend should be made in the statute. In my opinion, the statute should provide—

- (a) That the Government Actuary be designated also as the Superintendent of Insurance.
- (b) That as such his duties will be to supervise the workings of the insurance companies carrying on business in India.
- (c) That all documents and statements which are required to be filed under the Act, shall be filed with him as such Superintendent.
- (d) That the Superintendent shall be entitled to address any enquiries to any company carrying on business in Insurance and registered under the Act or require any explanation from such a company for the purpose of ascertaining its condition and/or its ability

to meet with its obligations, or in connection with any matter arising out of any return, statement of other document tendered for being filed under the statute, and that it shall be the duty of any company or officer so addressed to reply in writing to such enquiries within the time allowed by the Superintendent.

- (e) That the Superintendent shall have power in connection with such an enquiry to call upon the company and/or its officers, to produce any book or document of the company and to call for statements and to examine on oath the officers, etc.
- (f) That the Superintendent shall have the power, if it appears to him that any return submitted by a company in accordance with the provisions of the Act is incomplete in any particular, incorrect or misleading or does not comply with the requirements of the Act, to decline to accept the return, give directions for the variation thereof, and that it shall be the duty of the company concerned to comply with the directions so given.
- (g) That the Superintendent shall have the power (with the sanction of the Governor General in Council previously obtained) to appoint a duly qualified actuary and/or a duly qualified auditor to inspect the books and documents of the company—
- (i) when he has reasons to believe from the answers given by the company to the requisitions referred to in clauses (a) and (b) or otherwise that the affairs of the company are not being properly carried out or that the interests of the policy holders are in jeopardy or that the company is unable to meet its obligations;
  - (ii) when the company has been in default in carrying out or complying with the provisions of the Act;
  - (iii) or upon requisition being made by shareholders being in number not less than 1/10th of the whole number of persons entitled for the time being in the list of shareholders, or of 10 or more policy holders owning policies of an aggregate value of not less than Rs. 20,000;
- (iv) that there is a reasonable cause to believe that an offence under the Act has been or is likely to be committed by a company or any officer thereof.
- (h) That the result of the enquiry shall be embodied in a report a copy of which shall be kept with the file and another copy sent to the company.
- (i) That the Superintendent shall have power to call upon the company within a time to be limited by him to comply with the terms and conditions which may be imposed by him to remedy the defects (if any) which may be pointed out in the report.
- (j) That the Superintendent shall have power, (a) in case where default is on

the part of the company to comply with his requisitions, or (b) where he is of opinion that the interest of the policy holders demand it to apply with the previous sanction of the Governor General in Council to Court to have the company wound up.

- (k) With the sanction of the Governor General in Council to recover summarily the costs of the investigations if necessary from out of the assets of the company, by summary procedure in Court.

In order to guard against any possible abuse I would give to the companies a right of appeal against the orders of the Superintendent giving directions in the matter of returns or in appointing an Inspector and as in England I would put the onus on the company to show that the action of the Superintendent is in the circumstances wrong. In this connection I would also like to incorporate one suggestion made by the Clause Committee regarding the powers of the Court to direct inspection as contained in clause 21 of the draft bill submitted by them with their report. The said provision authorizes the Court on an application of the Board of Trade to make an order empowering the Board to appoint one or more inspectors to investigate the affairs of the insurance companies in the following cases, namely,—

- (1) where an offence against the Act has been or is likely to be committed by an insurance company; or
- (2) where circumstances exist in which the company may be wound up by the Court.

I would recommend therefore that, apart from the powers given to the Superintendent as indicated above, a provision should be made on the following lines:—

- (1) If, upon an application of the Superintendent, the Court (meaning the High Court) is satisfied that there is reasonable cause to believe—
  - (a) that an offence against the Act has been or is likely to be committed by an insurance company; or
  - (b) that circumstances exist in which the company may be wound up by the Court, the Court may make an order empowering the Superintendent to appoint one or more inspectors to investigate the affairs of the insurance company and to report thereon in such manner as he may direct.
- (2) All expenses of and incidental to an investigation made in pursuance of an order made under this section shall be defrayed by the insurance company and any sum due in respect of such expenses may be recovered by the Superintendent summarily as a civil debt.

#### WINDING UP.

149. Before dealing with certain matters which though of a miscellaneous nature, require careful consideration, I propose to make certain recommendations regarding the provisions for the winding up of insurance companies incorporated in and carrying on business in British

India. Most of the companies now in existence, and which are coming into existence are incorporated under the Indian Companies Act, which provides an elaborate procedure for the winding up of companies. In my opinion, the following matters require to be considered, *vis.* :—

- (a) Additional circumstances under which an insurance company may be wound up by the Court;
- (b) Provisions as to valuation of liabilities;
- (c) The disposal of the surplus assets;
- (d) Special powers of the Court;
- (e) Winding up of subsidiary companies;
- (f) Provisions for partial winding up.

I would suggest that subject to the recommendations made hereafter the procedure provided under the Indian Companies Act should be made applicable to the winding up of Insurance Companies.

150. *Circumstances under which a company can be wound up by a Court.*—Besides what is provided for in the Indian Companies Act, the Act should also provide for a petition being presented by a policy holder or a share-holder, provided he satisfies the Court that there is a *prima facie* case. Provisions must also be made for the Superintendent to present a petition for the winding up of an insurance company in certain cases, *e.g.*, default in complying with the provisions of the Statute and so on. I would therefore recommend that the Act should make it clear that an insurance company may be wound up in the following cases also, *vis.* :—

- (1) On a petition presented by any member (be he a shareholder or a policy holder) with the leave of the Court previously obtained, with a provision that such leave shall not be granted until a *prima facie* case is made out to the satisfaction of the Court.
- (2) On the application of the Superintendent (with the previous sanction of the Governor General in Council) in the following events, namely,—
  - (i) If default is made in depositing or keeping deposited the sums required to be deposited under the Act;
  - (ii) If default is made in complying with any other requirement of the Act and the same is continued for a period of one month after notice of the default has been given to the company by the Superintendent;
  - (iii) If on a consideration of the documents deposited under the provisions of the Act or from the report of an inspector appointed under the Act it appears that the company is insolvent;
  - (iv) where it appears to the Governor General in Council that the continuance of the company would be prejudicial to the interests of the policy holders.

151. *Circumstances under which an insurance company may be wound up voluntarily.*—Similarly it should be provided that an insurance

company may be wound up voluntarily in the following circumstances, *vis.* :—

- (i) If it is a company incorporated under the Indian Companies Act then in the circumstances under which a company can be wound up voluntarily under the provisions of the said Act.
- (ii) If it is a proprietary concern then on a resolution being passed by the majority of the proprietors that the company should be wound up voluntarily.

152. *Powers and duties of the Liquidator.*—I suggest that it should be provided in the statute that the Liquidator should have the same powers and be subject to the same duties as a Liquidator under the Indian Companies Act. As to the procedure to be followed in the winding up of insurance companies I suggest that it should be the same as that laid down under the Indian Companies Act subject to certain special provisions regarding the valuation of the liabilities, etc., which are indicated hereafter.

153. *Valuation of liabilities.*—In the matter of liabilities the liquidator should in ascertaining the same observe the rules laid down by the Clauson Committee in their report as to valuations of liabilities. The provisions should be on a line with those contained in section 16 of the draft bill submitted with their report and the rules enumerated in Schedule VII of the said draft bill, as far as practicable. Notice should also be given by the liquidator (subject to any directions which may be given by the Court) to all persons who according to the books of the company would appear to be entitled to or interested in a policy granted by the company of the value of the liabilities to each of them as ascertained in valuing the liabilities and a reasonable time should be given to them to dispute such valuation in Court.

154. *Disposal of the surplus assets.*—Regarding the disposal of the surplus the recommendations of the Clauson Committee (which relate to all kinds of insurance business) should be adopted in the Indian Statute and that the provisions of section 17 of the draft bill annexed by the Clauson Committee in the report should be followed as far as practicable.

155. *Special powers of the Court.*—Apart from the powers which the Court possesses under the Indian Companies Act in matters of winding up of companies, it is necessary, having regard to the special nature of insurance business, to give special powers to the Court to reduce the amounts of the insurance contracts entered into by the company which is being wound up upon just and equitable terms and conditions generally, and as an alternative to the winding up of the company where the company is a life insurance company in order to give such a company a chance of continuing its business where it is possible to do so by reducing the contracts. In other words, I would suggest the inclusion of a provision more or less on the following lines, *vis.* :—

- (a) The Court, in the case of a life insurance company which has been proved to be insolvent, may, if it thinks fit, in place of making a winding up order, reduce the amount of the contracts of the life insurance company upon such

terms and subject to such conditions as it thinks just.

- (b) Where an insurance company is in liquidation, the Court may make an order reducing the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks just.

The Act should also provide that an application for such an order may be made either by (a) the liquidator, or (b) by any person whether a member or a policy holder who is interested in the company, and that any person likely to be affected by such an order will be entitled to be heard on the hearing of such an application.

156. *Winding up of subsidiary companies.*—While on this subject, I would like to say that it is desirable, in my opinion, to provide also for the winding up of subsidiary companies. The matter was dealt with with regard to life insurance companies in the Indian Life Assurance Companies Act of 1912 in section 23 of the Act. The Government of India decided to make similar provisions with regard to all companies in the proposed Bill which was drawn up and introduced in 1925. The provisions in the said Bill of 1925 ran as follows:—

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first-mentioned company (in this section referred to as the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company), then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.
- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
- (4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the

principal company to which it is alleged to be subsidiary, the Court shall not direct the subsidiary company to be wound up unless after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.

- (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where a company stands in the relation of a principal company to one insurance company, and in the relation of a subsidiary company to some other insurance company, or where there are several insurance companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

I am of the opinion that the said provisions ought to be adopted in the new Act and I would recommend accordingly.

157. *Schemes for partial winding up of Insurance Companies.*—A very useful suggestion has been made by the Clauson Committee in their report regarding the partial winding up of insurance companies. It has often happened that the affairs of an insurance company which carries on business in more than one class of insurance is badly affected by losses in one particular class and it has been found that it is quite possible to carry on the business of that company in particular classes while it would be desirable to wind up the business relating to others. There is no provision in the existing Act for partial winding up and this difficulty was noticed by the Clauson Committee who made a very excellent suggestion for avoiding difficulties of this nature and to provide for winding up of portions of a company's business.

158. I would therefore recommend the adoption of the following provisions based on the lines of the suggestions of the Clauson Committee:—

- (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up, but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for the confirmation of the Court in accordance with the provisions of this Act.
- (2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities

of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy owners in respect of their policies, and for the manner of winding up any of the affairs of the company which are proposed to be wound up, and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

- (3) The provisions of this Act relating to the valuation of liabilities of Insurance companies in liquidation and bankruptcy, and to the application of surplus assets of statutory funds in liquidation or bankruptcy, shall apply in the winding up of any part of the affairs of a Company in accordance with a scheme under this section in like manner as they apply in the winding up of an insurance company.
- (4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall, as respects the alteration, have effect as if it were an order confirmed under the Indian Companies Act.

158-A. *Transfers and Amalgamations.*—I next come to the question of the provisions which should be inserted in the Act in relation to amalgamations or transfers of companies. In the Indian Life Assurance Companies Act, sections 21 and 22 lay down provisions in this behalf. What is essentially necessary is that no transfer or amalgamation should be allowed except with the sanction of the Court and that, before any such sanction is granted, reasonable opportunities must be given not only to the members but also to the policy holders to come before the Court and make their submissions, if any. In the Bill of 1925 provisions were made on this subject in sections 40, 41, 42 and 43. I have carefully gone into those provisions and in my opinion they ought to be adopted in the Act. I therefore recommend that, so far as transfers and amalgamations are concerned, the new Act should adopt the provisions of sections 40—43 of the Bill of 1925 which run in these terms:—

“40. *Amalgamation or transfer.*—No life insurance company constituted in British India shall amalgamate with another insurance company, or transfer its life insurance business or any portion thereof to another insurance company, unless the amalgamation or transfer is sanctioned by the Court.

41. (1) *Statements required before amalgamation.*—Before an application is made to the Court to sanction the amalgamation of two or more insurance companies of which any one is a life insurance company constituted in British India, or the transfer of any life insurance business of one such insurance company to another insurance company, notice of the intention to make the application, together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the

reason therefor, shall, at least two months before the application is made, be sent to the Governor General in Council and to every holder of a life policy of each company who is resident in British India, and the following documents shall be furnished to the Governor General in Council, and shall during the two months aforesaid be kept open for the inspection of the members and policy holders at the principal and branch offices or agencies of the insurance companies concerned, namely:—

- (a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;
- (b) certified copies of statements of the assets and liabilities of the insurance companies concerned in such amalgamation or transfer; and
- (c) certified copies of the actuarial or other reports, including a report by an independent actuary, on the proposed amalgamation or transfer.

(2) A notice required by sub-section (1) to be sent to a policy holder may be addressed and sent to the person to whom the notices respecting the policy are usually sent, and any notice so addressed and sent shall be deemed to be noticed to the holder of the policy.

42. *Sanction of amalgamation by Court.*—When an application is made to the Court to sanction the amalgamation of two or more insurance companies of which any one is a life insurance company constituted in British India, or the transfer of any life insurance business of one such insurance company to another insurance company, the Court shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct and, after hearing the directors or other persons whom it considers entitled to be heard, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

43. *Statements required after amalgamation.*—Where an amalgamation takes place between any insurance companies or where any insurance business of one insurance company is transferred to another, the insurance company formed by the amalgamation or the insurance company, as the case may be, shall within one month from the date of the completion of the amalgamation or transfer, furnish to the Governor General in Council—

- (a) a certified copy of the agreement or deed under which the amalgamation or transfer has been effected; and
- (b) a declaration under the hand of the chairman and the principal officer of each company that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.”

MISCELLANEOUS MATTERS.

150. I will now proceed to deal with some other matters of a miscellaneous nature which, in my opinion, should be considered. Some of these matters have arisen in the course of the working of the Act mainly in connection with life insurance companies during the last 22 years, while others have been raised by insurance companies from time to time during the said period. The questions which require to be so considered may be thus enumerated:—

- (i) The question of representation of policy holders in the management.
- (ii) The question of expenses properly incurable by a company.
- (iii) Questions relating to the assignment of policies.
- (iv) Questions relating to the power of nominations by policy holders.
- (v) Provisions as to conditions on fulfilment of which claims arising out of Life Insurance policies on the death of the insured are to be paid.
- (vi) Provisions for enabling companies to deposit monies in the Court in cases where complete discharge cannot be had.

160. *Representation of policy holders on the management.*—It has been suggested from a long time past that although the shareholders are the persons who bring into existence the company, yet the company thrives really on the monies received from the policy holders. Thus it is pointed out that the assets of a life insurance company consist principally of monies paid in by the policy holders and that in fairness to the policy holders, who are vitally interested in the assets, they should be allowed to have some voice in the management.

161. To my mind, there is a good deal of force in what has been said and I am of the opinion that the statute should make some provisions in this direction at least in the case of life insurance companies.

162. The advisability of such a course has already been recognised in Canada where in the case of a life company it has been provided that every person whose life is insured under a participating policy for over a certain sum of money will be entitled to be treated as a member of the company and will be entitled to vote at all general meetings of the company.

163. The Canadian Act further provides for a division of the directorate into two categories, namely, shareholders' directors and policy holders' directors and provides that at least 1/3rd of the total number of directors should be elected from amongst the policy holders.

164. In my opinion, provisions on similar lines should be made in the Indian Statute and I would accordingly recommend that the statute should make provisions on the following lines, namely,

- (1) All policy holders for sums exceeding Rs. 2,500 whose policies have been in existence for at least 3 years and on whose policies no premiums are due and who are not shareholders of the company shall be treated as members

of the company and shall be entitled as such to attend the meetings of the company.

- (2) That every member shall have one vote each. Every member will be entitled to vote either in person or by proxy, provided however that no member shall appoint any person who is not a member of his class as a proxy.
- (3) That every life insurance company shall have a Board of Directors in whom will be vested the rights of management of the concern.
- (4) That out of the total number of directors not more than 2/3rds of the number will be elected by the shareholders (or proprietors) from amongst themselves, while the rest (not being less than 1/3rd of the total number should be elected by policy holders from amongst the policy holder members). The directors appointed from the shareholders being called the shareholder directors, while the directors appointed from the policy holders being called the policy holder directors. (That policy holder members shall not have any right to vote on the question of the appointment of shareholder directors.) Casual vacancies occurring in the Board of Directors shall be filled up for the remainder of the term by the directors from amongst the qualified shareholders or policy holders as the case may be.
- (5) That every life insurance company shall hold a general meeting at least once a year at which the Balance Sheets, Revenue Account and Profit and Loss Account as also the statements required to be filed shall be placed for discussion before being filed. The procedure to be adopted at such meetings and the notice to be given for the holding thereof shall be the same as that provided in the Indian Companies Act.

In my opinion, this would give the policy holders a substantial voice in the management.

165. The considerations which have weighed with me in making these recommendations for companies carrying on business in Life Insurance, do not really exist in the case of companies carrying on other branches of insurance business, and I am unable therefore to make any such recommendations in the case of such companies.

166. *Fixing of an Expense Ratio.*—It has been urged from many sources that in view of the reckless commissions paid and the expenses incurred in connection with the procurement of new business by some of the companies the Legislature should fix the limits of the expenses which a company may incur in connection with its new business. It has also been said that such a limitation should be imposed in order to prevent unfair competition. It has been said that the figures relating to expenses, if examined carefully, would show that there are many life insurance companies which procure business by allowing to its agents most extravagant terms which often include



payments equal to 100 per cent. of the first year's premium, and sometimes 10 per cent. of the renewals.

167. It is obvious that reckless extravagant payments under the heading of expenses should be avoided, but the matter is one really for internal management. The amount of expenses would vary with the special circumstances of each company, and it would be difficult to prescribe any basis which would suffice to meet the necessities of every case. From this point of view it would be injudicious for the Government to step in and to prescribe any fixed ratio of expenses in the Statute. In my opinion, the question of expense should be left to the management and the public should be left to form their own judgment about the quality of the management of these companies from the published accounts. I am therefore unable to make any recommendations regarding the imposition of any limit of the expenses in the statute.

168. *Provisions regarding assignment of policies of life insurance.*—The right to moneys due under a policy of life insurance has been regarded as an actionable claim and the matter has been dealt with as such in the Transfer of Property Act. Sections 123, 130 and 135 of the Act govern the case of transfers and assignments of claims in action.

169. Under the said provisions of the Act, except in the Province of the Punjab (where assignments of actionable claims may be made orally) it is necessary to have an instrument in writing for the assignment or transfer of a right under a policy, and having regard to the express provisions of the Act, the doctrines of equitable assignment effected by a mere delivery of the policies (as recognised in the English cases of *Crossley vs. City of Glasgow Life Assurance Company* 4 Ch. D. 121 and *Spencer vs. Clarke* 9 Ch. D. 137) have no application in India [see in this connection *Mulraj Khatau vs. Vishwanath Prabhuram* (37 Bom. 198)]. Nothing however, is said in the statute as to the form of the writing necessary for effecting a valid transfer. The result has been that there is no unanimity of opinion as to what is sufficient to constitute a valid assignment or transfer. Thus in 13 Mad. L. J. 77 (*Kongeti vs. Varada*) the delivery of a bond with a letter to the debtor directing him to pay was held by the Court to amount to an assignment while in the case of *Sethna vs. Hemmingway* reported in 38 Bom. 618 the delivery of a banker's receipt with a letter to the Bank directing payment was held to be only a pay order.

170. In England to obviate such difficulties in the case of assignments of policies the Legislature has in the Policies of Assurance Act, 1867, specified the form which or the equivalent of which is to be used. In my opinion, a similar provision should be made in India to obviate difficulties.

171. Then again under the Transfer of Property Act, in order to bind the company express notice of a transfer has to be given. Many cases occur in which notices are not given to the insurance companies until after the death of the assured with the result that the insurance companies in these cases are often put not only to expenses but also to difficulties, specially if there is more than one claimant and the assignment or transfer is challenged.

172. In order to prevent the possibility of any such difficulty in matters relating to or arising out of assignment of policies, the Policies of Assurance Act has provided that no assignee or other person claiming under him will be entitled to sue the company until a written notice of that date and the purport of the assignment has been given to the company. To ensure promptness in the matter of these notices, the Act has also provided that the date on which notice of assignment is received by the company will regulate the priority as between the various assignees. Representations have been made to the Government of India by a very large number of Life Insurance Companies doing business in India that provisions similar to those contained in the Policies of Assurance Act of 1867 should be made in India.

173. Though I am unable to recommend the adoption of the English provisions in their entirety, in my opinion, for the proper protection of the insurance companies as also the assignees in this country, some provisions on the lines of the English Act should be introduced.

173A. After careful consideration, I recommend that the Act should make provisions on more or less the following lines:—

- (1) That a transfer or an assignment of a policy of life insurance absolutely by way of gift or otherwise or for the purpose of securing an existing or a future debt must be made either by endorsing on the back of the policy or by a separate instrument to be executed by the insured in the words or to the following effect, *viz.*:—

I, A. B. of \_\_\_\_\_ in consideration of \_\_\_\_\_ do hereby assign unto C. D. of \_\_\_\_\_ his Executors, Administrators and Assignees the (within) policy of assurance granted, etc., (here describe the policy).  
In witness, etc.

- (2) That every such endorsement or instrument must be signed by the transferor, assignor or his duly authorised agent and must be attested by at least one witness.
- (3) That the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument but shall not confer on the transferee or assignee therein named, his executors, administrators or assignees, any right to sue for the amount of such policy or the monies assured or secured thereby until a written notice of the transfer or assignment shall have been given to the company liable under such policy at their principal place of business.
- (4) That every company to whom notice shall have been given of any transfer or assignment of any policy under which they are liable shall enter the fact thereof in the register of policies to be kept in terms of the Act, wherein shall be mentioned the date of the assignment and the name of the transferee or assignee.

- (5) That every transferee or assignee giving notice to a company of the assignment shall be entitled upon payment of a fee, not exceeding Re. 1, to an acknowledgment in writing from the company of the receipt of such notice and every such written acknowledgment shall be conclusive evidence as against the company of their having duly received the notice to which such acknowledgment relates.
- (6) That upon notice being given of a transfer, the insurer will be entitled to recognise the transferee or the assignee as the only person entitled to the benefits under the policy.
- (7) That the assignee or transferee shall be subject to all the liabilities and equities to which the policy holder was subject to at the date of the assignment.
- (8) That any person who becomes entitled by assignment or other derivative title to a policy of life assurance shall be at liberty to sue or institute proceedings for the recovery thereof in his own name to recover such monies without obtaining the consent of the assignor to such suit or proceeding and without making him a party thereto.
- (9) That a payment *bona fide* made in respect of any policy by the company before the date on which such notice shall have been received shall be valid as against the transferee or assignee giving such notice as completely as if there had been no assignment.

174. *Right of Nomination.*—The question as to whether a right to nominate person in a policy should be given to the policy holders with provisions which will enable the nominees as such to receive the moneys due under the policy and give a complete discharge to the insurance companies is an important one and in my view should be discussed now that the law of insurance is likely to be reconsidered.

175. Before dealing with the question from the point of view as to whether any provision should be made in the statute, I would like to indicate the position of nominees as it is at present.

176. The Life Assurance Companies Act of 1912 does not deal with the question at all. The matter is governed by the General Law of the land, as in England. Before 1892 there was a diversity in opinion even in England as to whether a person nominated in a policy to be a beneficiary is entitled to payment of the insurance money and is in a position to give a complete discharge. The decisions were conflicting but the matter was for all practical purposes set at rest by a decision of the court of appeal in the case of *Cleaver vs. Mutual Reserve Fund Life Association* reported in (1892) I. Q. B. at p. 147 in which it was held that such a person could not bring a suit to enforce the payment on the ground that he is no party to the contract of insurance, and as such he cannot enforce payment in a Court of Law.

177. In India, although having regard to the definition of "consideration" as given in the Contract Act, the matter may be looked at from a different point of view, yet the tendency of the courts has been to take a view similar to that prevailing in England.

178. Thus in a recent decision of the Calcutta High Court Chief Justice Rankin and Mr. Justice Ghosh by their judgment reported in 32 Cal. W. Notes p. 634, held after reviewing the Indian authorities and relying upon the English decision reported in (1892) I. Q. B. 147, that the fact that a person is named in the insurance policy as a nominee does not give him any right to institute a suit for the recovery of the money. They held that the fact of his nomination did not constitute the relationship of a trustee so far as he and the insurance company were concerned, and that being a stranger to the contract he could not sue.

179. The effect of the Indian decisions therefore would still seem to show that a person though named in a policy as the beneficiary is still in law incompetent to sue or give a discharge for the monies although the policy might show the clearest intention on the part of the insured to create them his beneficiaries in respect of the policy.

180. The effect of decisions similar to that noted above, was to create great hardships in cases where nominations were made in favour of the wife and/or the children and as the result of representations made to the Government exceptions were made in the case of nominations made in favour of the wife and/or children of the policy holder. The Married Woman's Property Act of 1874 was amended in 1923 and as the result of such amendment a trust will now be deemed to have been created for the benefit of the wife or children where they are named as beneficiaries in the policy. The money is also deemed not to form any part of the estate of the policy holder. Under the Act the moneys are payable either to Trustees duly appointed to receive the same or if no such Trustees have been appointed then to the official Trustee of the Province who will hold it for the beneficiaries named in the policy. No estate duty is payable because it is not deemed to be a part of the estate of the policy holder. Now even in such a case the wife or the children would be entitled to maintain a suit against the insurance company in the event of non-payment. The person competent to sue would be the Trustee appointed to receive the moneys or if there is no such Trustee appointed, then the official Trustee—(see *Balamba vs. Krishnaya* 37 Mad. 483 F. B.). The result is that if for any reason the Trustee appointed or the official Trustee is unwilling to take any action, the beneficiary is driven to most circuitous proceedings. A suit for the administration of the Trust has to be filed and the appointment of a receiver is to be procured for the purpose of filing a suit to recover the moneys from the insurance company. These are needless complications and, in my opinion, the conditions of modern society demand that the disabilities under which the nominees are now placed should be removed.

181. On general principles it seems difficult to resist (a) the claim of policy holders to have the right to nominate persons, be they his wife

or his children or any other third party as beneficiaries in the policy, and (b) the claim of persons so nominated to realise the moneys due under the policy and to give a good discharge therefor to the insurance company.

182. It is difficult to understand why a policy holder should not be allowed in law to nominate persons in the policy as beneficiaries who would be entitled to realise the moneys due under the policy and to give a discharge therefor. Under the general law of the land, every person is entitled to dispose of his own personal property during his life time, and even after his death by means of a will (I am for the time being ignoring the Hindu mitakshara families). It is therefore difficult to understand why a policy holder who as such can assign his policy as part of his personal property to any person he likes during his life time and bequeath it to any person he by his will, should not be able to name in the policy persons who would be entitled to receive the money due under the policy when it matures.

183. The real effect of allowing a right of nomination to policy holders on the lines indicated above would be that instead of being forced to execute an assignment (which after it is once executed is irrevocable except with the consent of the assignee), they would have the right to name in the policy the person or persons to whom the moneys due should be paid unless in the meantime and before the policy matures they have by their own act given a contrary direction by cancelling the nomination or by effecting an assignment.

184. As for the insurance companies, so long as they get a proper discharge, it does not matter as to whether the money is paid according to the desire of the policy holder to his wife, children or to any other relation or to an absolute third party.

185. From this point of view I cannot see why a right of nomination should not be given to the policy holders. The right of nomination has already been recognized in the case of Co-operative Credit Societies where it is given by rules framed under section 43 of the Co-operative Credit Societies Act and also in the case of Provident Insurance Societies by rules framed under section 24 in most of the provinces and there is no reason why it should not be given under the Act.

186. The only question which needs some consideration is the question as to how such a right is going to affect the rights of a policy holder who happens to be a member of a joint Hindu mitakshara family. The question as to how and to whom payment should be made where the insured happens to be a coparcener of a joint mitakshara family has been always a difficult one to solve. The peculiar doctrines of the Mitakshara School of Hindu Law, make the problem a really difficult and complex one. Under the Mitakshara Law it can generally be said that properties acquired by a member must as long as the family continues joint be treated as joint family properties over which the acquiring member would have no disposing power. On the death of any one member his right, title or interest in the joint property passes on to the surviving coparceners who become entitled

to it on the principles of survivorship and a payment could therefore be made only to the *kurta* or the managing member of the family.

187. The question as to whether the moneys payable under a life insurance policy should be treated always as part of the joint property or not has been considered in various cases in this country and unfortunately for all concerned the decisions have not been unanimous. Thus in a case reported in 13 Mad. L. J. at p. 75 and in the case reported in 29 Mad. 121 the Court proceeded on the principle that notwithstanding the fact that the insured was a member of an undivided Hindu family, the policy money is to be treated as *prima facie* the self-acquired separate property of the deceased, while in other cases the courts have started with the presumption that it is joint family property. (See for instance 36 All. 380, 38 All. 474, 26 Cwn. 499). The effect of these conflicting decision has been causing a good deal of embarrassment to the insurance companies and representations have been made from time to time that the Legislature should make some provisions which will avoid all considerations of the personal laws of the assured.

188. The question is undoubtedly a difficult one, but in my view the insurance companies are entitled to say that they are not concerned with the complications of a joint family, and in view of the personal contract with them they are entitled to proceed on the basis that it is the separate property of the deceased and is payable to the beneficiaries to be named by him in the policy or in the case of the nominee being dead to his legal representatives. The surviving concerners if they claim this money as joint family property should be made to obtain a declaration to that effect as against the legal representatives. This is the view taken by the Madras High Court in 29 Mad. p. 121 and I recommend the acceptance of this view by the Legislature as I believe this will obviate many difficulties and will enable insurance companies to disburse claims on life policies speedily.

189. It may, however, be said that this will cause a financial loss to the Government inasmuch as no representation or assignment will be necessary. In my opinion, there is really no question of any loss of revenue. Even under the existing law, assignments can be made on the policy itself without payment of any stamp duty by taking out a policy and assigning it by endorsement on it in favour of the person whom it is intended to benefit. The only difference would be that instead of resorting to a round about procedure the same purpose would be achieved by a simpler process.

190. Then it may be said that it will encourage dishonest persons from causing insurance to be effected on the lives of persons in whom there is no insurable interest. In my view there is no substance in this either. Even at the present moment there is nothing to prevent a person from effecting an insurance on the life of a third party to cover some pecuniary relief. Thus a creditor is entitled in order to cover up his risk to insure the life of his debtor. See for instance *Halford vs. Kymer*, 10 B. & C. 724. Under the general law a policy effected by a man on the life of another in whose life he has no insurable interest is void and it is always

open to an insurance company to dispute a claim on the ground that the contract was void because the insurance was not effected by the insured but was effected by a third party who had no insurable interest in the life of the insured as was done in the case of *Alamal vs. Positive Government Securities Life Assurance Company, Limited*, reported in 23 Bom. 191. This right would still be open and in cases in which it can be proved that the assured was merely a cats paw and the insurance was effected by the nominee who had no insurable interest in the life of the assured, the claim would always be avoided.

191. Then lastly it may be said that there will be difficulties in making payments without ascertaining the proper identity of the nominee. Here again in my view this is no difficulty at all. No insurance company can be found to pay without satisfactory proof of identity being furnished, and suitable rules could always be framed to protect their interest by requiring satisfactory proofs of identity being furnished as a condition precedent.

192. The question as to whether the Legislature should recognise the right of a policy holder to nominate a person or persons who would be entitled to receive the moneys due under a policy of life insurance and give a complete discharge, was raised by Mr. T. V. Seshagiri Iyer, M.L.A., in the year 1921 when he gave notice of his intention to introduce a bill which amongst other things contained a provision to the following effect:—

“An insurance company is bound unless restrained by any lawful order of any Civil Court to pay the amount due on a policy on its maturity to the nominee or nominees described in the policy by the policy holder or the assignee or representatives of such nominee or nominees and a payment made to such nominee or nominees or to the assignee or representative of such nominee or nominees shall be valid and effectual as between the company and all claimants under the policy.”

Opinions were invited by the Government on the provisions of the Bill (see File No. 56-I of 1924) and the replies received will show that a very large section of the public welcomed the idea of the right of nomination being given to policy holders. There was opposition, however, from the Commerce Department and it was stated by the then Actuary that the Bill was unbusinesslike and sketchy and that the provisions had not been properly thought of. It is rather unfortunate, however, that the criticisms were all of a destructive nature and not of a constructive nature. One would have expected that an experienced Actuary like Mr. Mickle instead of resting with a general denunciation of the Bill should have gone on to say what according to him was the remedy for the defects which he had in mind.

193. The matter, however, did not proceed beyond the stage of the Bill, and as far as can be found from the records, it appears that for reasons which are not clear, the Bill was never moved.

194. After carefully examining the pros and cons of the matter, I am decidedly of the view that the advantages far outweigh the possible objections, and I have no hesitation in recommending that proper provisions should be made in the statute to secure the right of nomination of beneficiaries to the policy holders of a life insurance company. The provisions which I recommend the statute should contain may be indicated as follows:—

1. That every insured should be required at the time of effecting a policy to name the person or persons to whom the moneys payable under the policy may be paid on maturity of the policy. The name of such person or persons shall be designated as such in the policy itself and should be recorded in the Register of Policies maintained by the company.
2. That it should be permissible for the policy holder to change the nomination by writing communicated to the company at any time prior to the time when the policy matures. Every such change shall be endorsed on the policy and the company should be authorised to demand a reasonable fee for registering such change.
3. That an assignment or transfer of the policy by the policy holder should have the effect of cancelling the nomination.
4. That if the nominee dies before the policy matures, the amount should become payable to the heirs of the policy holder.
5. That an insurance company should, unless restrained by an order of a Civil Court of competent jurisdiction, pay the amount due on a policy on its maturity to the nominee or nominees designated in the policy by the assured and a payment made to such nominee or nominees shall be valid and effectual as between the company and all claimants under the policy.

195. *Conditions which must be fulfilled before payment of amounts due under life policies can be demanded.*—There has been considerable complaints from the public as to the conditions which are prescribed by insurance companies as conditions precedent for the payment of the claims on policies maturing as the result of the death of an insured. Some of these conditions are not only unreasonable and arbitrary but sometimes meaningless and serve only to obstruct the speedy realisation of the moneys due. I have in the course of my professional career come across many cases in which poor widows and needy dependants legitimately entitled to moneys due under life policies have been kept out of the same for unreasonably long periods of time because of their inability (often for want of funds) to satisfy these arbitrary and unreasonable conditions. While the companies are legitimately entitled to call for satisfactory proofs as to (a) the death of the insured; (b) the identity of the claimant and (c) the right of the claimant to give a good discharge, they are not entitled to

impose arbitrary and unreasonable conditions which must be fulfilled before the moneys due can be paid to the claimants.

196. In my opinion, therefore, provisions should be made in the Statute which while safeguarding the interest of the insurance companies will prevent the imposition of unreasonable and arbitrary conditions by the companies. I would therefore suggest that the statute should provide that before any company can be called upon to pay any sum due under any policy of life insurance payable on death, the claimant must comply with the following things, *viz.*:—

- (i) adduce satisfactory proof of death (making it clear that a claimant producing in support of his claim (i) a certificate of registration of death or where there is no system of registration of deaths in vogue a certificate from some respectable person who attended the cremation or burial and/or (ii) a certificate from the medical attendant (if any) who attended the assured during his last illness, would be deemed in the absence of evidence of fraud to have adduced satisfactory proof of death);
- (ii) produce the policy or otherwise explain satisfactorily the cause of its non-production and give such an indemnity as may reasonably be required;
- (iii) adduce satisfactory proof of age of the insured (unless it has been already furnished);
- (iv) adduce satisfactory proof of his own identity;
- (v) except where the claimant is the nominee named in the policy, or the assignee produce letters of administration or probate, or a succession certificate.

In my view this would be satisfactory not only from the point of view of the claimants but also from the point of view of the insurance companies.

197. While on this subject, I would like to deal with a question which was raised by some of the insurance companies in Calcutta as to whether insurance companies should be forced to pay moneys due under a policy to a person who produces a succession certificate (see File No. 70-I. of 1924). It was pointed out on their behalf that generally the policies provide that payments are to be made to the executors or administrators of the policy holder and it was contended that in those circumstances moneys due under the policy are payable only to the executor or the administrator and to no other person. It was therefore suggested that a person who held a succession certificate would not in these circumstances be entitled to call upon the insurance company to pay to him the moneys due under the policies and they wanted the statute to make this clear.

198. The fallacy, if I may say so, of this contention is firstly that the fact that in the policy the moneys are said to be payable to the executor or administrator, does not create a contract which the executor or administrator can force and secondly that in British India there is the special provision in the Succession Act for the obtaining of a succession certificate which enables the holder thereof to collect and recover a debt due to a deceased and that under the decisions of the High Courts in India, moneys due

under a policy have been treated as debts due to the estate of the deceased and as such have been held to be recoverable by the holder of a succession certificate.

199. In my opinion, it is doubtful, notwithstanding the decisions which have been made in India, if the amount due under a policy which matures only on death can be treated as a debt due to the deceased. Although the matter is not free from doubts, yet on the principle of *stare-decisis* it is desirable that the practice should be maintained, and it is on that basis, that I have recommended that claimants other than nominees or assignees should produce either a probate or a letter of administration or a succession certificate and that payment to any one of them would afford a complete discharge to the company.

200. *Provision for Life Insurance Companies for paying in Court moneys due under a policy in cases where proper discharge cannot be obtained.*—A number of life insurance companies have represented to the Government of India that owing to conflicting claims or want of satisfactory proof of title, insurance companies find themselves frequently in a difficulty in obtaining a satisfactory discharge. Claims which thus remain undisposed of have got to be shown in the Balance Sheets and have got to be carried on at times from year to year. It has therefore been urged that some provision should be made which will enable life insurance companies to get a complete discharge on paying the moneys in respect of such claims into Court.

201. This question though newly ventilated in this country is not a new one at all. As a matter of fact this question had to be considered in England a long time ago. Prior to 1875, the insurance companies in England used to obtain their discharge upon depositing the money payable under a policy into Court under the Trustees Relief Acts. The principle on which such deposits were made was that the companies were in the position of Trustees with regard to the moneys payable under a policy. In 1876, the propriety of this procedure came to be considered by Sir George Jessel, M. R. in the case of *re. Haycock's Policy* (1 Ch. D.-611) and the Master of the Rolls disapproved of this procedure and held that moneys payable by an insurance company in respect of a policy could not under any circumstances be regarded as money held upon a trust. He repeated this view in a later case which was heard by him and is reported in 9 Ch. D.-80. (*Mathew vs. Northern Assurance Company*). As the result of this criticism as to the legality and propriety of this procedure, there came to be enacted The Life Assurance Companies (Payment into Court) Act of 1896 which enabled life insurance companies to obtain a discharge upon paying moneys into Court in cases where their directors certified that a satisfactory discharge cannot otherwise be obtained.

202. In 1932 certain insurance companies and the Indian Life Assurance Offices' Association in Bengal made a representation to the Government of India that an Act like the English Life Assurance Companies (Payment into Court) Act of 1896 which authorises the English insurance companies to pay monies in Court in certain eventualities should be framed

for India. They even went to the length of submitting a draft bill to the Government of India as the basis on which they should proceed.

203. The matter was taken up by the Government of India and the papers were circulated for opinion. (Reference is in this connection made to File No. 375-I., where all the opinions received on the subject are contained).

204. The proposal had mixed reception. The opinions were divided. Some of the opinions supported the proposal on the ground that such a provision was necessary to enable the insurance companies in getting rid of their liabilities quickly while others were of the opinion that the proposal if accepted would give an unlimited discretion to the insurance companies to decide as to whether sufficient discharge could be obtained or not and that the powers so given were likely to be abused and would encourage insurance companies to shirk the responsibilities which they had under the existing law of shifting the title for themselves and that it would result in passing the burden on to the courts. It was also said that it would involve parties in needless expenditure. Thus the Hon'ble the Chief Justice of Bombay expressed himself on the subject as follows:—

"If moneys are paid into Court the Court can only pay out on strict proof of title and strict proof of all deaths, births and marriages involved in the title may cause much expense which could be avoided if the moneys were not in Court. \* \* The Court should be given powers to order the company to pay the costs of obtaining payment out if the Court is of opinion that payment in was not necessary".

205. After carefully considering the matter, I am of opinion that some provision should be made enabling insurance companies in cases of *bona fide* difficulty to pay money into Courts. I cannot recommend the adoption, *en bloc* of the provisions of the English Act, but I would suggest provisions should be made in the statute on the following lines, *viz.*:—

(1) That a life assurance company would be entitled to pay into the High Court of the province (within whose jurisdiction shall be located the place at which the moneys are payable in terms of the policy) moneys payable by the company under a Life Policy in the following case, *viz.*:—

Where by reason of conflicting claims, or insufficiency of proof of title or any other sufficient reason to be specified by the company, the company is of the opinion that no sufficient discharge can otherwise be obtained.

(2) That the amount payable under the policy may be paid into Court on a petition to be filed by the company to be verified by an affidavit of one of the principal officers of the company in which the following particulars must be given:—

(a) the name of the deceased and his address as recorded in the books of the company;

- (b) the date and place of his death;
- (c) the amount due under the policy and a short description thereof;
- (d) the name and address of the claimants; so far as is known to the company;
- (e) a short statement of the notices received by the company from any person claiming an interest in or title to the money assured, the dates when such notices were received and the dates of withdrawal of such notices and the names and addresses of the persons serving such notices;
- (f) short reasons as to why (according to the company) discharge cannot be obtained;
- (g) an undertaking by the company to pay such further sums as may be directed to be paid by the Court for costs, interest or otherwise;
- (h) an undertaking by the company forthwith to transmit to the Registrar of the Court any notice of claim received by the company after the petition with a letter referring to the particulars of the policy and the date of the payment in;
- (i) the place where the company may be served with any petition, summons, or order, or notice of any proceeding relating to the money.

(3) That on the amount being deposited notices would have to be given by the company to the claimants at their respective places of residence of the fact that the moneys payable under the policy have been deposited in Court.

(4) That any person applying to the Court to withdraw the moneys so deposited shall give notice to all persons named in the petition of the company as having any interest in a claim to the moneys and the persons who may have put in claims thereto.

(5) That the Court would have jurisdiction to decide all questions including questions of title and shall in the event of its coming to the conclusion that there were no sufficient reasons for the company paying in the moneys into Court award costs or interest as against the company provided however that no such order for costs or interest will be made without hearing the company and provided always that the company would under no circumstances be entitled to any costs.

(6) That the receipt obtained by the company from the Court on payment of the sum in manner hereinbefore indicated shall be a sufficient discharge to the company for the money so paid subject, however, to the liability to pay any further sums if so directed by the Court.

(7) In order to safeguard any case of hardship, I would suggest that a proviso should be added that no such application for payment would be maintainable:—

(a) before the expiry of six months from the date of the death of the assured (to enable the claimant to satisfy the

insurance company and if necessary to obtain representation in respect of the sum); or

- (b) if notice is received by the company that proceedings to obtain representation are pending in a Court of competent jurisdiction before the proceedings are completed.

(8) That upon any moneys being deposited under this provision the same would be invested in Government Securities bearing interest so that pending the withdrawal the money may earn some interest.

206. *Disposal of unclaimed moneys.*—While on this connection I would also like to deal with a question which has been raised by some of the life insurance companies as to the period of limitation within which a claim has to be made in respect of moneys payable under a policy on the death of the insured. At the present time actions for recoveries of moneys due under Policies payable on death are governed by Art. 86 of the Indian Limitation Act which provides that such actions must be brought within three years of the time when proof of death is furnished to the company. It is said that this is unfair to the insurance companies as there is nothing to prevent proof of death being furnished even a decade after the death of the assured, and it has therefore been suggested that this Article in the Limitation Act should be altered so as to limit the time within which an action should be brought to 3 years from the date of death so that no insurance company would have to carry forward these unadjusted matters for more than 3 years.

207. While it is undesirable that these unadjusted claims should be carried on for any indefinite length of time, it is equally undesirable that after a lapse of 3 years, the insurance companies should be enabled to appropriate to themselves the unpaid claims.

208. I have already recommended that in cases where claims are made, but satisfactory proof of title etc., cannot be made out the insurance companies should be able to pay moneys into Court and get their discharge. In cases, however, where the moneys remain unpaid because of the inability to trace the claimants, there is no justification for allowing the insurance companies to appropriate the moneys to their own use. If at all, the moneys should escheat to the Crown, if within a reasonable length of time no claimants are forthcoming to claim the sum.

209. From this point of view the recommendations which I would make are:—

(1) That Art. 86 be amended so as to limit the time for bringing an action to 3 years from the date of the death of the assured.

(2) That any sum due under any policy (which has matured) to which no claim has been made within 3 years from the date of the death of the assured shall be paid by the insurance company which issued the policy to the Superintendent.

(3) That the company shall when paying in the said sums furnish the Superintendent with the following particulars, *vis.*:—

- (a) The name of the Insured.

(b) The number and description of the Policy.

(c) The name of the beneficiary, if any, named in the Policy.

(d) The attempts which have been made to get into touch with the beneficiaries and the result thereof.

(4) That upon such payment being made, a notice shall be published by the Superintendent in the official Gazette and in such newspapers having circulation in the locality where the assured resided as the Governor General in Council may direct.

(5) That the said sums shall be kept in a Fund to be called the Unclaimed Policy Fund, invested in interest bearing Government Securities.

(6) That if within 20 years from the date of the payment of the money no valid claim to the same is established the moneys shall be forfeited to the Crown.

(7) That upon payment of the moneys to the Superintendent the insurance company shall be discharged from all liability in respect of the policy.

In my view this will do away with the difficulties which the insurance companies now complain of and at the same time give reasonably long time for claims to be formulated. It will also put an end to the unjustified appropriation by the insurance companies of the unclaimed policy monies to themselves.

*General provision for all Indian companies carrying on business in insurance in India.*

210. Apart from the miscellaneous matters discussed there are some matters of general importance to all branches of insurance business which require some consideration. They relate to (a) The question of agents; (b) The question of payment of rebates; (c) Penal provisions necessary for the proper conduct of business and (d) Special provisions regarding liability of directors and offences of insurance companies. I propose to deal with them shortly before I conclude.

211. *Licensing of agents.*—It has been pointed out from various sources that some provision should be made in the statute to protect the public from the vagaries of persons who pose to act as agents of insurance companies. It has been said that various sorts of misrepresentations are made by persons purporting to act as agents for procuring business with the result that innocent persons are very often victimized. It has been therefore suggested that provisions should be made in the statute for:—

(a) licensing of agents;

(b) penalising mis-statements and other deceptive statements made by any persons acting as agents.

212. The employment of agents is always necessary in the case of insurance companies but it is undoubtedly true that at the present time neither the companies nor the Government has any hold over them. At the present time any and every person is in a position to

earn some commission by introducing business to insurance companies specially those which have come into existence recently and have not been able to obtain a firm footing and neither the insurance companies nor the Government has any means of investigating the methods by which some of these agents procure business. For the sake of the insurance companies themselves it is necessary to improvise some means of checking their activities and in my opinion this can only be done by providing a system of licensing. In my opinion so long as the legislation does not interfere with the carrying on of an agent's business in a legitimate way, no harm is likely to be caused by introducing a system of licensing of agents. On the contrary, it is likely to create some check on persons acting as agents and is likely to prevent many abuses like rate cutting etc., which prevails now.

213. After careful consideration I have therefore decided to recommend that provisions should be made in the statute on the following lines, *vis.* :—

(1) That no person shall be allowed to act as agent or otherwise canvass for business on behalf of an insurance company unless he obtains a license from the Governor General in Council to act as such.

(2) That no license shall be issued to any person except on his application countersigned by the company.

(3) That every company shall maintain a register showing the names and addresses of its agents and the dates from which they have been acting as such and the date on which they have ceased to act as such agents.

(4) No company shall make any contract with any director, trustee, officer, employee or servant of the company save such agents as are employed to solicit insurance and hold licenses issued in accordance with the provisions of the Act to pay any remuneration or reward whatever by way of commission or otherwise in respect of the business of the company or any portion thereof, provided however that this shall not apply to insurance personally solicited and secured outside of office hours by any employee or servant not being a director or officer of the company.

(5) If any person being an agent of any insurance company, with intent to mislead or defraud, gives to any policy holder a wrong or incorrect copy of any rules, laws, regulations, statements or other documents of the company, or is otherwise guilty of fraud or misrepresentation, he shall without prejudice to his other liabilities in law be liable to have his license cancelled.

214. *Prohibition on the payment of rebates.*—While on this subject I propose also to deal with the question of rebates which are very often allowed to prospective policy holders by agents. In my opinion, the payment of rebates is a pernicious principle and should be stopped.

215. I am quite aware of the fact that no amount of legislation can stop the payment of a rebate in an underhand manner, but none the less it is desirable to stop any such payment being made openly. I accordingly recommend that a provision should be made prohibiting the

grant of rebates by companies or agents to policy holders directly or indirectly, more or less on the following lines—

“No company, or any officer or agent or representative thereof shall pay, allow or give or offer to pay, allow or give directly or indirectly as inducement to insure any rebate of premium payable on the policy or any other inducement whatever intended to be in the nature of a rebate of premium.

Every person violating these provisions should be penalised with a heavy fine and any company aiding or abetting the commission of such a violation shall be liable to have its registration cancelled as well.”

215. *Penal Provisions.*—The attention of the Government has been drawn from time to time to cases of deliberate misrepresentations, misapplication of Funds, wrongful detention of properties and making of false entries and neglect to make proper entries on the part of the persons engaged in the management of insurance companies. Cases have also been brought to the notice of the Government where on liquidation it has been found that proper books and documents have not been kept. The present Act does not contain any specific provision applicable to these cases, and though the provisions of the Indian Companies Act (which is applicable to most of these companies) might have been legitimately brought to bear on the subject, the want of specific provisions in the statute in these matters was commented upon recently by a bench of the Calcutta High Court in a case to which my attention was drawn by the Registrar of Joint Stock Companies, Bengal.

216. Although I do not know that other High Courts would have taken the same view, I think it is on the whole advisable to make specific provisions in the statute to check these manifest abuses. Specific provisions have been made with regard to some of these matters in English and Canadian Statutes, and in my view it is desirable to make provisions in the Indian Statute to guard against—

- (a) False statements in declarations or returns or statements to be submitted under the Act.
- (b) Wrongful retention or detention of the properties of an insurance company.
- (c) Misapplication of Funds.
- (d) Falsification of books.
- (e) Neglect to make proper entries.
- (f) Wilful misrepresentation.

217. In order to successfully achieve this end, I am of the opinion that in the first place the statute should declare that the following acts constitute offences punishable under the Act, *vis.* :—

- (i) If any officer of an insurance company knowingly makes a false or fraudulent statement in any of the declarations or statements required to be made and/or submitted under the Act.



- (ii) If any such person obtains possession by false representation or imposition of any property of a company registered under the Act or withholds or misapplies any such property in his possession or wilfully applies any part thereof to purposes other than those authorised under the Act.
- (iii) If any such person wilfully makes, alters or allows to be made any entry, erasure in or omission from the books, balance sheet, revenue account, or profit and loss account of a company registered under the Act, or a return or a document required to be sent, produced or delivered for the purposes of the Act.
- (iv) If any director, manager or other officer of the company wilfully neglects to make any proper entry in any book or statement required to be kept or made under the statute or to exhibit the same, or to allow the same to be inspected by any person duly authorised by law to do so.

It should be made clear that the word "officer" includes "directors", "managers", "managing agents" and other persons entrusted or associated with the management of insurance companies. I would next suggest that the statute should provide that persons convicted of such offences should in case (i) be penalised by the imposition of heavy fines, and in the case of No. (ii) a fine coupled with an order for delivery up of all properties, or the repayment of all sums of money applied improperly, and in default of compliance of such orders imprisonment, and in the case of No. (iii) and (iv) imprisonment.

218. *Liability of directors and officers.*—Besides the provisions recommended above, I would like to suggest the adoption of a provision in the Act on the lines of the one recommended by the Clauson Committee in Clause 20 of the draft Bill annexed by them to their report, with certain modifications which will enable the provision to be applicable not only after an insurance company has gone into liquidation and is being wound up, but will also enable them to be resorted to even when the company is in a working state.

219. The Clauson Committee have suggested a provision which makes the directors, manager and other officers of the company *prima facie* liable for any depletion of the statutory funds and puts the onus upon them to show that the depletion occurred without his consent or connivance and was not facilitated by any neglect on his part and enables the Court to assess the amounts which the officers guilty of such misfeasance will be liable to make good.

220. It is in my view a very salutary provision and should be specifically incorporated in the statute with some modifications as mentioned hereafter. The provision should run on the following lines:—

- (a) If on an application to be made by the company, or any member or policy holder, or the Liquidator of the company, the Court is satisfied that by reason of any contravention of the provisions of the Act the amount of any

statutory fund has been diminished or wasted or lost, every person who at the time of the contravention was a director, manager or liquidator or an officer of the company shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the company, unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part.

- (b) That the Court shall have powers on such an application to direct the examination in public or privately of any of the persons deemed to be guilty of such misfeasance, and the evidence so recorded shall be capable of being used against the person so examined in any legal proceeding, civil or criminal.
- (c) That the Court shall have the power of assessing the sum by which the amount of the statutory Fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to the statutory Fund the whole or any part of that sum by way of compensation.
- (d) That the Court shall have the power where it is satisfied as the result of the examination that an offence under the Indian Penal Code has been committed by the person or persons to direct them to stand their trial before a Court of competent jurisdiction.
- (e) That the passing of an order under subsection (c) will not be a bar to an order under subsection (d).
- (f) That an order made under subsection (c) be capable of execution as if it were a decree.

221. *Managing Agents.*—Before concluding I would like to refer shortly to two other matters which have been raised in some of the papers received by me. They relate to (a) Managing Agents and (b) the necessity of making special provisions for Accident Insurance and Motor Vehicles Insurance.

222. With regard to the 1st matter, it has been urged that having regard to the nature of insurance business, no financing arrangements are necessary and consequently no Managing Agents should be allowed to be employed by any insurance company. An observation to that effect was also made by the Tariff Board in one of their reports.

223. I have already recommended that policy holders satisfying a certain description should be treated as members of the company and as such should be in a position to take part in questions relating to the management of the concerns. In my opinion the question as to whether an insurance company should have a Managing Agent or not is a matter which is primarily for the members and beyond suggesting that the provisions of the Indian Companies Act on the subject should apply. I would leave matters where they are, feeling confident, that the new rights granted to policy holders under my recommendations would enable them to adequately safeguard their interests.

224. The other matter involves a consideration of the question as to whether in the case of companies doing business in motor insurance and accident insurance, it is necessary to make some special provisions to safeguard the liabilities which are likely to arise in the usual course of the business in these two classes.

225. Motor insurance and accident insurance in this country has been of a comparatively recent growth in this country, but they have been in vogue in the United Kingdom for a comparatively large number of years. No special provisions were considered necessary for them and the Clauson Committee, when examining the

Insurance law even so late as 1927, did not think it necessary to suggest any additional provisions from the point of view of the safety of the policy holders. In 1930 when motor vehicles insurance was brought in within the scope of the Assurance Companies Act no special provisions were inserted.

226. In my opinion the provisions already made are sufficient and on the whole I am convinced that there is no necessity for making any special provisions. In the circumstances, I am unable to recommend any special provisions to be applied to companies carrying on business in these two classes.

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## CHAPTER II.

## FOREIGN COMPANIES.

227. I now come to deal with the case of Foreign Insurance Companies. I have used the word "Foreign" as distinguished from Indian Companies and throughout this Chapter I will use it in this sense.

228. In my opinion, foreign companies may be broadly divided into three classes, viz.:—

- (a) Companies incorporated in the United Kingdom;
- (b) Companies incorporated in countries other than the United Kingdom, and India; and
- (c) Companies incorporated in the Native States of India;

and provisions should be made with regard to companies falling within each category.

229. The existing provisions with regard to foreign companies are rather in a confused state. The Act divides foreign companies into two groups, viz.:—

- (i) Insurance companies incorporated outside British India and doing business in the United Kingdom under the Assurance Companies Act of 1909;
- (ii) Insurance companies incorporated outside British India and not carrying on business as such.

230. As regards companies falling under the 1st heading, the provisions in the existing Act may be summarised as follows:—

(A) *As regards Life Insurance Companies.*—Every such company has the right to avoid the provisions of (a) deposits, (b) separation of funds, (c) the preparation of accounts, (d) actuarial valuation, (e) filing of statements and accounts, (f) auditing of accounts, (g) amalgamation and transfer and (h) appointment of inspectors, by applying merely for a declaration that it carries on business under the Assurance Companies Act of 1909. It is entitled to such a declaration on satisfying the Governor General in Council that it is so carrying on its business. If a declaration is made all that is necessary is to deposit with the Governor General in Council copies of the accounts and statements which it has to file with the Board of Trade.

(B) *As regards companies other than those carrying on business in life assurance.*—They have merely to deposit with the Governor General in Council within six months or such further time as may be allowed after the close of a financial year four copies of every report on the affairs of the company and of every balance sheet, revenue account and profit and loss account in respect of that year which has been submitted to its shareholders or policy holders and also such of the said documents as are required by law to be submitted to the Government of the country in which the head office of the company is situated.

231. They have also to append with every balance sheet a statement of the Indian assets giving particulars of the Government securities and other assets in Indian concerns held by them and certain particulars in connection with their constitution.

232. As regards companies falling within the second category they are as regards their life insurance business subject to the same provisions as the Indian companies while as regards other classes of business they are subject to the same provisions as those applicable to companies incorporated in the United Kingdom as indicated above. It can thus be seen that life insurance companies incorporated outside British India and carrying on business in the United Kingdom as also all Foreign companies carrying on marine and miscellaneous insurance business occupy at present a quite favourable position. They enjoy amenities and freedom which are not available to an Indian company which may seek to extend its business to any foreign country including the United Kingdom. Representations have therefore been made and not without some reason and justification that the provisions in the statute with regard to these foreign companies should be entirely reconsidered and that these companies should not be placed on any better footing than an Indian company carrying on business in the country of their origin. In my opinion there is a great deal of force in these representations. The provisions relating to foreign companies must therefore be entirely reconsidered.

233. *Registration of Foreign Companies.*—The first thing which the new Act should, in my opinion, provide is that every foreign company carrying on business in insurance of any kind in British India must register itself under the Act. In the case of new companies the registration must be effected before it is allowed to commence business, while in the case of existing companies they should be allowed three months time within which to do so. I have also to recommend that power should be reserved to the Governor General in Council to refuse the initial registration or the renewal of registration of any foreign company without being liable to give any reasons therefor. I am reluctantly compelled to recommend a provision to this effect in view of the way in which Indian companies have been prevented from doing business in Japan and Italy. It is in my view only fair and proper that powers should be reserved to the Governor General in Council to refuse registration to companies hailing from a country which affords no facilities for an Indian insurance company to do business there.

234. I am unable to accept the suggestion made from various sources that we should in India adopt the Licensing system as prevails in Canada. It will not only amount to a complete change in the principle hitherto followed in India but will also introduce needless complications, which it is desirable to avoid in the interest of India. The powers which I have suggested should be reserved to the Governor General in Council will, in my opinion, be sufficient to meet any contingency likely to arise in the near future.

235. *Place of business and a local agent.*—The next thing that the new Act should, in my opinion, provide is that every foreign company must in order to be entitled to carry on business either directly or through agents in British India have (i) a place of business, and (ii) an agent duly authorised by a power of attorney to conduct the business of the company and to receive all notices which the law requires to be given or which it may be thought advisable to give.

236. For this purpose it should be provided that every foreign insurance company must, before it commences to carry on business, file besides the documents mentioned in section 19 (a) and (b) of the Life Assurance Companies Act VI of 1912 and section 12 (a), (b), (c) and (d) of the Indian Insurance Companies Act V of 1928, the following documents—

- (i) A declaration as to the place in British India where the principal place of business is to be located.
- (ii) The name and address of the person who is to be the agent of the company in British India; and
- (iii) A copy of the Power of Attorney granted to him.

Any change either in the address of the principal place of business or the personnel of the agent must be notified to the Superintendent within a week from the date thereof and a copy of the Power of Attorney in favour of the new agent should be filed within the same time and any failure or neglect to do so should be penalised by a heavy recurring fine.

237. *Deposits.*—The next thing which the Act should provide is for deposits to be paid in by every foreign company. So far as the companies doing business in life insurance are concerned those which have not been carrying on business in the United Kingdom under the Assurance Companies Act of 1909 have now got to comply with all the provisions of the Act applicable to Indian companies including the question of deposits and the same arrangement will continue.

238. As to life insurance companies which by reason of their carrying on business in the United Kingdom under the Assurance Companies Act of 1909 have up till now avoided making any deposits, it was said in 1912 when Act VI was passed that inasmuch as these companies have to make a deposit of £20,000 with the Board of Trade under the provisions of the Assurance Companies Act of 1909, there is no point in demanding a deposit from them.

239. In my opinion, there was neither logic nor substance in this contention. If we look at the provisions of the English Assurance Companies Act of 1909, we find that it does not allow any exemption to an Indian company or for the sake of that to any foreign company, (foreign in the sense that it is not incorporated in the United Kingdom) in the matter of deposits to be made under the Act. No consideration is shown to an Indian company because of the deposits made in India. Under the English Act every company incorporated outside the United Kingdom has got to make a deposit of £20,000 irrespective of the fact that a large amount may have been deposited by it in the country of its origin.

240. The principle on which this is done in England is that foreign companies should not be placed in any better position than indigenous companies. It is difficult to understand why the same principle should not guide the legislature in India in the matter of deposits to be made by companies incorporated in the United Kingdom.

241. The difficulty of justifying a differential treatment in the case of companies incorporated in the United Kingdom has been realised by the Government of India for a long time and in

the Bill which was drafted in 1925 they accordingly provided that there should be no exemption in any case, and that all foreign companies would have to comply with the provisions as to deposit in the same way and to the same extent as Indian companies.

242. In my opinion that is the only consistent and logical course possible for the legislature to follow in India, and I therefore suggest that in the Act the exemption hitherto enjoyed by companies doing business in life insurance under the Assurance Companies Act should no longer be allowed.

243. I would like in this connection to deal also with the case of companies incorporated in the Native States in India. For the purpose of the Act they are also to be treated as foreign companies. Some of these States such as Baroda, Cochin, Travancore, Indore and Jodhpur have their own Insurance Laws and any company from British India desirous of carrying on business in life insurance in those States has got to comply with the provisions regarding deposits as contained in their own statutes. In these circumstances, *prima facie* every company incorporated in these States should comply with the provisions contained in the statute in British India.

244. The number of British Indian companies operating in the States is, however, far in excess of the number of companies formed in the States and operating in British India and a representation was made sometimes back to some of the Native States such as Baroda, Indore, etc., by the Government of India at the instance of the Insurance Companies Association asking them to exempt life insurance companies who had already paid in deposits in British India from making any deposits in the States, and pursuant thereto exemptions have been granted by some of the states to companies incorporated in British India and carrying on business in life insurance in the states.

245. The Indore Government when approached indicated its willingness to do the same thing but very pertinently asked if the Government of India would reciprocate the concession in the case of companies formed in the States if they intended to carry on business in life insurance in British India. No answer has been given by the Government of India, but I have no doubts that the question will again be raised in the near future by the States. It is impossible to resist the reciprocal demand for exemption on the part of the States, and having regard to the fact that a very large volume of business is done by British Indian Companies in these States, the question has to be very carefully handled.

246. As at present the balance is clearly in favour of the British Indian companies and is likely to be so for some time to come and I think it would be desirable in the interest of British India to grant exemptions should any occasion for doing so arise in the case of companies incorporated in any of the States. I would therefore suggest that there should be a provision in the Act giving powers to the Governor General in Council to exempt a company formed in a Native State in India from the performance of the provision as to deposits if the laws of the State provide for the same concessions in the case of companies formed in British India.

247. Subject to this reservation, in my opinion, all foreign companies should be subjected to provisions for deposits as a condition of being allowed to do business in British India.

248. I shall now come to the question of the amounts to be deposited. I have already indicated in the first chapter of my report the amounts which should be deposited by Indian companies, *viz.* :—

Rs. 2,50,000 in the case of a Life Insurance.

Rs. 2,00,000 in the case of Marine and Fire Insurance; and

Rs. 1,00,000 in the case of every other company carrying on other kinds of insurance.

The question to be considered is as to whether the amounts to be deposited by foreign companies should be the same or different.

249. It has been represented from some sources that the provisions existing in Australia, New Zealand and some of the other parts of the British Empire for enforcing higher deposits from foreign companies should be adopted in the statute in India and that larger deposits should be called for from foreign companies.

250. This question was raised in England and was considered at the time when the Assurance Companies Act of 1909 was being considered and they came to the conclusion that it ought not to be accepted and adopted in the statute as it would be an incentive for other countries to retaliate. The Clauson Committee who considered the changes necessary to be made in the Insurance Legislation in the United Kingdom have not adopted this suggestion. The matter was also considered by the Government of India in the year 1924 in connection with the proposed Insurance Bill and they too came to the conclusion that the scale of deposits should be the same for Indian and foreign companies.

251. The suggestion for a differential treatment in the case of foreign companies has been advocated principally by certain persons who have been complaining during recent times that there has been "dumping" of business by foreign insurance companies and this suggestion has been made as part of a demand for protection for Indian companies.

252. I confess I have been unable to follow exactly what the grievance is and in what shape protection is wanted. Insurance is not like ordinary trade commodities capable of being exposed for sale on attractive and competitive terms. It is quite true that some foreign companies are sometimes in a position to offer more favourable terms to the prospective customers than indigenous companies in the shape of high bonuses which indigenous companies are unable to offer. This is possible because of the large profits which they make out of their business outside India and the comparatively lesser expenses which they incur. It is said that in one case a foreign company issued new shares at a premium and gave out that the extra sums would be utilised in procuring Indian business. But that is possibly the only case which the supporters of protection have been able to find out. In my opinion, what the foreign companies do is perfectly legitimate from the business point of view and it is impossible for the Government to take exception to what they have been doing. I have also been unable to find out

how exactly it is suggested the Government of India should act. It is all very well to say that business is being "dumped" and to cry for protection, but with all respect to those who use the expression I must say that the agitation is meaningless and purposeless.

253. The remedy of counteracting the amount of business done by foreign companies, if I may be allowed to say so, does not lie with the Government but with the people in the country and if they are not patriotic enough to patronise the Indian companies in preference to foreign companies, it is not for the Government to come to the rescue of the indigenous companies.

254. The Bengal National Chamber of Commerce has made a suggestion that for 25 years next no further foreign companies should be allowed to come in and do business in India. I have been unable to follow the principle on which this is to be justified. I can well understand a demand for refusal of permission to companies which have their origin in countries which have refused permission to Indian companies to do business there, but apart from that it is difficult to find any warrant for the suggestion made by the Bengal National Chamber of Commerce.

255. To my mind, beyond seeing that indigenous companies are not exposed to any unfair competition from foreign competitors and that the foreign companies are placed in no better position than Indian companies and that the interest of the Indian policy holders are properly safeguarded, there is nothing else that the Government can legitimately do.

256. Considering everything that has been or can be said for and against the proposition, I am of the opinion that the scale of deposits should be the same for Indian as also foreign companies, with this difference that all foreign companies must put in the deposits at once. In the case of existing companies I am prepared to give some time and I suggest that within three months from the date of the new Act coming into force should be allowed to put in the amounts of the deposits. The amounts to be deposited therefore will be—

In the case of Life Insurance Companies  
Rs. 2,50,000.

In the case of Fire and Marine Companies  
Rs. 2,00,000.

In the case of other kinds of Companies  
Rs. 1,00,000.

The deposits should as in the case of Indian companies be made in Government securities of an amount the market value of which on the date of the deposit comes up to the amounts mentioned. Such foreign life companies as have already put in deposits must put in securities to make up the deficit in the amount within three months.

257. All other provisions as to refund of securities, putting in of securities to make up deficiency in value, etc., suggested in the case of Indian companies should be applicable to the case of foreign companies as well.

258. (C) *Keeping of Funds in India by foreign companies.*—In connection with companies incorporated outside British India another important question has been raised, *viz.*, as to whether such companies should not be made to keep

under Government control in British India funds sufficient to meet their liabilities in British India.

259. It is said that a provision of this nature is necessary in order to properly safeguard the interest of the policy holders in British India. In the case of the average foreign company there is no warranty that the liabilities would be met and it is pointed out that in the event of a liquidation or in the event of a state of war being proclaimed, there is a great risk of the Indian policy holders losing their moneys unless some provision is made making it obligatory upon foreign companies operating in British India to keep sufficient funds and assets under Government control to meet their liabilities. It has also been said that such a provision would indirectly tend to foster the growth of indigenous companies.

260. This matter is an important one and must be carefully considered. In my opinion, it has got to be considered separately from the point of view of (a) companies incorporated in the United Kingdom and companies incorporated in the Native States in India and (b) companies incorporated in other foreign countries.

261. So far as companies incorporated in the United Kingdom and in the Native States in India are concerned the matter has got to be considered on a footing altogether different from that of the other foreign companies. There is no provision of this nature with regard to Indian companies in the statute in force in the United Kingdom or in any of the States and in my opinion so far as companies incorporated in United Kingdom and the States in India are concerned, no such provision should be introduced.

262. As regards companies incorporated in the United Kingdom, it must be remembered that, apart from the fact that under the new Government of India Act a provision of this nature would at once be hit by the principle of discriminatory legislation, there are certain points of distinction. In the first place, a great deal of the company's affairs are easily ascertainable from documents filed with the Board of Trade. Besides there is no possibility of disowning of liabilities by reason of war, etc., and there is no real apprehension that the liabilities incurred in British India would not be met in full.

263. As regards companies incorporated in the Native States in India as I have said at the present time a very small number of insurance companies registered in such States carry on business in British India. On the other hand, a very large number of British Indian companies carry on business in the States. There is at present no provision in the law of Insurance as prevailing in these States under which a British Indian company is required to keep sufficient assets in such State. In the circumstances, it would be injudicious to impose any such conditions as regards these companies, and I would recommend that for the present no such provision be made in the Act with regard to companies incorporated in the Native States in India. I should, however, mention that should at any time hereafter the volume of business done in British India by these companies increase by any formidable degree, the matter may have to be reconsidered and these companies may have to be placed in the same category as companies incorporated outside the United Kingdom.

264. As regards companies incorporated in other foreign countries, the question stands on a different basis altogether. The attention of the Government has been attracted to the question for a long time and from the records available it would appear that the matter was very fully considered at the time the Government of India were considering the Insurance Bill in 1925. So far as the members of the Government were concerned, there was a sharp division of opinion. The then Finance Member Sir Basil Blackett was, however, of opinion that such a provision would result in some financial advantages to the Government of India. As there was no unanimity of opinion the draft bill which was prepared and was ultimately introduced in the Assembly and circulated for opinions, did not contain any such provision.

265. The Government of India in the circular letter which was issued, thus expressed its views:—

"Closely connected with this question is the question whether the Bill should contain provisions to the effect that insurance companies constituted outside of, but operating with, British India should be required to keep in British India, under Government control, assets equal to the reserve value of the policies issued by them in British India. The Insurance Laws of many countries contain provisions of this kind. It is claimed, in the first place, that such provisions would protect the interests of policy-holders in this country, in the event of the liquidation of any company not constituted in, but operating within, British India. In that event funds would be available in this country for the payment of the reserve value of the policies issued in British India. The reserve value of a policy of course is much less than the sum assured, and in the case of a life policy may be taken as roughly equivalent to the surrender value. The policy-holder in British India would therefore be protected to the extent of a sum equivalent to that which he would have received if he had surrendered the policy for a cash payment immediately prior to the date of liquidation. He receives no additional protection. This is the first advantage that is claimed for provisions of this kind. The second is that such restrictions, in so far as they hamper the operations of companies constituted outside the country, tend to foster the growth of indigenous companies

On the other hand, there are various objections to the inclusion in the Bill of restrictive provisions of this nature. Experience has not shown that such provisions are necessary, and it might legitimately be argued that it is more in the general interest, in present circumstances in India, to foster the growth of the insurance habit by providing the safest possible insurance at the lowest possible price than to foster the growth of indigenous insurance companies. Moreover, the implications of the proposal should not be overlooked. A statutory valuation of assets would be

necessary consequence of provisions of this kind, and this statutory valuation would necessarily be applied to Indian as well as non-Indian companies. A large staff of Government actuaries would be required and it would be impossible to avoid a large measure of interference with the management of companies. But there are other graver objections to statutory valuations. Where companies are left to themselves, experience leads them to adopt strict standards of valuation, and it is by these methods that many British companies have built up for themselves a world-wide reputation for strength and reliability. On the other hand, there is a danger that a statutory valuation may be a lenient valuation. The same basis of calculation must be applied to all companies, and the tendency may be for the valuation to be adjusted to the needs of the weaker rather than of the stronger companies. Indeed a statutory valuation may become little more than a test of the bare solvency. On the other hand, the public is apt to place too great reliance on the results of the valuation, and the companies themselves, instead of strengthening their position by the continuous application of strict standards, may tend to remain satisfied with the bare minimum of a statutory valuation. In other words, the danger of a statutory valuation is that it may lead to a lowering of standards."

266. The advantages resulting from such a provision being adopted may be summarised as follows:—

- (1) It will ensure, in the event of a liquidation, substantial payment to Indian policy holders.
- (2) It will give an additional impetus to the formation of indigenous life insurance companies in India.
- (3) It will increase the demand for Indian securities.

While the disadvantages of imposing such a system may be summarised as follows:—

- (1) It will involve the setting up of a separate Government department whose duty will be to make or check valuations of the liabilities in the case of these companies.
- (2) That valuations are likely to be made on a comparatively lenient basis.
- (3) It will lead to a withdrawal of many of the non-Indian companies now operating in India;
- (4) It is likely to invoke retaliatory measures on the part of the foreign Governments.

267. Before dealing with the objections, I would like to say at once that from the records and figures available to me it appears that this system of requiring foreign companies to keep within the country assets sufficient to meet the liabilities has been in vogue in America and some of the countries in Europe, and that notwithstanding such a provision business in insurance in those countries has not suffered. It

can therefore be safely inferred that the imposition of this system is not in the absence of any special reasons likely to affect the progress of insurance business to any considerable extent in India.

268. Coming now to the objections, I would say that the first objection does not seem to require any serious consideration. In my opinion, the protection which will be afforded to the subjects would more than amply compensate any extra expenditure which is likely to be incurred. Besides a great portion of this expenditure may be recouped by the judicious imposition of fees.

269. As regards the second objection, in my opinion, there is very little substance in it. The valuations are to be made by properly qualified actuaries and it is difficult to believe that they will not base their valuations on proper basis and that they are likely to do it on a lenient basis.

270. As regards the third objection it appears to me that the withdrawal of some of the foreign non-British companies from the field of insurance is likely to serve as a well merited impetus to the indigenous companies and on this ground alone should be over-ruled.

271. That leaves me to the 4th ground of objection, *viz.*, that it is likely to provoke countries other than United Kingdom to take retaliatory measures. Before dealing with this ground, it would be desirable to see as to which are the companies that are most likely to be affected if such a provision is made and whether there is any chance of Indian companies being prejudicially affected by retaliatory measures which may be introduced as the result thereof. The number of foreign companies other than those incorporated in the United Kingdom which carry on business in India is very small. The following statement will show the number of such companies and the countries of their origin in December 1934.

Statement of Foreign Companies operating in British India.

Country of origin.	Total number.	Life.	Fire.	Marine and Miscellaneous.
Canada . . . . .	8	3	3	2
Hongkong . . . . .	8	1	7	
Straits Settlements . . . . .	3	1	2	
South Africa . . . . .	1	..	..	1
United States of America.	16	..	5	11
Switzerland . . . . .	6	1	2	3
Germany . . . . .	4	1	1	2
Holland . . . . .	3	..	1	2
France . . . . .	2	..	2	
Italy . . . . .	1	..	1	
Japan . . . . .	9	..	5	4
Java . . . . .	5	..	5	

272. Under the law in force in most of the countries of their origin as mentioned above every foreign company carrying on business in insurance there has to keep in the country assets sufficient to meet the liabilities incurred there. Thus an Indian company if it wanted to do business in Insurance in any of these countries would have to keep sufficient reserve in the country. There is therefore no question of any further retaliatory measures being introduced. The provision is already there and it is difficult therefore to follow how the imposition of similar provisions in India can possibly be objected to legitimately by any of these companies or the Governments in those countries. Even if retaliatory measures were to be introduced the extent to which the business of Indian companies is likely to be affected will be negligible considering the fact that very little amount of business is done by British Indian Companies in these countries.

273. In 1925 the Government of India sought opinions from the local Governments and public bodies on the question as to whether it was desirable to provide in the proposed statute that insurance companies constituted outside but operating in British India should keep under Government control assets equal to the reserve value of the policies issued in British India. The opinions received were not unanimous and it may be said to have been evenly divided. The exact position may be thus shown.

For the inclusion of such a provision. 1	Against the inclusion of such a provision. 2
1. Considerable number of public bodies in Assam.	1. Government of Assam.
2. Oriental Government Security Life Assurance, Limited.	2. Government of the Central Provinces.
3. Millowners Association (Bombay).	3. Government of Bihar and Orissa.
4. Large volume of opinion in Madras.	4. Chamber of Commerce of Bombay (with some modification).
5. Punjab Chamber of Commerce.	5. Government of Bombay and some Insurance Companies.
6. United Provinces Chamber of Commerce.	6. Karachi Indian Merchants Association.
7. Burmese Chamber of Commerce.	7. Government of Madras subject to reservation of power to impose such a condition if necessary.
8. Burma Indian Chamber of Commerce.	8. Northern India Chamber of Commerce.
9. Ahmedabad Millowners Association.	9. Government of the Punjab.
10. Rai Sahib Seth Chuhmull.	10. Government of Bengal (on the ground of the balance of advantage).

For the inclusion of such a provision. 1	Against the inclusion of such a provision. 2
11. General Assurance Society (of Ajmer).	11. Registrar of Joint Stock Companies, United Provinces.
12. Indian Chamber of Commerce (Calcutta).	12. Majority of officials in Burma.
13. United India Life Assurance Company, Limited.	13. Chief Commissioner of Ajmer-Merwara.
14. Non-Gazetted Government Officers' Association (Madras) subject to some modification.	14. Bengal Chamber of Commerce.
15. Dewan Bahadur D. S. R. Pantalu Garu.	15. Institute of Actuaries, London.
16. Principal, Government Institute of Commerce, Madras.	16. Faculty of Actuaries, Scotland.
17. Registrar of Joint Stock Companies, Madras.	17. Joint Committee of Accident, Fire and Life Offices and Institute of London Underwriters.
18. Southern India Chamber of Commerce.	18. Bombay Accident and Fire Insurance Association.
	19. Registrar of Companies, Bombay.
	20. Tokio Marine and Fire Insurance Company of Bombay.
	21. Chamber of Commerce, Madras.
	22. Director of Industries, Punjab.
	23. Advocate General of Madras (subject to reservation of power to impose such a condition).
	24. Board of Revenue.
	25. Indian Civil Service Association of Madras.

274. It must, however, be borne in mind that the question then was so framed that the proposed provision would not exclude companies incorporated in the United Kingdom from its operation and that is possibly the reason why the majority of the local Governments expressed views against the inclusion of such a provision in the Statute. Now that the recommendation is intended not to apply to British companies, different considerations would apply and I am almost sure that a referendum would result in an overwhelming majority in favour of the insertion of such a provision.

275. In conclusion I must say that the introduction of a provision for retention of assets in India sufficient to meet the Indian liabilities in the case of non-British foreign companies cannot, in my opinion, be treated as introducing



any novelty or hardship—it would, so far as most of the countries intended to be affected, be merely introducing reciprocal legislation. I am therefore of opinion, upon a careful consideration of all the facts, that in the case of companies incorporated in countries other than the United Kingdom and India a provision should be made to the effect (a) that they must keep in India assets sufficient to cover the liabilities in British India, (b) that these assets should be under Government control, and (c) that the companies should be incapable of withdrawing or dealing with the same except to discharge the liabilities to the Indian policy holders.

276. In order, however, that there should be no risks at all, I would recommend that a proviso should be inserted whereby power should be left with the Governor General in Council to exempt companies incorporated in any particular country from the operation of these provisions if he is satisfied that there are no reciprocal provisions for the keeping of assets in such a country and that the result of imposition of such a provision is likely to affect the business of Indian companies in such country prejudicially.

277. It should also be specified that in the case of a life insurance company the amount of the liabilities shall include for the time being liabilities to policy holders for matured claims, surrender values and full reserve for outstanding policies after deducting the claims, if any, which the company has against such policies, while in the case of fire and marine insurance it is to be the reinsurance value of all its risks outstanding in British India.

278. (D) *Investment of assets of foreign companies.*—Another question which has got to be considered in this connection is the question as to in what shape these assets should be kept and whether the statute should prescribe the form of the investments. It is only common sense that where the statute requires some assets should be retained by foreign companies in the country, that it should also provide in what shape it is to be kept. Having undertaken the duty of forcing assets sufficient to cover their liabilities to be kept, the next step would be to make provisions for keeping the said assets invested in safe securities. Now in the category of safe investments one can only consider Indian Government securities and what are known as Trust Securities first, and in my opinion, the statute should therefore provide that the assets to be kept in India may be kept invested only in Indian Government Securities and securities specified by section 20 of the Indian Trusts Act.

279. I am not sure as to whether this recommendation of mine for enforcing a certain class of foreign companies to keep assets sufficient to meet their liabilities in India would be accepted by the Government of India, but in case for any reason the Government of India feels that it cannot accept my recommendation then as an alternative suggestion I would suggest that the statute should provide generally with regard to all foreign companies that a certain portion of their premium income should be kept invested in Indian securities.

280. The question as to whether foreign companies should be made to invest any and if so what portion of their assets in Indian securities

has also been brought up for consideration from time to time, but no statutory provision was made in view of the fact that the figures available showed that even without any statutory provision the foreign companies held a fair amount of Government securities. The figures for the last 6 years obtained from the Insurance Department as set out below would show that about 37 per cent of the premium income was invested in Government securities.

*Statement of Investments in Indian Securities.*

Year.	Premium Income.		Total Indian assets.
	Life.	Non-life.	
	Rs.	Rs.	Rs.
1928 .	2,90,25,000	2,13,46,000	29,66,62,000
1929 .	3,42,91,000	2,47,21,000	
1930 .	3,88,90,000	2,22,82,000	
1931 .	4,10,39,000	1,90,99,000	
1932 .	4,23,46,000	1,81,51,000	
1933 .	4,42,57,000	1,79,31,000	11,13,44,000

The total amount of premium income during the years 1929-1933 was Rs. 20,08,23,000 + Rs. 10,21,84,000 or Rs. 30,30,07,000 while the increase in Indian assets during the same period (1928-1933) was Rs. 11,46,82,000 or about 37·8 per cent of the total premium income during the period. It is, however, only fair to say that although the aggregate figures show that a fair amount of the premium income is invested in Indian securities and other Indian assets, yet it does not mean that all foreign companies behave reasonably in the matter of investments: Thus German companies which receive annually a sum of about Rs. 6,74,000 in the shape of premium income have got only Rs. 7,21,000 in Indian assets out of the total Life Funds amounting to Rs. 48,74,74,000. The American companies which receive Rs. 11,70,000 annually in the shape of premium income have Indian assets of the value of Rs. 1,97,000. The French companies which receive Rs. 1,73,000 annually in the shape of premium income have Indian assets of the value of Rs. 1,70,000. Companies formed in Canada receive a sum of Rs. 2,39,97,000 in the shape of premium every year, but they have Indian assets of the value of Rs. 4,25,99,000. Companies formed in Australia receive by way of premium Rs. 37,07,000 annually, but the total Indian assets held by them is of the value of Rs. 46,59,000 only.

281. The figures available would show that except the companies formed in the United Kingdom, all other foreign companies keep a very small percentage of their premium income in Indian securities and assets. In these circumstances the demand made from some sources for making in the statute at least a provision for investment by foreign companies of at least a portion of their premium income in Indian securities appears to be reasonable.

282. After giving the matter my careful attention and taking the actual figures of the investments into consideration, I would suggest that a provision should be made that foreign companies should invest at least 40 per cent of their premium income in Indian securities meaning thereby Government securities within the meaning of the Indian Trusts Act. In making this alternative suggestion, I must not be taken to say by any means that the recommendation first made by me about the keeping in India of a reserve sufficient to meet their liabilities in India should be discarded. As a matter of fact my own view is that the alternative suggestion is not sufficient.

283. (E) *Books of account and accounts to be kept.*—I have already indicated in the previous chapter the accounts and the books to be kept by every Indian company. As regards foreign companies carrying on business in British India, in my opinion, there is no reason for any discrimination in treatment as regards the accounts and the books to be kept, and in my view the Act should provide that so far as the books of account and the particulars of the accounts to be kept are concerned every foreign company must maintain the same books and keep the same accounts of their business done in British India as a company incorporated in British India would have to and that every such company would have to submit and file with the Government, the same documents and statements in respect of their Indian business as Indian companies have got to do under the statute.

284. This would mean a departure so far as companies carrying on business in the United Kingdom under the Assurance Companies Act are concerned, but having regard to the provisions of the Assurance Companies Act itself and the fact that no distinction is made in the case of Indian companies or for the sake of that any non-British companies, any discrimination in the Indian Act so far as these companies are concerned can hardly be justified.

285. My recommendations therefore may be summarised as follows:—

- (a) That every foreign company doing business in British India shall keep at its principal place of business in British India the same books as an Indian company would have to keep under the Act, and generally such books, records and documents as would enable the statements required to be filed under the Act with regard to its Indian business to be compiled and verified therefrom.
- (b) Every foreign company should in respect of the business done in British India furnish the same accounts and statements as have to be furnished by Indian companies under the Act.
- (c) Every foreign company shall also along with the documents referred to in clause (b) file copies of—
  - (i) the Revenue Account,
  - (ii) Balance Sheet, and
  - (iii) the Profit and Loss Account of its general business.

In cases where companies do not under the law of the country of their origin keep such accounts, they must file—

- (i) Short abstracts showing their general assets and liabilities during the period in question; and
- (ii) The income and expenditure from their general business.

As to the time within which these documents are to be filed, I have already made my recommendations with regard to Indian companies and I suggest that the same provisions should apply with this exception that foreign companies should have three months more time to do so. The statements and documents to be filed should be verified by an affidavit to be sworn by two of the directors and the agent in British India.

286. *Auditing of Accounts.*—I recommend that the same procedure be observed by all foreign companies regarding the auditing of the accounts of their Indian business as has been provided for the Indian companies in the statute.

287. *Re. Actuarial Valuation.*—The Act should provide that every foreign company must have the assets and liabilities of their Indian business duly valued by a qualified Actuary once at least in every five years and that the procedure relating to valuation of Indian companies should be applicable to these companies as well.

288. *Powers of Inspection and obtaining explanation.*—I suggest that the Act should make it clear that the Superintendent should be entitled to exercise the same functions and powers over foreign companies as he will be entitled to do in the case of Indian companies.

289. I must in this connection deal with a suggestion made by some persons that the Act should provide that no non-Indian company will be entitled, in declaring bonuses, to resort to the surplus resulting from their non-Indian business. I have not been able to follow the logic or the justice of this suggestion. The procedure now adopted by foreign companies in the matter of declaration of bonus payable to their policy holders enures really for the benefit of the Indian policy holders who get the benefits of the surplus resulting from the non-Indian business and I can see no justification for introducing provisions which will deprive them of this benefit. In the circumstances I regret I cannot accept the suggestion or make any recommendation in that behalf.

#### LLOYD'S.

290. The case of Lloyd's stands on an altogether different footing. In order to understand the exact nature of the works done it would not be out of place to go into a bit of ancient history with regard to the formation and the activities of Lloyd's, as furnished by them to the Government of India in 1924. The Corporation known as "Lloyd's London", owes its origin to the enterprise of one Edward Lloyd who kept a coffee house in the City of London in the seventeenth century. The practice arose for marine underwriters to resort to his coffee house to transact their business, instead of to the walks of the Royal Exchange as they had formerly done. Lloyd started his coffee house in Great Tower Street about 1688, and moved it to Abchurch Lane in 1692. Underwriters would sit there to do business, and merchants or

brokers who desired to effect insurance would go there to deal with them. Any Policy so effected was, of course, a contract made with the Underwriters who signed it, and Mr. Lloyd who merely was landlord of the coffee house, was no party to any such contract. It is believed that the Policy was more or less in the form which is still used, by which Lloyd's Underwriters now sign it—"each one for his own part, etc.". The main function of Lloyd was to provide a room in which they could do business, which took the place of an "Exchange" or "Bourse" as a place of meeting.

201. Later on, after the death of Lloyd, it was convenient for marine Underwriters to have a similar place of business, and in 1770 the "Society of Lloyd's" as a voluntary association, provided rooms for its members in Pope's Head Alley. Still later this Society moved to rooms in the Royal Exchange, and after the Royal Exchange was rebuilt (following its destruction by fire in 1838) the Society came to occupy the rooms now known as "Lloyd's" in the new Royal Exchange.

202. In 1871, the Society was incorporated by an Act of Parliament as the Corporation of Lloyd's. The function of Lloyd's, as a Corporation, is precisely similar, though on an enormously increased scale, to that of the Keeper of the Coffee House from whom it derives its name. This is to say, the Corporation does not transact insurance, this being undertaken by the Members of the Corporation as individuals, each of whom carries on his business for his own account and risk, either himself or through an Underwriting Agent. At the present time the custom is for the Members to group themselves together in Syndicates, each of whom operates through an Underwriting Agent, who sits in the Underwriting Room at Lloyd's and acts for all the Members of his particular Syndicate. Lloyd's Underwriters can only accept risks shown to them by Brokers who are specially admitted by subscription to the Corporation, so that the Underwriter does not transact business direct with the public.

203. The Broker wishing to place a risk with an Underwriter at Lloyd's writes the details on a slip, which is shown to the Underwriter, who, if willing to accept the business, initials the slip either for the full amount, or a portion thereof, and when the whole amount to be insured has been accepted in this way, the Broker prepares the Policy and deposits it with the slip with the Underwriters' Signing Bureau, whose duty it is to place on the Policy by means of a rubber stamp, the names of the Members forming the various Syndicates whose Agent has indicated on the slip his acceptance of a portion or the whole of the risk. The Policy is then handed back to the Broker for delivery to his Client. Thus all Lloyd's Policies are signed at Lloyd's in London, and no Policy can be issued elsewhere than at Lloyd's.

204. In order, however, to meet the convenience of Merchants and others wishing to insure at Lloyd's, arrangements are sometimes made by which Lloyd's Underwriters give a Cover to a person or persons resident abroad which would authorise that person or persons to issue Cover Notes or Certificates subject to the terms of such Cover. These Cover Notes or Certificates would give details of the particular insurance, and would be replaced in due course by Policies

issued at Lloyd's. These persons are properly known as Lloyd's Agents.

205. So far as Lloyd's Members are concerned the security which is available to a person who holds a policy issued by Lloyd's Underwriters has been pointed out to be as follows:—

- (a) Every Underwriter must satisfy the Committee of Lloyd's as to his status and financial position before he can be elected a Member.
- (b) He must deposit with the Committee as security for his Underwriting liabilities exclusively, a sum which they deem to be adequate for the amount of business which he underwrites. A minimum of £5,000 is required in respect of Marine risks, and the amount of liability he may incur is restricted in proportion to his deposit with the Committee.
- (c) In addition to this each Member is responsible to the full extent of his personal resources for his Underwriting liabilities.
- (d) All premiums received are held in trust for the purposes of Underwriting business only.
- (e) The Non-Marine liabilities of all Underwriters are guaranteed under a scheme which has received the approval of His Majesty's Board of Trade.
- (f) The accounts of every Underwriter at Lloyd's are audited annually by independent Auditors approved by the Committee, when adequate security must be shown to meet estimated outstanding liabilities, according to requirements approved by His Majesty's Board of Trade.
- (g) The Deposits and Guarantees lodged with the Committee by a Member of Lloyd's, and the funds held in trust for the purposes of Underwriting business, as well as the responsibility of the Member to the full extent of his personal resources, lie behind every Lloyd's Policy underwritten by him wherever the risk may be situated or the policy-holder domiciled.

206. When the Assurance Companies Act of 1909 came into force in England, the question of bringing Members of Lloyd's into the ambit of insurance law was considered and under the Act it was decided to bring them in and they were brought in, but given a preferential treatment and special provisions were made for them in the Eighth Schedule of the Act and the rules framed under the Act. The main distinction between Lloyd's and other and ordinary Insurance Corporations being the lower amount of deposit and the mode of the deposit—as also the difference in the nature of the documents required to be filed.

207. The Legislature in substance really gave effect to the regulations already in existence in Lloyd's and the rules appended in the VIII Schedule to the Act really incorporated the system already in operation.

208. The question as to whether Lloyd's should be brought in within the purview of the Indian legislation was considered by the Government of India at the time when they thought of overhauling the existing legislation on the subject

of insurance in 1924 and they came to the conclusion that Lloyd's should be included in the Indian Act and in the draft bill which was prepared no preferential treatment was proposed for Lloyd's.

290. The Bill, however, which was then drafted out, was dropped in view, as I have already stated, of the examination then pending in England of the laws of insurance by the Clauson Committee. The Clauson Committee after considering their question stated in their report as follows:—

"The Bill has the effect of bringing the marine business done by Lloyd's and other bodies of underwriters into the scope of the legislation. By Part II, Clauses 22 to 24, the Bill recognises the peculiar position of Lloyd's underwriters by placing them in a position as regards marine business corresponding to that in which they were placed by the Act as regards the clauses of business enumerated in the Act. The result is (in effect) that, so long as the business of Lloyd's is carried on with the well-established safeguards which have hitherto proved satisfactory, the position of Lloyd's underwriters will be substantially unaffected. These provisions will also be applicable to other bodies of underwriters, but after receiving information, both in writing and verbally, from representatives of the Association of Underwriters and Insurance Brokers in Glasgow, the Committee are satisfied that no sufficient cause has been shown for reducing the requirements of Part II of the Bill."

They in effect kept Lloyd's more or less in the same favoured position where they were before. The Clauson Committee's report has not yet been given effect to and Lloyd's continue to be in the same position in which they were under the Assurance Companies Act of 1909.

300. The questions now to be considered now that the Indian Act is being reconsidered are:—(a) whether underwriters being Members of Lloyd's should be brought in within the purview of the Indian Statute, and (b) what are the obligations to which they should be subjected to. As to the first question as I have already indicated in the opening chapter of my report, I am of opinion that they should be brought in within the Act. There is no reason why they should be exempt from the question of the Insurance Statutes in this country and I am therefore of the opinion that the Act should be so framed as to make it clear that they should be brought in within its purview. The second question, however, requires a very careful consideration. The main thing to be considered is whether, in view of their particular constitution and the securities already available in their case, any discriminatory treatment should be meted out to them in the Statute. It is interesting in this connection to shortly notice how the Members of Lloyd's have been treated in some other parts of the British Empire:—

*In Canada*—the provision made with regard to Lloyd's in the Insurance Act of 1927 was as follows:—

"It shall moreover be competent to the Minister, notwithstanding anything in this Act, to grant a license to any association of individuals formed upon

the plan known as Lloyd's whereby each associate underwriter becomes liable for a stated, limited or proportionate part of the whole amount insured by a policy, or to any association of persons formed for the purpose of exchanging reciprocal contracts of indemnity upon the plan known as inter-insurance, authorizing such association to transact insurance other than life insurance in Canada in like manner and upon the same terms and conditions as in the case of a company, and all the provisions and requirements of this Act regulating the business of licensed companies shall, so far as applicable, be deemed to be terms and conditions of any license so granted: Provided that the statements required by this Act to be filed in the Department may, in the case of such an association, be verified in such manner as the Superintendent shall direct and prescribe."

This Act has been repealed in 1932—but the same provisions have been maintained—in the regulations framed with reference to British Companies by defining the words "British Company" as including an association which has been defined as follows:

"'Association' means any association of persons formed in the United Kingdom of Great Britain and Northern Ireland or in any British Dominion or possession other than Canada or a province of Canada upon the plan known as Lloyd's whereby each associate underwriter becomes liable for a stated, limited or proportionate part of the whole amount insured by a policy."

*In New Zealand*—no distinction appears to have been made. Thus in the matter of deposits the following provision appears:

"*Deposits to be made by agents of underwriters.*—(1) Every agent in New Zealand of a British underwriter or of British underwriters in respect of any class of insurance business specified in the Schedule hereto, and every person in New Zealand who acts as an underwriter in respect of any such class of insurance business, shall in accordance with this section deposit with the Public Trustee in money the sum specified in that Schedule in respect of that class of insurance business. Every such deposit made in respect of any class of insurance business shall be held as security in respect of all policies or other contracts of insurance of that class effected or negotiated by such agent or underwriter, as the case may be."

*In South Africa*—however some preferential treatment is provided for Lloyd's and other like associations and the provision with regard to Lloyd's is as follows:—

"The following requirements shall be complied with by any person initiating insurance business or who does any act in the Union in reference to the receiving of proposals for insurance or the issue of policies or the collection

of premiums on behalf of brokers or underwriters at Lloyd's or on behalf of members of associations (specially approved by the Treasury) of individuals formed upon the plan known as Lloyd's, whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by a policy:—

- (1) No person shall carry on such insurance business in the Union unless he is licensed as provided by law and has made the deposit in accordance with the provisions of the next succeeding paragraph and in respect of such business.
- (2) Any such person transacting such insurance business in the Union at the commencement of this Act shall, within six months after such commencement, and any person not transacting such insurance business at the commencement of this Act shall, before commencing to transact such insurance business in the Union, deposit and keep deposited so long as he transacts such insurance business, money or approved securities or both to the value of two thousand pounds. The provisions of sections eight to twelve inclusive shall *mutatis mutandis* apply to such deposit.
- (3) Any person transacting such insurance business in the Union shall have an office in the Union and notice of the situation of such office and of any change in the situation of such office shall be lodged with the Treasury.

Process in any legal proceedings in any court against such person may be served by leaving it at such office.

- (4) Any person transacting such insurance business in the Union shall prepare and lodge with the Treasury within six months after the expiry of each calendar year a statement for such year in the form shown below:—

Statement for the year ending the thirty-first day of December, 19      in respect of insurance business transacted in the Union by      as agent for      of      brokers.

Premiums received £

Claims paid £

Other receipts

Commission received  
(by agents)

(details to be given)

Other payments  
(details to be given)

Total Receipts £

Total Payments £

- (5) Any person transacting such insurance business in the Union as aforementioned without having complied with the requirements of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds in respect of each such transaction."

301. I was originally inclined to take the view that, having regard to the peculiar Constitution

of Lloyds, they should be accorded some special treatment, but after careful consideration I am of opinion that it is impossible logically to mete out any discriminatory treatment to Members of Lloyd's. It is undoubtedly true that the different groups include persons of undoubted financial stability but even then they do not stand on any better footing than any of the large corporations incorporated in the United Kingdom and carrying on business there under the Assurance Companies Act, which have built up huge reserves, have paid in the usual deposits, given proofs of financial stability for years together, and there is, in my view, no justification for treating Lloyd's in any way better than these companies.

302. It may, however, be said why if that is so, have the Members of Lloyd's been accorded a preferential treatment in England. The circumstances in England are entirely different. In the first place there the local authorities are in a position to have constant information about the activities of Lloyd's, about the financial stability of its members and as regards the volume and nature of the works done by them. The same facilities are not open, nor are they available to the authorities in India. In the second place, I cannot help thinking that the favoured treatment which the Members of Lloyd's have hitherto received in the hands of the legislature is due to a considerable extent to the fact that eminent public men, members of the aristocracy and a good number of the people in power have at all times been members of Lloyd's. As a matter of fact when a representative of Lloyd's came to see me at Delhi the first thing he pointed out was that some of the *Ex-Viceroy*s were members of Lloyd's. While I admit that members of Lloyd's as regards financial stability stand on perhaps an equal footing with the powerful corporations doing business in England, yet I cannot from the point of view of legislation treat them on a better footing than these corporations.

303. The Government of India was intimated in a telegram received from the Secretary of State for India dated the 13th September 1934 that having regard to the fact that the British Government had recognized the peculiar constitution of Lloyd's and had enacted special provisions to be complied with by Members of Lloyd's, the Lloyds Corporation were suggesting that the needs of the Indian Legislation would be met if the Indian Statute provided that, so far as Lloyd's Underwriters were concerned, it would be sufficient if they provided each year to the Indian Government an assurance from the British Board of Trade that they had complied with the requirements of the British Government. For reasons which I have indicated above, I am unable, however, to treat them on any better basis than the well established insurance companies carrying on business in the United Kingdom.

304. It has also been pointed out that the method and constitution of Lloyd's enables its members to conduct their business at a much lower expense ratio than all other insurance institutions and that they are therefore able to offer Insurance Cover at most favourable rates and subject to the most advantageous conditions, and that any legislation which is likely to shut out the facilities and the security, which the Corporation of Lloyds affords must result in the increased cost of insurance and thus tend to the enhancement of prices generally. I must,

however, point out that the provisions which I have recommended regarding companies doing business in the United Kingdom under the Assurance Companies Act and which I think should be made applicable to the case of Lloyd's are not intended to nor will they result in launching these companies into any extra expense and as such any apprehension on this score seems to be wholly unwarranted. I am unable, therefore, on a consideration of all these facts, to recommend that any discriminatory treatment be allowed to the Lloyd's. My recommendations, therefore, will be:—

That the Underwriters of Lloyd's who themselves or through their agents known as Lloyd's Agents in this country carry on business of insurance should be treated on the same footing as foreign corporations carrying on business in India and as such be subject to the provisions I have already recommended as regards companies incorporated in the United Kingdom and doing business there under the Assurance Companies Act of 1909.

805. Before concluding I would like to refer to two matters, *vis.*:—

- (1) The necessity of making a provision regarding the right to sue in India for policy moneys;
- (2) The necessity of applying to non-Indian companies of the provisions recommended by me when dealing with

Indian companies, regarding the licensing of agents and the prohibition of payment of rebates.

806. As regards the 1st matter, representations have been made that such a provision should be made in the statute, and instances have been cited to show, how in the absence of such a provision, claimants have been unduly and unreasonably harassed by foreign companies in some cases. I am of the view that it is desirable by way of protection to insert a provision in the statute enabling claimants to file suits in India notwithstanding provisions to the contrary in the policies. I find that there is such a provision in some of the Dominions, and I would recommend that in the statute a provision should be made more or less in the following terms:—

“The holder of a policy issued in British India after the commencement of this Act shall notwithstanding anything in the policy or in any agreement relating thereto to the contrary, be entitled to sue the insurance company in respect of the policy in any court of competent jurisdiction in British India and any question of law arising upon any such policy shall be decided according to the law prevailing in British India.”

807. As to the other matter, I am of the opinion that the provisions recommended by me with regard to Indian companies should be made applicable to foreign companies as well, and I recommend accordingly.

## CHAPTER III.

## PROVIDENT INSURANCE SOCIETIES.

308. The Provident Insurance Societies in this country are governed at present by the Provident Insurance Societies Act V of 1912. The main features of the Act are:—

- (a) It applies only to the case of companies which undertake to pay on any life assurance policy a gross sum not exceeding Rs. 500 or an annuity exceeding Rs. 50 and do not receive by way of premium or contribution more than Rs. 250 where the premium or contribution is payable in one year and not more than Rs. 25 in a year where it is payable for a number of years.
- (b) There is no provision for any deposit to be made.
- (c) There is no provision for any actuarial valuation in the Act itself.
- (d) There is only a limited right of interference by the Registrar of Joint Stock Companies. He can inspect the books of a company at any time and has the right to direct an enquiry as to the solvency of a company or as to the manner in which the business of a company is carried on, either of his own motion or at the instance of 10 or more policy holders or members. There is also a right given to the Registrar to cancel the registration and to direct a winding up of the company if as the result of the enquiry he finds that the company is or is bound to be insolvent or that the business of the company is not being done according to the rules.

The original idea behind the Act was to provide for the better control of Provident Insurance Societies, that is to say, societies not being Life Assurance Companies proper which undertake insurances on births, marriages or other contingencies and deaths on a limited scale. These societies were really intended to enter to the needs of people of small means who could with difficulty afford up to Rs. 25 a year and the intention of the Act was that while it would provide for controlling the operations of societies working on unsound principles it would not interfere in any way with the development of Provident Societies of a useful character.

309. The absence of any provision for deposits at present has enabled many unscrupulous persons to start societies and collect monies by framing most impossible but attractive schemes which will not bear the scrutiny of an actuarial test at any time.

310. These schemes have succeeded in attracting people of small means and making them put in their slender savings into these companies in the hope of getting back for themselves or their families a substantial sum. Many of these companies working on unsound lines have gone into liquidation within comparatively short periods of time and a large number of poor people who have had the misfortune of paying in their savings to these companies have lost even what they have paid

311. The worst cases have occurred in Sind, Bengal and Guzerat where a very large number of bubble provident insurance societies were formed during the last four years. As could be expected there were a large number of failures too. An abstract showing the actual figures is given below:—

*Abstract showing formation and failures of Provident Insurance Companies during the last four years.*

Year.	No. of new companies formed.	No. of companies which failed.
1930 . . . . .	57	2
1931 . . . . .	163	4
1932 . . . . .	159	16
1933 . . . . .	168	19

Many of the existing companies though they have not actually been wound up are in a very moribund condition and a very considerable number are bound to cease business in the immediate future.

312. The failure of these societies is bound in each case to affect a large number of people, and that is what has happened as the result of the failures during recent years. A persistent demand for the protection of the poor public of this country against the frauds of those responsible for the activities of these mushroom concerns has since been made from almost all quarters. In my opinion, this is a matter which requires careful and speedy consideration and early steps must be taken to ensure the safety of the very large number of people who are likely to be affected by further failures of these societies. In order to effectually combat such failures it is necessary in the first place to improvise means whereby the formation of further mushroom companies can be checked. In the next place it is essentially necessary to make provisions whereby illusory and impossible schemes will be prohibited and business will be conducted on sound lines and lastly provisions must be made to preserve the funds of these societies to prevent any misapplication thereof.

313. *Prevention of mushroom concerns.*—Most of the companies that have come into existence during recent years are incorporated under the Indian Companies Act. In the report which I have submitted in connection with the Indian Companies Act, I have already made certain recommendations to prevent the formation of mushroom companies in general and it is my firm belief that if they are accepted they will prevent the growth of mushroom companies generally to a very considerable extent, but besides what is likely to be provided in the Indian Companies Act, special provisions must also, in my opinion, be made in the Act itself.

314. *Deposit.*—In my opinion, the system of deposits should be introduced with regard to these societies and it must be provided that

every such society must put in a deposit, before it is registered and is allowed to commence business.

315. At the present time there is no provision for any deposit in the case of provident insurance societies. The reason why no deposit for this class of societies was provided for was the fact that in the opinion of the Legislature the limited scope of activities of these companies did not then call for any deposits. This assumption on the part of the Legislature as appears from the actual facts was not justified. The absence of such a provision has enabled an inordinately large number of mushroom concerns to be brought into existence in this country. Most unbusinesslike but attractive schemes have been put forward by these exploiters to capture business. The premiums received are misused and the result is as I have stated that after a short time many of these newly formed societies have come to grief.

316. In the various suggestions which have been received from various quarters, there is, however, for all practical purposes an unanimity of opinion on the question of the necessity of providing for deposits in the case of these societies.

317. The question of the amount to be deposited is, however, a rather difficult one. At one time, *viz.*, in 1925 it was the idea of the Government of India to bring Provident Insurance Societies and Life Insurance Companies on the same level in the matter of the deposits. In my opinion, however, that would be too hard and such a provision if made will result not only in the weeding out of unsubstantial companies but also in the disappearance of the majority of the small but sound concerns now doing business in provident insurance. In my opinion, a different and a smaller scale of deposits must be improvised for these small companies.

318. The provision as to deposits has already been introduced in some of the Native States in India. Thus in Travancore and Cochin it has been provided that any company or society intending to carry on business in provident insurance, must before commencing business, deposit a sum of Rs. 5,000 and continue depositing 15 per cent. of the gross income until the amount comes to Rs. 50,000.

319. Various suggestions have been received from individuals and public bodies as to the amount of deposit, but there is no unanimity on the subject.

320. After careful consideration, I have come to the conclusion that I should recommend that societies intending to carry on business within the limits mentioned in the Act should henceforth be required to make—

- (a) an initial deposit of Government securities of the market value of Rs. 5,000, and
- (b) further deposits at the rate of one-fifth of the gross premium income every year until securities of the market value of Rs. 50,000 are deposited.

In the case of existing companies I would suggest that the initial deposit must be made within one year from the date of the amended Act coming into force.

321. I have deliberately recommended a comparatively small amount for the initial deposit to be made in the case of these concerns as in my opinion the imposition of any higher amount would have the result of crushing out many of the companies now in existence which are proceeding on a sound basis and would also provide an unjustifiable setback to the progress of provident insurance business in this country.

322. As a necessary corollary there must be a provision in the statute to provide against the depletion of the value of the securities. The statute should provide that if at any time the value of the securities falls below the amount to be deposited by reason of a fall in the market value of the Government securities, it would be competent for the Controller of Currency to call upon the society to put in additional securities so as to make up the amount of the deficit.

323. I am quite conscious of the fact that this recommendation would involve a constant reference to the market value of Government Securities, but, as I have already pointed out in a previous chapter of this report, there is no way out of it unless the Government is prepared to accept (as in some other countries) the amount of the deposit in cash and agree to invest it in specified securities or to pay some interest thereon.

324. *Provisions as to working capital.*—The making of a provision for the deposit of the sum of Rs. 5,000 with the Controller is not by itself, however, sufficient to prevent the formation and continuance of mushroom societies. It is in my opinion also necessary that before any such society is allowed to commence work there should be a sufficient sum available for working capital. This is necessary in order to provide against the misuse of the premium income from the start. I have already recommended a similar provision in the case of Indian Insurance Companies Act, but for reasons which are fairly obvious the amounts must be different. After careful consideration I am of the opinion that a sum of at least Rs. 5,000 should be fixed as the minimum working capital which must be procured before any provident insurance society is allowed to commence business. Along with the other documents necessary to be filed there must also be filed a declaration on oath by the promoters (in case it is a proprietary concern) or the directors (in case it is a company incorporated under the Indian Companies Act) that they have in their hands at least a nett sum of Rs. 5,000 as and by way of working capital.

325. *Rules of the Society.*—In the next place I would suggest that the provision in the Act regarding the filing of rules of business be altered and it should be made obligatory on all companies to file rules which will have a certain number of items as common items. Under the existing provisions of the Act it is incumbent on the Societies to file with the Registrar at the time of the application for registration a copy of the rules. All that the concerns have to see is that the rules must comply with the provisions in the Act. The Registrar may refuse registration if he is of opinion that any particular rule is not in compliance with the Act. He has to give notice to the concern pointing out the rule which he objects to and the companies have 90 days' time within which



the rule has to be amended. On such amended rule being put in and on its being accepted by the Registrar the registration is effected. Section 5 of the Act indicates certain particulars which have to be given in the rules and it provides that the rules are to contain such other particulars as may be prescribed by the local Government under section 24. The rules as framed by the local Governments are not, however, all uniform and in consequence there is no uniformity in the matter of these rules.

326. In my opinion it is desirable to have an uniformity in the matter of the rules, if possible, and what I would therefore suggest is that section 5 should indicate such matters as all societies without any exception must provide by their rules and leave the local Governments to superimpose such special matters as local conditions may justify.

327. As a rough guide I would suggest that the rules of every Provident Society must contain the following particulars, *vis.* :—

- (i) The name of the Society.
- (ii) The objects.
- (iii) The location of the registered office.
- (iv) The contingencies or classes of contingencies on the happening of which money is intended to be paid.
- (v) The proportion of the annual income of the society derived from the premiums or contributions which may be disbursed for the expenses of the management of the society.
- (vi) The appointment, qualification, and powers of the directors, of the manager or secretary and of other officers of the society and the conditions under which they may be removed.
- (vii) The conditions to be complied with by persons applying for admission and the payment to be made for admission.
- (viii) The rates of premiums and contributions and the period for which and at which they are payable.
- (ix) The penalty for delay in paying premiums and contributions.
- (x) The maximum amount payable to a subscriber or policy-holder.
- (xi) The amount to which a policy-holder or his representative becomes entitled on the maturity of a policy.
- (xii) The circumstances in which a bonus shall be payable to policy-holders.
- (xiii) The nature of the evidence required to prove birth, marriage, death or other event on the occurrence of which the insured amount is payable.
- (xiv) The circumstances in which policies may be forfeited and renewed and premiums and contributions already paid may be refunded.
- (xv) The maximum number of policies other than life assurance policies which a single person may hold.
- (xvi) The mode in which the value of the interest of a deceased member or policy-holder shall be ascertained, and the nomination of a person to whom such interest may be paid or transferred.

- (xvii) The mode of investment of the funds of the society.
- (xviii) The allowances payable to agents or canvassers.
- (xix) General meetings of the members and policy-holders, the procedure to be observed at and the powers to be exercised by such meetings.
- (xx) The procedure to be adopted for the amendment of the rules.
- (xxi) The appointment and remuneration of auditors.
- (xxii) The proportion of income set apart for the payment of benefits on each class of policies.
- (xxiii) The raising of additional capital.

In my opinion, the Act should provide that every Provident Insurance Society must give the particulars given above in their Rules along with such other matters as the local Government within whose jurisdiction the registered office of the company is situated may prescribe.

328. In order to prevent unscrupulous persons from changing rules for avoiding liabilities undertaken by them, I would also suggest some changes in the provisions in the Act relating to amendment of rules, as contained in section 8. The present provisions do not make any provisions for the preservation of the rights of the existing policy-holders. It is quite conceivable that amendments may sometimes be made which, though they are not repugnant to the Act, are such that they are likely to affect the rights of the existing policy-holders. Some cases where this has been actually done have been brought to the notice of the Government as well.

329. In such an event under the existing Act the Registrar is powerless. In order to protect the rights of the existing policy-holders, the Act should be amended so as to make it clear that no amendment can be made of any rules of any society which is likely to affect the rights of the existing policy-holders unless such amendment is sanctioned by the High Court on an application to be made by the Society of which notice should be given to the policy-holders then in existence and power should be given to the court to reject or sanction the amendment and to impose any condition which may appear just and proper. In my opinion these provisions, if properly worked, would suffice to substantially prevent the formation of mushroom societies.

330. I will now pass on to discuss the question of provisions necessary to prevent illusory and impossible schemes being put forward on the part of these societies. In the first place in my opinion it is desirable henceforth to specifically limit the field of activities of these societies to such matters as may legitimately be classed under the heading of Provident Insurance.

331. *Activities of Provident Societies.*—At the present moment a Provident Insurance Society is defined under the Act to mean "any person who or body of persons whether corporate or unincorporate which receives premiums or contributions for insuring money to be paid on the birth, marriage or death of any person or on the happening of any such other contingency

or class of contingency as may be prescribed" and section 24 of the Act authorises the local Governments to make rules prescribing the contingencies or class of contingencies referred to in the definition.

332. Pursuant to these rules the various local Governments have prescribed what according to them are the contingencies contemplated in the Act in their respective provinces. There is, however, no unanimity, and in my opinion for the sake of uniformity it is desirable to prescribe in the Act itself the contingencies on the happening of which money can be paid by a Provident Insurance Society.

333. Having considered all the rules framed by the local Governments, I would suggest that the Act should limit the operations of Provident Insurance Societies to payments of moneys on the happenings of the following events, *viz.* :—

- (i) Birth, marriage or death of any person.
- (ii) The payment of sums on a person or persons surviving a given term, age, or contingency and the contingency arising under any other life assurance business which is not subject to any other Act.
- (iii) Failure of issue.
- (iv) Provisions for the expenses of any ceremonial occasion, such as betrothal, circumcision, attainment of puberty in the case of women, sacred thread ceremonies, shaving of the head, baptism, etc., which is generally observed among the different communities in India.
- (v) Unemployment or retirement from business.
- (vi) Education of a dependant.
- (vii) Sickness
- (viii) Accident.
- (ix) Such other contingencies in the case of any province as the local Government may by notification in the local official Gazette prescribe.

I have omitted what is known as Bond Investment Business from this list because in my opinion that cannot legitimately be classed as insurance business by any stretch of imagination.

334. In this connection, I propose next to deal with what is known as Dividing Insurance Business and make specific recommendations with regard thereto. There are at present quite a large number of societies which do what is known as "Dividing Society Business". There is no mention of a dividing society in the Act, but unfortunately some of the local Governments have in accordance with the powers vested in them under section 24 of the Act given a definition of what is Dividing Society Business thereby suggesting by implication that this is a class of business which can be legitimately carried on by a Provident Insurance Society.

335. Dividing society business is defined as Provident Insurance Business under which the amount payable on the policy money becoming due is not fixed but depends either partly or wholly on the results of the division of any

portion of the premium income or funds amongst the policies which have become due for payment in proportion to the premium received in each class in any specified period. In other words, roughly speaking the scheme generally is this, *viz.*, the society distributes the yearly collection realised from its members, excepting a small amount which is kept for expenses, amongst members whose policies mature during the year.

336. To my mind (and I am fortified in this view by expressions of opinion from the Government Actuary himself) it is a misnomer and a mistake to include this class of business in the category of insurance business.

337. The genesis of this class of business was the practice followed in England in the early 18th Century amongst the clubs and other institutions to make collection from their members for the purpose of creating a fund and dividing the same for payment to the legal representatives of any member who might die during any fixed period of time.

338. The worst feature of these societies is that there is no scientific basis for the payments. There is no age limit for persons who desire to be enrolled on the list of members of these societies, and there is no medical examination. There is one uniform rate of subscription, and young and old are both eligible for the memberships. The amount of payment naturally varies with the number of people who are on the list of members as also the number of deaths occurring in a particular year. There is no, nor can there be any, guaranteed minimum, but some of these companies in order to attract members fraudulently announce a fixed minimum sum as being payable on death. Based as they are on no scientific principles, these institutions are bound to go from bad to worse and must ultimately end in liquidation.

339. This form of insurance has been attracting the attention of the local Governments in Bengal and in Bombay from a considerable time past and from time to time representations have been made by these two Governments to the Government of India to provide some means for putting a stop to this class of business which by reason of the patent unsoundness of their schemes are bound to fail. Government Actuaries have condemned it times without number and the opinion of the present Government Actuary in his report for the year 1933 runs as follows:—

"Some Indian companies transact life assurance business on the dividing plan under which the sum assured is not fixed but depends on the division of a portion of each year's premium income amongst the claims arising in that year. The main defect of dividing insurance business is that policy-holders in each class are charged the same rate of premium or subscription irrespective of their age on admission ranging even in some cases from 15 to 60 years. Business of this nature is not only unsound but is apt to lead itself to the practice of fraud on the part of policy-holders and agents and later on by the company. It has been declared to be the course of insurance enterprise in India. Before the Act of 1912 was passed there were numerous

companies which transacted dividing insurance business and most of them came to grief. Of such companies which were in existence at the time of the passing of the Act the majority have disappeared and some have stopped issuing policies on the dividing plan. A few new companies have taken up this dividing insurance business and it will not be long before they realise their mistake."

340. It is surprising that inspite of such strong condemnation these companies have not yet been put down. Prominent individuals connected with insurance as also of prominent public bodies and journals interested in insurance matters have practically with no exception condemned it, and having regard to the unanimity of opinion of Insurance experts that these societies can never succeed or thrive and are bound to end in liquidation, it is, in my opinion, necessary to put a stop to these companies. I have therefore omitted dividing insurance business from the list of permissible business on the part of a Provident Insurance Society. I will now suggest how the dividing societies should be dealt with.

341. The question has got to be considered from two points of view, *viz.* :—

- (i) Provisions to prevent formation of such societies in the future, and
- (ii) Provisions with regard to the existing societies.

342. As regards the provisions to be made for preventing the formation of such societies in the future, the best course obviously is to prohibit in the statute carrying on of business on the dividing insurance basis.

343. The question of the existing societies, however, presents some difficulties. In my opinion, so far as these are concerned, having regard to the fact that these concerns are bound to go to liquidation, and thus to affect a very large number of persons badly, the only course is to make the best of a bad bargain and have them compulsorily wound up.

344. Having thus dealt with the question of limitation by the statute of the field of activities of a Provident Insurance Society, I will now proceed to discuss the other provisions which I consider should be made in the statute to minimise chances of loss to the policy-holders.

345. In my opinion, it is necessary in the next place to make adequate provisions in the statute to ensure their working on sound principles. In my view this can be done only if the statute places some restrictions on the schemes which a Provident Insurance Society may adopt, by providing for an actuarial examination of such schemes before they are allowed to be worked.

346. *Actuarial Certificates.*—There is at present no restriction to any company working or adopting any scheme it likes however unsound or unbusinesslike it may be. The Registrar is powerless to prevent it. The result has been that some societies are working schemes which are so unsound that failure must be the inevitable result. To prevent catastrophes resulting from the working of such schemes, it is necessary in my view to provide in the statute that all societies must have the schemes which they

propose to work including the Premium Tables in respect thereof duly certified by qualified actuaries before they actually commence business for submission of copies and particulars thereof to the Registrar with a certificate from the Actuary that he has examined the scheme and the Premium Tables and that in his opinion it is actuarially sound.

347. As a necessary corollary it should also be provided that if at any time the company desires to alter any scheme the altered scheme should also be similarly certified and submitted to the Registrar before it is worked. If such alterations are intended to affect the existing rights of any policy holders, as is often attempted to be done, it should be provided that no such alteration will be allowed unless it is sanctioned by the court on notice to the existing policy holders. Provisions should also be made for discharging the liabilities of dissentient policy-holders as a condition of allowing such amendments. These provisions would in my view be quite appropriate for the future. As to existing societies, I suggest that the following provisions should be made in the statute:—

- (i) That all schemes which the society has been working including the Premium Tables should, within three months from the date of the commencement, be submitted to a duly qualified actuary for a report which should specifically state:—
  - (a) If the schemes are actually sound;
  - (b) If the assets of the society are sufficient to meet the existing liabilities;
  - (c) If the existing assets are not sufficient to meet the liabilities under the existing schemes, the actuary should make a report giving his views as to how the existing contracts should be modified.
- (ii) The Actuary must make a report within three months and a copy of the report should be filed with the Registrar.
- (iii) In the event of any scheme being denounced by the actuary as unsound, business on the basis thereof is to be stopped as from a date to be fixed by the Registrar.
- (iv) In such an event provided the assets are sufficient to meet the existing liabilities the society is to set apart out of its assets a sum sufficient to meet the liabilities already incurred (the extent thereof being ascertained by Actuary) under the scheme so denounced by the actuary. In the event, however, of the assets proving insufficient the company should be made to apply to the Court within 3 months and the Court should be authorised to modify the existing contracts on the lines of the recommendations of the actuary, or, if that is impossible to wind up the company.

In my opinion these provisions are necessary to prevent the continuation of business on unsound principles which in the end is likely to do more mischief to the policy-holders than would be done by a variation of their contract and the reversion to a sound practicable scheme.

348. In this connection, I would like to make two other recommendations, *vis.* :—

- (1) That the Act should make it clear that the maximum amount payable by a Provident Insurance Society should not exceed a lump sum of Rs. 500.

Section 3 of the existing Act does purport to prescribe limitations as to the amount to be received by way of premium and the amount to be paid out. It appears, however, from the papers at my disposal [File No. 77-I (28)], that there is some difference of opinion as to whether the limitation placed in the Act as to the amount payable applies to all classes of business carried on by a provident insurance society or only to cases of life insurance. From the wording of the Act it would appear that the limitation is only applicable to the case of moneys payable under a life insurance policy issued by such a society and that societies may exceed the limit of Rs. 500 prescribed in section (3) in cases of insurance other than life insurance. The opinion given by the Advocate General of Bengal in 1914 which is to be found in the file above-mentioned supports this view. The opinion of the Advocate General of Bombay given in 1915 to the Government of Bombay on the same question is, however, contrary to the opinion given by the Advocate General of Bengal, and the Government of Bombay has in consequence thereof insisted upon the limits set down in section 3 being observed in the case of all classes of business.

349. While I am unable to agree with the view taken by the Advocate General of Bombay, I am prepared however to admit that the intention of the Legislature as far as the same can be gathered from the papers used at the time Act V of 1912 was passed would appear to have been to apply this limitation as to the amount payable by these societies to all classes of business done by these societies. I would therefore recommend that the Act should be so amended as to make it clear that the limitation as to the amount payable as set out in paragraph 3 applies to all classes of business carried on by these societies.

350. The second recommendation which I would like to make is that the limitation as to the amount of premium receivable by these societies should not be retained. It has been represented that this limitation makes it impossible for any actuarially certified scheme being worked under the Act. I referred the matter to the Government Actuary and he agreed that the complaint was justified. I am therefore of the opinion that this limitation should be made away with and I recommend that the Act be amended accordingly.

351. I am unable to accede to the suggestion made from some quarters that the limitation of Rs. 500 in section 3 of the Act should be raised to Rs. 1,000. The effect of such a change would in my opinion result in serious encroachments on the activities of life insurance companies. I now pass on to the next head, *viz.*, provisions necessary to prevent misapplication of funds.

352. *Keeping of books.*—The first thing essential in this connection is to provide for proper books and accounts to be kept. The existing Act is absolutely silent in the matter of the books to be kept by a society. There is

nothing said as to what books should be kept by the company. In my opinion the statute ought to make specific provisions as to the books which every company should keep. In my view the books which must be kept by all societies are:—

- (i) A Register of members (which is required by section 10) for all societies which are not incorporated under the Indian Companies Act.
- (ii) A Register of policy holders giving the names, addresses, and description of the policy holders, the date when the policy is effected and the date of assignment of transfer if any effected and the name and address of the transferee or assignee for each class of business effected.
- (iii) A Register of claims showing the name and address of the claimant, the date when the claim is made, and the date when it is satisfied or discharged.
- (iv) A Cash Book in which shall be entered the daily receipts from premium or other sources and the daily disbursements.
- (v) A Ledger.
- (vi) A Journal.
- (vii) A Register of agents of the society.

I would also suggest that in order to ensure the due observance of these provisions it would be provided as has been done in Canada that every society which neglects to keep the books required under the statute to be kept shall incur some sort of a daily penalty.

353. *Accounts and Statements.*—The next thing is to ensure the keeping of proper accounts. To achieve this it is necessary in the first place to provide that where a society carries on different classes of business, separate accounts of the various businesses should be kept. In the next place it is necessary to provide that the books and accounts should be properly audited and a proper Balance Sheet, Revenue Account and a Profit and Loss Account and that statements of the business of the company should be correctly made out and made available to the members and policy holders.

354. Under the existing Act every company has to prepare annually a balance sheet and a revenue account from its books and to have it audited by a duly qualified auditor, and under section 13 copies of the same have got to be furnished to the Registrar within six months from the expiration of each financial year and to publish the same. The Society has also to submit a record of all insurance effected on a life other than the life of the person insuring. I would supplement these provisions by providing in the Act itself that—

- (i) The auditor must along with his usual certificate as to the Balance Sheet, make a report as to whether proper books have been kept and as to any matter which he thinks it is necessary to bring to the notice of the members and policy holders.

- (ii) The directors should along with the Balance Sheet and Revenue Account and Profit and Loss Account make a report as to the general affairs of the company.
- (iii) That a copy of the Balance Sheet, Profit and Loss Account and Revenue Account as also the two reports should be sent over to every policy holder within a fortnight from the same being filed with the Registrar.

As to the form of the Balance Sheet, Profit and Loss Account and Revenue Account, I think standard forms should be annexed to the Act and I would suggest that the forms should follow the forms prescribed under the Indian Companies Act so far as practicable.

355. I am also of the opinion that in order to enable the policy holders as also the Registrar to fully and properly realise the actual state of affairs of the business, it is necessary to have certain further statements, *vis.*:—as to the extent of new business, the premium income and the expenses. I would therefore recommend that over and above the Balance Sheet, the Profit and Loss Account and the Revenue Account, every society should prepare the following statements, *vis.*:—

- (i) A statement of new policies effected during the year in each class, including the amount thereof, the premium income received therefrom and the number of existing policies discontinued during the year and the amount thereof;
- (ii) A statement of the claims made during the year and the amount paid by way of discharger or satisfaction;
- (iii) A statement showing separately the expenditure in respect of the several classes of the businesses carried on by the society;

and file copies of them with the Registrar along with the Balance Sheet and Revenue Account.

356. For the protection of the auditors, I would also suggest that the statute should make it clear that the auditors shall have access to all the books and accounts and all other papers and documents necessary for the proper auditing of the balance sheet, profit and loss account and revenue account, and that all the provisions in the Indian Companies Act relating to audits and auditors should apply to these societies irrespective of as to whether they are incorporate under that Act or not.

357. *Periodical Actuarial Valuation.*—In my opinion, it is essentially necessary for every society to have an actuarial valuation of its assets and liabilities, at regular intervals in order to find out if the company's affairs are carried on properly. There is no provision in the body of the Act for any actuarial valuation of the assets of the company, but in some of the rules framed by the local Governments provision has been made for a periodical actuarial valuation. I think, however, that it is very much better to provide for the same in the Act. I would therefore recommend that the following provisions be made in the Act, *vis.*:—

- (i) That every such society shall at least once in every 5 years have its assets and liabilities valued by a duly qualified actuary.

- (ii) That the report of the actuary containing an abstract of the results of his valuation together with a statement as to—
  - (a) the method by which the valuation age of the lives were ascertained;
  - (b) the rate at each age of the mortality assumed and of the annuity values used in the valuation;
  - (c) the reserve values held against policies effected;
  - (d) the rate of interest taken into account; and
  - (e) provisions for expenses made in the valuation;

should be filed with the Registrar.

- (iii) In the event of the actuary finding that the financial condition of the society does not permit of any surplus being distributed either as bonus to policy holders or as a dividend to shareholders, he shall also state in his report whether or not in his opinion the society is insolvent. If according to him it is insolvent, he shall also state how, in his opinion, the existing contracts should be modified or what other adjustments of the rates of premium should be made in order to make good the deficiency in the assets.

358. *Investment of Funds.*—The next thing which I would recommend in order to prevent misapplication of funds would be to make some provisions regarding funds as also the investment thereof. In my opinion it should be provided in the first place that where societies carry on different classes of insurance business, the funds in respect thereof should be kept separate. In the second place, it should be provided that the funds should be charged in favour of the policy holders of the respective classes of business. This system is in force in the case of life Insurance Companies and in my opinion should be applied to the case of Provident Insurance Societies as well.

359. As to the investment of funds, under the existing Act there is nothing provided as to how the funds of a society should be invested and up till now all societies have enjoyed complete freedom in the matter of investments. Having regard, however, to the experience gained from the working of these societies during the last 22 years, I am of opinion that a departure should be made in this direction and some statutory limitations should be imposed upon the right of investment of funds.

360. The scheme in England under the Friendly Societies Act of 1896 is to create a statutory body of trustees in whom the funds of a Friendly Society are vested, and under section 44 of the Act the trustees may, with the consent of a majority of the members present invest the funds of a society either—

- (a) in the Post Office Savings Bank, or in any other savings bank certified under the Trustee Savings Bank Act; or
- (b) in the public funds; or
- (c) with the National Debt Commissioners; or

- (d) in the purchase of land, or in the erection of buildings thereon; or
- (e) upon such other security not being personal security in which under the rules of the society the moneys can be invested.

I am convinced that in the interest of the numerous policy holders it is essentially necessary that a substantial portion of the funds of the Provident Insurance Societies in India should be kept invested in Government and Trustee Securities. The question as to what portion of the funds should be kept so invested is always a very difficult one but after considering the matter carefully I am of opinion that the statute should make the following provisions:—

- (i) That out of the total funds of the society, not less than 60 per cent. thereof should be kept invested in Government securities, and in securities as specified in section 20 of the Indian Trusts Act;
- (ii) That the funds and investment of every society shall be kept in its corporate name and not in the name of any individual director or other officers of the concern;
- (iii) That no loans shall be given to the directors or other officers of the society except against policies (if any) held by them in the society;
- (iv) That no loans shall be given to any concern (including a partnership) in which any director, manager or other officer of the company shall be directly or indirectly concerned.
- (v) That a penal clause should be inserted penalising any breach of these conditions by any officer or director of the society on the following lines:—

“If any loan is made by a society to any director or officer of the society or to any concern in which they are directly or indirectly concerned in violation of the provisions hereinbefore contained, all directors and other officers of the society who make the same or assent to or acquiesce in the same, shall be jointly and severally liable to the society for the amount of such loan with interest at such rate not exceeding 12 per cent. as the Registrar may fix from the time of the making of such loan to that of the repayment thereof and the amount shall be recoverable by execution from such director or officer.”

361. *Limitations as to expenses of management.*—In this connection I would like to discuss the question as to whether or not the statute should provide some limitations on the expenses of management of a society. Cases have frequently been brought to the notice of the Government where very large amounts have been spent by the persons in charge of the management of a society under the heading “Expenses of Management” and it has been suggested that a limitation as to the expenses properly incurable by any society should be inserted in the statute.

362. Under the existing Act, although a society has under its rules to specify the proportion of the premium income which is expected to cover the expenses of management, there is no penalty imposed if that limit is exceeded nor is there any power given to the Registrars to restrain the spending of excessive sums by way of management expenses. The question of expenses is really one of internal management and it is difficult to justify any direct interference in the matter. The quantum of expenses which may legitimately be incurred would vary according to the special circumstances of each case and in my opinion it is extremely difficult if not impossible to suggest any fixed ratio which would suffice to meet the necessities of all cases. After considering all the aspects carefully, I regret to say that I cannot recommend the making of any provision limiting the proportion of the premium income which may be spent under the heading of expenses of management. In my opinion, the matter should be left as it is leaving it to the public to form their own conclusions from the figures which would be available to them from the returns submitted and the reports made by the actuaries.

363. *Inspection of books and documents by Registrar or some one deputed by him.*—The last thing I would suggest under the present heading that I have been discussing would be to extend the right of inspection of books and documents. In the existing statute, under section 16 the Registrar or any person appointed by him is entitled to have access to the books of a society at any time he likes. There is no provision, however, for any periodical inspection or to inspection of documents other than the books. Having regard to the very large number of cases of irregularities and illegalities which have been brought to light, it is necessary to make some provisions for periodical inspection of the books and documents of these societies. In my opinion, it should be provided that the Registrar should himself or through Inspectors inspect the books and documents of every society once at least in every year and I would suggest that provisions should be made more or less on the following lines, namely,—

- (a) That the Registrar shall visit personally or cause by a duly qualified member of his staff to visit the head office of every society registered in his province at least once in every year and examine the books and documents of the company and shall make a report as to the conditions and affairs of each society.
- (b) That the Inspectors should in such connection have the right to require explanations from the directors or managers or other officers of the company on any matter relating to the affairs of the company.
- (c) That the reports should be kept with the file of the papers relating to the society to which it relates in the office of the Registrar and should be open to inspection by all members and policy holders.

In my opinion this procedure if followed will constitute a wholesome check on the activities of these societies and will effectually prevent the misapplication of funds.

364. I am quite aware of the fact that my recommendation will involve the employment of additional staff under the Registrar with the consequential expenses, but I feel that the duty which the State owes to its subjects would justify the incurring of these expenses. A portion of the expenses so incurred however be recouped by the imposition of reasonably moderate fees on the companies in connection with the filing of documents in connection with the provisions under the statute.

365. *Miscellaneous Provisions.*—I have already dealt with the matters which according to my view are the principal matters which should be considered in connection with companies carrying on business as Provident Insurance Societies. There are, however, certain other matters on which recommendations must be made and I now proceed to make them.

366. *Re: Names.*—It has been rightly pointed out from various quarters that in order to distinguish companies which carry on business in Provident Insurance Companies Act, it is desirable to make some provisions in the statute regarding the names to be allowed to be adopted by these companies. There is no provision in this direction in the statute but under the rule-making powers, some of the local Governments have made rules, the effect of which is to prevent the use of the words "Life Assurance" or "Life Insurance" in connection with such companies. This rule, however, is not to be found in all the provinces. In my opinion, it is necessary that, in order to properly distinguish Provident Insurance Societies from other insurance Companies, these societies must not only be prevented from using the words "Life Insurance" and "Life Assurance", but they must have the word "Provident" associated with their names, and I recommend that the statute should make provisions on these lines. In my opinion, this is necessary to make it clear to the public that the concern is really a Provident Insurance Society and not a Life Insurance Company. Existing companies should be given six months time within which to effect the necessary changes in the name.

367. *Liquidation.*—The provisions with regard to the winding up of the Provident Insurance Societies, in my opinion require considerable additions and alterations. At present the provisions in the existing Act are rather in a nebulous condition. A Provident Insurance Society may be wound up by the Registrar if he is satisfied as the result of an enquiry made under section 17 that the society is insolvent or must necessarily be so or that the business of the society is conducted fraudulently or not in accordance with the rules thereof, but before he does so, he must cancel the registration in the first instance. There is no provision for a company going into winding up of its own motion. Then again the procedure to be followed up in a winding up has been left to be dealt with by the Rules. The powers and duties of liquidators have not been properly dealt with at all.

368. In my opinion, it is really necessary and desirable that the question of the winding up of these companies should be dealt with in a

separate chapter and the following provisions should be made, *viz.*:—

(A) *Winding up.*—(i) It should be provided that a Provident Insurance Society may be wound up in the following circumstances:—

- (a) If it is a company incorporated under the Indian Companies Act, then according to the provisions of section 162 or of section 203 of that Act.
- (b) If, however, it is not a company incorporated under the Indian Companies Act, then on a resolution being passed by the proprietors to the effect that the society be wound up voluntarily.
- (c) On the registration of the company being cancelled by the Registrar according to the provisions of section 18 of the Act.
- (d) On failure to pay in the deposits in terms of the Act.
- (e) On failure to send in any return or statement under the Act within a fortnight from being called upon to do so.
- (f) Where as the result of the report made by an Inspector, the Registrar is of opinion that it would be prejudicial to the interest of the policy holders to allow the society to continue any further.

(ii) That in the event of a society deciding to wind up voluntarily or in the event of a society being directed to be wound up by the Court, notice shall be given by the Society to the Registrar within seven days from the date of the order or the passing of the resolution.

In this connection I would like to recommend an amendment to section 18, that in a case where the Registrar has held an enquiry under section 17, he may in a proper case where he thinks fit instead of cancelling the registration of the company and directing a winding up recommend to the Court that the society may continue subject to reducing the amount of its contracts upon such terms and subject to such conditions as he thinks fit. The society should in such an event apply to the High Court for sanctioning the reduction of the contracts as suggested by the Registrar. I am recommending this because there may be cases where it would be worth while giving a society the chance of reducing the contracts and continue its workings without forcing it to a winding up. The necessity for such a provision was felt by some of the local Governments under the present Act and certain rules to this effect, but giving the powers to the Registrar, were introduced under the rule making power conferred on them under section 24. I am extremely doubtful as to whether under the provisions of section 24, the framing of a rule containing this provision would not be *ultra vires*. Apart from this, as such a step is likely to affect quite a large number of people, I am of the opinion that the Registrar should recommend the adoption of such a course but the ultimate sanction should be left to the Court.

369. (B) *Appointment of Liquidator.*—The statute should provide that, except in cases where the winding up is directed by the court,

Registrar should appoint the liquidator to wind up the society and fix the remuneration he should be entitled to.

370. (C) *Procedure to be followed by Liquidator.*—In my opinion, the following provisions should be made, *viz.* :—

- (i) That the liquidator shall immediately take charge of all the property moveable or immovable and of all the documents and records belonging to the Society.
- (ii) That it shall be the duty of the proprietors or the directors and/or the managers and other officers of the society to make over to the liquidator all the properties including books, documents and etc., of the society.
- (iii) That any manager, director or other officer of the society retaining or detaining any portion of the assets or any of the books or documents of the company in spite of a notice from the liquidator to do so would be liable to be punished on conviction with a heavy fine and/or imprisonment. The Court should also have the power in such a case to make an order directing the offending director, manager or officer to make over the same within a time to be allowed by the Court and in default thereof will be liable to punishment by way of imprisonment.
- (iv) The Liquidator should, within 7 days from his appointment, send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date, not being less than 14 nor more than 21 days after his appointment, and at a place and hour to be specified in the notice. Notice of the meeting should be given once in the local official Gazette and in such newspapers as the local Government may by rules provide.
- (v) At the meeting to be so held, the creditors shall determine—
  - (a) whether an application shall be made to the Registrar for the appointment of any person as liquidator, in the place of, or jointly with, the liquidator already appointed; and
  - (b) whether a committee of inspection should be appointed.
- (vi) If the creditors so resolve, an application may be made to the Registrar at any time, not later than fourteen days after the date of this meeting, by any creditor appointed for the purpose at the meeting. On receipt of any such application, the Registrar shall appoint a suitable person as liquidator in the place of, or jointly with, the liquidator already appointed and if so desired by the application, a committee of inspection.
- (vii) In cases where a Committee of Inspection is appointed, the Committee shall, subject to such limitations as may be prescribed by the Registrar, be entitled to have a general right of

supervision over the acts of the liquidator and a right to inspect at reasonable times the accounts of the liquidator.

- (viii) The liquidator shall as soon as practicable, after obtaining possession of the assets, ascertain the amount of the liability of the society to each person appearing by the books of the society, to be entitled to or interested in policies granted by such society and shall give notice of the amount so found to such persons and in such manner as the Registrar may direct, and any person to whom notice is so given shall be bound by the value so ascertained.
- (ix) The liquidator shall simultaneously cause a valuation to be made of the assets of the society and shall also cause an estimate to be prepared of the costs of the winding up and shall on the basis thereof cause the list of contributories to be settled.
- (x) The liquidator shall keep proper books in which shall be entered proceedings at meetings, the receipts and disbursements and such other matters as the Registrar may prescribe, and any creditor or contributory may, subject to the control of the Registrar, inspect any such books.
- (xi) The liquidator shall in the administration of the assets of the society and in the distribution thereof among its creditors have regard to any directions that may be given by the creditors and/or contributories at any general meeting or by the Registrar.
- (xii) That in all matters not specifically provided for a liquidator appointed under the Act shall so far as practicable follow the same procedure as is prescribed in the case of an official liquidator appointed under an order of the Court for the winding up of the company under the Indian Companies Act.

371. *Powers of Liquidator.*—As to the powers of the liquidator, I suggest that it should be provided that a liquidator appointed to wind up a society shall have power—

- (1) to institute or defend any legal proceedings on behalf of the society by his name of office;
- (2) to determine the contribution to be made by members of the society respectively to the assets of the society;
- (3) to investigate all claims against the society and to decide questions of priority arising between claimants;
- (4) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and
- (5) the liquidator shall, so far as the settlement of list of contributories and the realisation of the amount of contribution is concerned, have the same powers as an official liquidator under the Indian Companies Act;



- (6) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;
- (7) to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908;
- (8) A liquidator appointed under the Act may, with the sanction of the Registrar, employ such establishment and seek such assistance from an actuary or an auditor as may be required for the purposes of his office as liquidator, and such legal assistance as may be necessary for the purposes of the institution or defence and the conduct of any legal proceedings.

372. *Removal of Liquidator.*—Provision should be made for liquidators appointed under the Act being removed by the Registrar from office, if it is proved to his satisfaction that the duties entrusted to such liquidator have not been properly discharged.

373. It should also be provided that a vacancy in the office of a liquidator, caused by death, resignation or removal, shall be filled up by the Registrar by the appointment of a suitable person, by an order in writing.

374. *Periodical rendering of account and meeting of creditors and contributories.*—The statute should provide that every liquidator appointed to wind up a society under the provisions of the Act should render annual statements of account and a report to the Registrar. The account specifically show the amount realised and the amount disbursed and the report should give details of what the liquidator has done during the course of the year towards realising the outstanding assets and meeting the existing liabilities. The Act should further, in my opinion, provide that this report and account should be placed before a meeting of creditors and contributories at least once in every year, and the views expressed by them thereon should be forwarded to the Registrar.

375. *Dissolution of the company.*—At the present time rules for dissolution are not contained in the Act but have been provided for by rules framed under section 24 of the Act. It is desirable that the Act should contain provisions regarding dissolution. The provisions that I suggest should be more or less on the following lines, *vis.* :—

- (A) The liquidator must also prepare a final account and lay the same before a general meeting of the society to be called for the purpose. Notices should be given to all the creditors and contributories individually as also by advertisement in the official Gazette and in at least two newspapers having circulation in the province.
- (B) That the liquidator must make a report to the Registrar showing how the winding up has been conducted and the property of the society has been disposed

of. The official Liquidator should forward the final accounts together with his report to the Registrar.

- (C) The Registrar on receiving the said return shall, if he is of the opinion that the affairs of the society have been finally wound up, register the report, and on the expiration of three months from the date of submission of such return, declare the society as dissolved. The liquidator shall thereupon stand discharged from acting any further.
- (D) If, however, the report is not approved by the Registrar, he shall return it to the liquidator, indicating in what respect it is incomplete or unsatisfactory and he should be authorised to give directions for such further acts as he thinks are necessary for the final winding up, and it shall be the duty of the liquidator to comply with the directions so given by the Registrar and to complete the winding up pursuant to such directions within six months from the date thereof and to submit a fresh report to the Registrar on the expiry of the said period.
- (E) If the Registrar accepts the report, the liquidator shall forthwith pay off all sums, if any, in his hand remaining undisposed of to the Registrar who is to hold the same for a period of three years. If within that time no direction is obtained from a Court of competent jurisdiction with regard to the same at the instance of any person interested in the same, the sum will stand forfeited to the Crown.
- (F) The dissolution should be notified in the official Gazette.

376. *Power of Nomination.*—I have already in connection with my report on Indian Life Insurance Companies recommended that the statute should allow to all policy holders the right to nominate beneficiaries in the policy who will be entitled to receive the moneys due under the policy on its maturity and will be able to give a good discharge on receipt thereof. The necessity for such a provision is all the greater in the case of Provident Insurance Societies which were intended to cater to the needs of persons of comparatively small means. On the death of a policy holder the total amount that his heir can receive is Rs. 500, but under the existing state of the law, his heirs and legal representatives cannot obtain payment of even this small sum without obtaining either a succession certificate or some other form of representation. In many cases there are conflicting claims too and as the result of these the lawful claimant is very often kept out of the money for a very considerable period of time.

377. To remedy this defect, it has been suggested from a long time past that so far as the Provident Insurance Societies are concerned the statute should contain a provision enabling nominations to be made by the policy holders and thereby obviate a scramble amongst the possible claimants and the necessity of having to obtain a succession certificate or other form of representation for obtaining payment. Similar provisions have been made in the United Kingdom under the Friendly Societies Act of

1896 and the Industrial and Provident Societies Act of 1893. The former Act provides that a member of a registered Friendly Society may nominate a person to whom any money not exceeding £100 shall be paid at his or her decease. The nominator must not be under 16 years of age and the nominee at date of payment must also not be under 16. The nominee may be any one except an officer or servant of the society unless that officer or servant be the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator. The nomination may be revoked or varied during the life time of the nominator but it cannot be revoked by a will. The marriage of the nominator acts as revocation of the nomination. If a nominee dies payment is to be made to his legal representatives. An assignment made subsequent to the nomination does not affect the latter.

378. The provisions in the Industrial and Provident Societies Act are very similar except that marriage does not act as a revocation of the nomination in these cases.

379. Though the Indian Statute does not contain any provisions regarding the power of policy holder to nominate a person who will be entitled to receive the benefits of the policy when it becomes due, some of the local Governments, *s.g.*, the Government of Bengal, purporting to act under the provisions of section 24 of the Act, have made rules in that behalf. Thus in the Bengal Rules the provision runs as follows:—

“Any policy-holder or contributor of a Society registered under the Act, not being under sixteen years of age, may, by writing under his hand delivered at or sent to the registered office of the Society, nominate any person, not being an officer or servant of the Society unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator, to whom any monies payable by the Society on the death of such member, not exceeding Rs. 500, shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and, on receiving satisfactory proof of the death of a nominator the Society shall pay to the nominee the amount due to the deceased member, not exceeding the said sum, and the receipt of the nominee over sixteen years of age for any amount so paid shall be valid; but the marriage of a member of a Society shall operate as a revocation of any nomination theretofore made by that member: provided that where the Society pays to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the Society.”

The question of making some provision in the statute on the lines of the provisions in the Friendly Societies Act was raised in the year 1919 by certain Insurance Companies in a representation made to the Government of India. As the result of such a representation certain enquiries were made and some amount of information was collected—(see File No. 70-I of 1924), but nothing was done in the end.

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380. For reasons which I have already indicated, I am, however, of opinion that provisions should be made in the Act so as to enable—

- (a) Policy holders of the Provident Societies to nominate persons who will be entitled to receive the benefits under their policy when the money becomes due, and
- (b) The nominee to receive the money without having to undergo the trouble and worry of obtaining a representation either in the shape of a succession certificate or otherwise.

381. I am prepared to adopt subject to some modifications the rule as framed by the Government of Bengal under the provisions of section 24 of the Act as the basis of what I would like to be provided in the Act, and I recommend that the Act should make the following provisions:—

- (1) That it will be incumbent on all persons when applying for policies in these societies to nominate the person or persons who would be entitled to receive the benefits under the policy when it becomes due and that the name of such person or persons be entered in the policy itself, as also in the Register of Policies to be maintained by the Society.
- (2) That nominations will be permissible only in favour of persons falling within the following category, *vis.*:—the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator.
- (3) That it shall be competent for the nominee from time to time and at any time prior to the monies under the policy becoming due to revoke or vary such nomination by writing under his hand, delivered at, or sent to the registered office of the society, along with the policy.
- (4) That it shall be the duty of the society on receipt of any such writing to make an endorsement to that effect in the Policy as also the Register of Policies.
- (5) That the society shall be bound to pay to the nominee the amount due under the policy on receiving satisfactory proof of the death of the nominator without insisting on the production of a succession certificate or other form of representation.
- (6) That in the event of the death of the nominee the moneys shall be paid to the heirs and legal representatives of the policy holder.
- (7) That no assignment of the policy will affect the rights of the nominee unless such assignment is made in writing and is attested by at least one witness and is sent for registration with the society along with the policy prior to the policy becoming due.

382. This concludes the recommendations which I have to make regarding Provident Insurance Societies and I firmly believe that the changes which have been recommended, if worked in the proper spirit, would put an end to all apprehensions against the ultimate success of provident insurance business in this country.

SUSIL C. SRN.—20-11-35.