

whereas the average duration of the policies in force in the same company is found to be 5.24 years."

Are not the two foregoing paragraphs in conflict one with the other, and is it not fairly open for an incorrigible logician to affirm that Mr. Rea has apparently set up a first-class dilemma? If the average duration of policies which became claims was only 5.71 years, and the average duration of the policies in force was only 5.24 years, would not a logician be justified in asking from what source profit was derived in this particular company?

If in "the case of more matured assurances" (5.24 years to wit) a paid-up surrender-value policy of 30 per cent. of the present value of the premiums exhausts—according to Mr. Rea—all profits, then *a fortiori* the payment of claims—which, being death claims, are greater in value than paid-up surrender policies—on policies having an average duration of only 5.71 years should not only exhaust all profits but create a deficiency, and thus the particular company quoted by Mr. Rea, like the old woman in the story, has discovered the means of living on its losses. We are sorry that the question of lapses did not receive more attention in the discussion which followed the reading of Mr. Rea's interesting paper, for it is a question which, in the public eye at any rate, resembles the case of the two men who stole the leg of mutton—one swore that he had not got it, and the other that he had not taken it. Many people may, in fact, be excused if, in the dying words of the illustrious Goethe, they exclaim: "More light, indeed, more light!"—*The Policyholder*, (Eng.)

COMPANY DIRECTORS AND "COMMISSION."

(*Daily Telegraph*, London.)

It is a well-known principle of law, and one which is constantly acted upon in our courts, that what is euphemistically called "commission," when received by an agent or trustee for a purchaser from a vendor without the knowledge of his principal, is in fact a bribe; it is a profit on the transaction which the purchaser has a right to extract from the agent whenever it comes to his knowledge. Nor is this principle in any degree less applicable when the purchaser happens to be a public company. That a director stands in a fiduciary relation to his company has long been recognized, and cannot now be disputed, and in the matter of a scale to the company his duty in that regard demands that he shall accept neither money nor shares by way of gift from the vendor or promoter, as the case may be.

Nor does it make any difference that when the bribe is taken the contract as between the vendor and the company is in fact already completed, for in that case it is quite conceivable that it might be his duty as a director to upset the contract on such a ground as fraud. It is, unfortunately, but too common for a vendor, when selling to a company—which may con-

sist for the moment of seven shareholders of one share apiece—to offer sums of money to persons of weight and consideration, persons whose names will be likely to inspire confidence in the public, so that the purchase-money may be duly forthcoming. A long line of decisions has, however, made it abundantly clear that sums of money so paid may be recovered by the company while it is a going concern, or by the liquidator if it is in the course of winding-up. The procedure in the former case would be by action in the High Court, brought against the delinquent director, either by the company itself or by a shareholder suing on behalf of himself and his fellow-shareholders. But where a company has gone into liquidation an easier and more expeditious method was prescribed by the Companies Act of 1862.

By that Act it is provided that, on the application of any liquidator of such a company, the Court may examine into the conduct of any officer of the company (which includes a director) who has been guilty of any misfeasance or breach of trust, and compel him to repay any moneys for which he has become accountable, or to contribute such sums to the assets of the company by way of compensation for his misconduct as the Court may think just. It must be borne in mind, however, that this Act conferred no new rights upon a company as against a director who had been unfaithful to his trust. It merely relieves the liquidator of the necessity of bringing a separate action to enforce the equitable rights which the company and its shareholders already enjoyed. There can be no doubt upon the authorities that the acceptance of a gift by a director, by way of additional remuneration for his services or to induce him to render them, amounts to such a misfeasance or breach of trust as the Act contemplates, or as will render him liable at the suit of a shareholder or a company. The late Sir George Jessel, in a case tried before him as far back as the year 1878, is reported to have even gone as far as to say, "I am disposed to think that if a man is promised £500 if he can induce a person to become a director, and goes to that person suppressing the fact of the promise, the transaction is an immoral transaction, and the person who was to receive the bribe could not maintain an action for it."

There may be something to be said in favour of the proposition that a man who accepts a sum of money from the promoter of a company in consideration of his giving his services as a director need not necessarily be guilty of a dishonest act, because it may be that his capabilities for the post are such that his services to the company will, in his opinion, be more than worth what he has been paid for them. But, as it has been judicially laid down, to argue thus is to misunderstand the position and the nature of the duties he has undertaken to the company. There may have been no improper intention on his part, but the law on the subject is perfectly plain and admits of no possible doubt, and he will be compelled to refund as soon as the matter is made the subject of inquiry.