

SOLICITORS AND COMMISSION.

From among the many excellent articles dealing with one of the most delicate matters now being discussed (more particularly by financial and insurance journals), we have selected the following from an English namesake and contemporary, "The Finance Chronicle:"

"From time to time a desperate effort is made by some would-be reformers to put right some wrong which has been allowed to grow 'out of measure' through the carelessness and apathy of honest men, rather than through the knavery of the other sort. The favourite panacea is a legal enactment, and it would be unjust to the would-be reformers not to recognize that occasionally some benefit is derived from this. But, in a general way, evils of the kind to which we now refer, can only be removed by getting at the causes of them, and where the causes are of the nature referred to above, little can be done by direct action.

"There can be no doubt that the position of giving and taking secret commission is a bad one, likely to lead by almost imperceptible steps from a very venial matter to simple fraud, and the Bill introduced by Lord Russell may do some good if it can be got to work. But it is clear that any measure of this kind is open to the objection that in doing some good, it also may do some evil, and it is by no means easy to decide in advance whether the good or the evil will preponderate.

"On the general question of secret commission we do not intend to dilate, but the question of commission paid by insurance offices to solicitors introducing new business is one of great interest, and has been much discussed during the last few weeks. There are, of course, two sides to the question, and the disputants may be roughly divided into two classes, viz., those who take their stand on the strict letter of the law, and those who, ignoring this, are quite content to let things alone so long as they find no serious harm being done.

"The law is quite clear. In a letter to 'The Times,' of 6th inst., Mr. Justice Fry thus states it. Referring to Lord Russell's Bill, he says:—'In its main provision, that which is, I suppose, the one in controversy, it seizes hold of a well-known doctrine in the law of principal and agent. When an agent without the consent of his principal, receives money, or makes any profit from the transaction in which he is concerned for his principal, there the law steps in and says that he shall not hold it. It is old and good law that where one man reposes confidences in another, the man trusted shall give his best efforts and with a single eye to the benefit of his principal, and shall make over to his principal anything which he acquires in the transaction, and retain no benefit beyond the remuneration stipulated for in the bargain between them. Moneys thus wrongfully received, or held by an agent, may be recovered in the Courts by the principal from the agent.'

"Under this law, it may be argued, that no solicitor can, under any circumstances, be entitled to take insurance commission from an office unless he states the circumstances to his principal, that is the client who pays the premium. But the question arises—Does the solicitor act for his client when he pays premiums for him?

"Take a simple case of fire commission. A solicitor

or is employed to draw up the lease of a house, and on the covenant of the lease is that the house should be insured against fire. The solicitor charges for drawing the lease, but makes no charge for remitting the fire premium to the office. Can he, in such a case, be correctly described as 'acting' for his client in respect of fire insurance. He is not remunerated for this by his client, he merely saves him the trouble of paying the premiums, and, as far as the client is concerned, the solicitor does this for nothing. Nevertheless, this seems to Mr. Justice Fry to come within the definition of a corrupt practice, for, he says:—

"I find no reason to withdraw the criticisms which I ventured to pass on that practice. They have excited much comment, but, unless I mistake, little or no direct confutation of my allegations of fact or of law. I said that the percentages paid were often heavy; this is not denied. I pointed out the tendency of the practice to create a bias on the minds of the recipients, this has not been controverted. I said that the practice was not known to all the clients; this has been met by saying that it is known to many, which is no answer. I dwelt on the conditions under which alone a valid gift can be made by a client to a solicitor; and this statement has not even, I think, been criticized. I pointed out that trustees had not the power to assent to an inquiry to their trust fund, and that this would apply to many cases. On this point, so far as I have observed, a judicious silence has been maintained. I said that in many which the solicitor would be entitled, and this has been met by averring that sometimes they do not.

"The question of the amount of the fees that could be charged by the solicitor seems to us to be rather outside the argument, and some of the remarks about gift to a solicitor by a client, and even to a trust fund, seem to be irrelevant, unless it is assumed that the solicitor by taking commission prevents his client from so doing. Of course, in such a case as that, the solicitor is morally bound to consider the interests of his client; but such cases are too rare to be of much use in forming a judgment on the general question.

"So far our remarks apply rather to commission on fire insurance rather than on life assurance. The latter is usually larger in amount and generally of more importance than the former, but the same principle may be applied. If the client suffers no loss, the solicitor cannot be said to cause him any harm, but, in the case of the life assurance, the solicitor may do his client a great deal of harm, if, instead of merely paying his premium for him he also 'introduces' his client to the offices.

"It is for this introduction that the offices pay commission, and a solicitor who advises a client to assure in his office, merely because he is an agent for it, assumes a rather great responsibility. A solicitor has probably neither the time nor the special skill necessary to make him a good judge of the various advantages offered by different life offices, and it would be well if all solicitors recognized this and declined to advise in such matters. Besides, it is obvious, that what are called 'inducements to introduce new business' are likely to be always in inverse ratio to the soundness of the office offering them, and this consideration should have weight with men who though lawyers are still human.

"In the case when the client has decided for himself in which office he will insure, and merely asks his solicitor to take the necessary steps to carry out his intention, we think there can be little doubt that, as