

in lieu of the said increase to the amount insured, to be used in reduction of subsequent premiums."

The contention of the defendant is that the plaintiff's contract with the company as contained in his policy does not require that the whole surplus or profits of the company shall be divided among the policy-holders; that, if the contract embraced the charter provisions as well as the stipulation of the policy and both taken together gave a right to plaintiff as policy-holder to a division of the whole surplus, still an action at law would not lie for any specific sum until such sum had been allotted to the plaintiff; that this action, although in form an action at law, involves an accounting to ascertain what sum, if any, equitably belongs to plaintiff, and is not maintainable in view of the provisions of the Insurance Law (chap. 600, laws of 1892, section 56, chap. 400, laws of 1890), that proceedings for an accounting against the corporation must be upon the application of the Attorney-General; and that plaintiff's right, if any, to a larger dividend than he received, gives no right to demand a cash payment, but, under the charter, to have such dividends applied to the purchase of additional insurance or an annuity."

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"These are statements not of fact, but of conclusions, and the complaint is demurrable for want of the necessary allegations of fact to sustain the demand for the sum of \$7,007.38 claimed. The plaintiff under the terms of his policy must abide by the methods and principles adopted by the company in distributing its surplus, and he professes to base his claim upon them, conceding their correctness. What these methods and principles are is not set forth, but it is alleged that an apportionment of surplus has been made each year that the policy was in force; and it is manifest, that it will require a series of further apportionments made for each of those years of the undistributed surplus to correspond with those actually made and set forth in the complaint. Instead of seeking to recover upon such a method, which would correspond to that adopted by the company in arriving at the annual sums that make up the \$3,932 allotted to plaintiff, he arbitrarily selects the amount apportioned to his policy in the year 1895, which is \$328, and is larger than the sum allowed for any other year, and seeks to recover the same proportion of the entire net surplus of \$43,277.179, as \$328 bears to \$2,002,954.23, which was the surplus distributed in 1895. The complaint does not show that such a distribution will accord with the methods and principles of distribution adopted by the company, for such methods and principles are not set forth. The complaint seems to be fatally defective in this regard. For aught that appears in the complaint, an account of the business of the company for each year that the plaintiff's policy was in force, will have to be gone into in order to ascertain what proportion of the whole surplus he was equitably entitled to each year—a hardship which the Legislature has sought to relieve the company from at the suit of a single-policy-holder.

The complaint sets forth proportions of the surplus distributed to the plaintiff each year, and the net accumulation of each year over and above the sum distributed. A comparison of these figures shows that different elements or factors entered into the distribution of each year, and these differences the complaint ignores; but they must be the subject of inquiries which make an accounting indispensable.

There seems, therefore, to be a visible defect in the

complaint (1) in failing to show facts that entitle plaintiff to the proportion of the net surplus which he demands in this action; (2) in failing to show that an accounting will not be required in order to ascertain what further sum is due to the plaintiff, and (3) in failing to show that the plaintiff's contract with the company entitles him to any greater sum than he has received."

WINTER NORTH ATLANTIC LOAD-LINE.

The President of the British Board of Trade has very properly decided to widen the terms of reference of this subject, so that they now fall under the following three comprehensive heads:

(1) To consider the operation of the North Atlantic winter freeboard as prescribed by the load-line tables, and to report if any, and if so, what modification is required in the load-line tables in the application of such freeboard, and to advise as to the area throughout which such freeboard should be in force.

(2) To examine the present mode of assigning freeboards to vessels of the "turret deck" type; and to advise if any modification is necessary; and

(3) To advise as to the extension of the present load-line tables for steam vessels not having spar or awning decks so as to make them applicable to vessels of moulded depths up to 45 feet.

The representative committee named about two months ago, under the former restricted reference, with Sir Francis Jeune as chairman, is now, we understand, to undergo some change by additional appointments, or by substitutions, to be made so far as possible from the load-line committee of 1885. Doubtless the co-operation of gentlemen thoroughly conversant with the circumstances that surrounded the action of the original load-line committee, provided they are equally alive to the conditions and requirements of 1898, would prove of substantial value in the present deliberations.

It is sincerely to be hoped that these deliberations will be vigorously and systematically prosecuted, and that the reasonable contention of our North Atlantic ports be promptly granted once for all through such a revision of the present regulations as will allow an equal freeboard (other things being equal) to all vessels traversing the same courses in the North Atlantic and accordingly exposed to identical perils. Nevertheless, the fact is well known that the action of public committees is apt to be slow, and meantime it must not be forgotten that another winter season is fast approaching, during which, if not sooner rescinded, the present severe and needless discriminations against our ports north of the Chesapeake will be again operative. Although it is not until October 1st that the present winter North Atlantic load-line would go into force, the effect of it is felt long before that date. Sales of export commodities have already been made for shipment during October and later, and the passing of each week will, under normal conditions, make this future business more and more important; and the load-line conditions in force after October 1st are, of course, taken into consideration by the present makers of winter freight rates—the ports that offer the best inducements naturally getting the preference.

We would by no means urge a superficial haste; let the gentlemen of the Board of Trade take ample time to hear and digest thoroughly all the evidence possible bearing on the important issue; let them at the same time remember that while the lawyers