

should be frankly abolished, and, if it is to be retained, it should be retained as a bona fide qualification.

A senator taking the oath of qualification is required to swear that he is by law duly qualified to be Senator, that he is legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common socage of the value of four thousand dollars over and above all rents, dues, debts, mortgages, charges and encumbrances due or payable out of, or charged on or affecting the same; and that he has not collusively or colourably obtained a title to or become possessed of the said lands or tenements or any part thereof for the purpose of enabling him to become a member of the Senate; and that his real and personal property are together worth four thousand dollars over and above his debts and liabilities.

In this clause the British North America Act provides for a genuine property qualification, and makes it pretty hard to pass a bogus one without direct perjury. The clause in the new Charter on the other hand seems expressly calculated (not intentionally) to facilitate the collusive and colourable acquisition of titles to real estate which the senatorial qualification so expressly forbids.

The principal people to be disqualified under the new Charter for the office of Mayor and Aldermen will be the men who are too conscientious to enter the Council on a bogus though strictly legal qualification. It would be infinitely better not to have a property qualification at all than to allow a man to qualify upon property that he only nominally owns and the colourable title to which he has obtained for a short period by collusion with some civic contractor.

The best interests of the City would be served by increasing the property qualification of aldermen and by providing more stringent safe-guards to prevent the law being evaded. The object of the qualification is we take it two-fold, to favour the election of a desirable class of aldermen and to ensure a substantial guarantee against malfeasance in office. The new law fulfils neither the one nor the other object.

RIGHT TO SHARE IN LIFE COMPANY'S SURPLUS.

Failure to state facts sufficient to constitute a cause of action, combined with other reasons very clearly set forth in an elaborate and most interesting opinion delivered by Mr. Justice Daly of the New York Supreme Court, has resulted in a decision being given adverse to the plaintiff in the case of Emil Greeff vs. the Equitable Life Assurance Society.

Greeff was the holder of a \$20,000 endowment policy and the charter of the Equitable provides that each policy-holder, at stated intervals, shall be credited with an equitable share of the net surplus after deduction of an amount therefrom sufficient to cover all outstanding risks, and obligations.

The policy provided that "this policy during its continuance shall be entitled to participate in the

distribution of the surplus of this society by way of income to the amount insured according to such principles and methods as may from time to time be adopted by this society for such distribution, which principles and methods are hereby ratified and accepted." It had been the custom of the company, both before and after the plaintiff took out his policy; to distribute a portion of the annual surplus and to withhold and accumulate the balance. The plaintiff sought in the action to recover, in adoption to the amount of surplus credited and paid to him out of portions distributed, a share of the aggregate amount accumulated.

The following passages from the opinion of Mr. Justice Daly will be of interest to life assurance managers:—

"The plaintiff was the holder of an endowment policy in the defendant company for \$20,000, which he took out in 1882 and which matured in 1897, when he received the sum mentioned, together with \$3,932, as additions, to which had been devoted his annual dividends or share of the surplus profits allotted to him by the company. This action is brought to recover \$7,087.38, on the ground that said sum would be due and payable, in addition to what he actually received, if the company had allotted to him his proportion of its whole surplus, his claim being that the company was bound to divide all of its surplus profits among its policy-holders, and that its ascertained net surplus on December 31, 1896 was \$43,277.179, of which he has received no portion.

His complaint refers to the charter of the company, which provides that its officers, every five years, "shall cause a balance to be struck of the affairs of the company, which shall exhibit its assets and liabilities, both present and contingent, and also the net surplus after deducting a sufficient amount to cover all outstanding risks and other obligations. Each policy-holder shall be credited with an equitable share of the said surplus," to be applied to the purchase of additional insurance or an annuity, or in reduction of future premiums, as the policy-holder may elect. His complaint also refers to the Statute of 1868 (chapter 118), which gave to this company power to make annual dividends in the manner and proportions provided in its charter or articles of association; and to the Statute of 1872 (chapter 100), providing that any life assurance society organized under the laws of this State may ascertain at any given time, and from time to time, the proportion of surplus accruing to each policy from the date of the last to the date of the next succeeding premium payment, and to distribute the proportion found to be equitable either in cash, in reduction of premium or in reversionary insurance payable with the policy and upon the same conditions as therein expressed at the next succeeding date of such payment, anything in the charter of any company to the contrary notwithstanding.

The complaint also refers to the policy issued to the plaintiff, as a contract with him, providing "this policy during its continuance shall be entitled to participate in the distribution of the surplus of this society by way of income to the amount insured, according to such principles and methods as may from time to time be adopted by this society for such distribution; which principles and methods are hereby ratified and accepted by and for every person who shall have or claim any interest under this contract; but the society may at any time before a forfeiture upon request of the person holding the absolute legal title to this policy substitute a cash payment, to be fixed by said society