

CORRESPONDENCE.

“ON THE LIQUIDATION OF AN INSOLVENT LIFE OFFICE.”

To the Editor of the Assurance Magazine.

SIR,—Will you allow me to use your *Journal* as the channel of a few remarks on the scheme for the liquidation of Life Insurance Companies, recently propounded by Mr. Bunyon.

The following is a brief outline of Mr. Bunyon's proposal as I understand it. The business of the Company in liquidation is to be carried on by a committee of joint liquidators; the policyholders who do not choose to withdraw are to continue to pay their full premiums; the creditors of the Company whose claims have matured are to be paid (in a certain order of priority) out of the realized assets a proportion of their debts, which proportion is to be ascertained from an estimate of the values of the assets and liabilities at the time of payment; the matured debts which cannot at once be paid are to bear a low rate of interest; and finally, when the estate has become so small that it will not bear the cost of management, the assets and a proper proportion of liabilities are to be taken over by a solvent Insurance Company.

Mr. Bunyon's scheme is clear and comprehensive; it could, I believe, be easily worked at less cost than the present mode of winding up such Companies. It has, however, the disadvantage that the operation of it would produce a certain amount of inequality among the persons interested

in the assets. It could not probably be carried out without legislative enactment. It would, I think, be more expensive, and would certainly be more dilatory than the modification of it I am about to propose.

Probably every one would admit that inequalities between those among whom the assets of an insolvent Company are to be divided should not for a moment be weighed against a substantial benefit to the whole body, such as the preventing the estates being eaten up by costs; at any rate, provided no person, however much relatively worse off than others he is made, is absolutely a loser by the scheme that works those inequalities. On the other hand, notwithstanding some glaring exceptions, the principle of proportionate distribution of assets of insolvent estates has always been the guide, both of the Court of Chancery and the legislature, in the winding up of insolvent estates, whether of individuals or associations; and a scheme of uneven distribution would be universally condemned unless in other respects it offered great advantages. Now Mr. Bunyon's scheme favours those persons whose claims have already matured, and in a less degree those persons who are, by reason of their holding old policies, paying light premiums, over the holders of more recently issued policies, inasmuch as he contemplates their continuing to pay the full premiums, though they will ultimately receive only a proportion of the sum insured. Now it is clear that it would be worth while for a number of the assured to sacrifice their policies (which in most instances ought to be worth something), and take new policies in other Offices, rather than go on paying premiums, a part of which must go to the aggrandizement of their co-assured.

I think I can best expound my view of the course of liquidation that ought to be pursued by illustration. Let us take the simplest case possible, that an Insurance Company is to be wound up, whose liabilities entirely consist of those upon policies originally issued by itself, and has no liabilities on annuities or otherwise; and we will also suppose that nothing is paid for commission on the premiums, and that the Office is small enough to be taken up by some other Office. There must be some price at which a solvent Company would undertake the whole of the liabilities of the first Company, the policyholders paying the same premiums to the new Office that they did to the old Office; and if half, or some other proportion of that price, only were paid, the new Office might undertake to pay half or the other proportion of the sums insured, and receive only half or the other proportion of the premiums.

On the winding up of an insolvent Insurance Company, I would propose that after deducting the necessary expenses of liquidation, or so much, if any, of them as are payable out of the funds applicable to payment of the policy claims, the whole of that fund should be handed over to another Office, which would issue fresh policies, of amount proportionably smaller with premiums smaller in the same proportion than those paid on the original policies. Each policyholder might also be allowed an option of retiring, and receiving a dividend on what I may call a minimum value of his policy, instead of receiving a new policy.

Of course it is clear that the allowing every policyholder to prove for the value of his policy, taking into consideration the state of health and circumstances relating to the person whose life is insured, would lead to endless expense and fraud; but the value could be fixed, on the supposition

that the person whose life is insured is in perfect health, and the policyholder's receiving a dividend on such minimum value would work no injustice to the other claimants.

If the business of the Company to be liquidated were too large to be absorbed by one Office, it could be distributed and taken over by more than one Office.

There would be less difficulty still in handing over liabilities on annuities and otherwise to be proportionably paid by the Office taking over such partial liabilities.

I have suggested the barest outline of a scheme, which could be better developed by persons more practically familiar with the details of insurance business than I am. But I believe such a scheme could be carried out under the 159th section of "The Companies Act, 1862." I do not say that the Court of Chancery would have no power to sanction under that section Mr. Bunyon's scheme, but I do not think, in the exercise of its discretion, it would, inasmuch as it offends the spirit of the Winding-up Acts and principles of equity.

It is almost needless to say that any liquidation that can be effected without having recourse to fresh legislative enactment is, on that ground alone, to be preferred. Piecemeal legislation is at all times to be deprecated, and at this time there are so many changes in contemplation, and the public mind is so filled with other matters, that it would be more than ordinarily difficult to pass a satisfactory measure on this subject.

The matter of costs can be best estimated by experience. Past experience tends to show that the cost of carrying on a business in liquidation in Chancery far exceeds that of carrying on the same business in private hands.

Mr. Bunyon's scheme is to end in amalgamation. It seems to me that an amalgamation brought about within a moderate time would be preferable to one brought about after long delay. One of the objects of winding up Companies is, that the shareholders should be able to ascertain what their liabilities are, and discharge them at once. Now, it is to be observed that the liabilities of shareholders in Insurance Companies, as generally constituted, is not really limited to the nominal value of their shares, for the shareholders are bound to discharge in full all the costs of liquidation and all liabilities on contracts not in terms limited to the funds of the Company, and by keeping matters open, an amount of uncertainty is introduced—some shareholders may become insolvent in the meanwhile, and greater expense be consequently thrown on the others. It may, however, be admitted that the giving of time to some few contributories may enable them to pay up a larger part of their liabilities than they otherwise could; but ample power is given by "The Companies Act, 1862," to make any arrangement with separate contributories.

Mr. Bunyon's able and lucid pamphlet suggests many interesting questions; for instance, in what cases a Company is to be deemed so insolvent that it ought to be wound up, and whether the powers of policyholders to petition might not beneficially be extended, and again to what extent the doctrine of marshalling will be applied as between different classes of creditors, that is to say, how far creditors, who have more than one fund to go upon, are to be paid out of the fund in which other creditors have no interest. It would be trespassing on your space too much, and would be beyond

the object of my letter, to pursue those questions further; but I ought perhaps to notice two passages in Mr. Bunyon's pamphlet which seem to me likely to mislead. The first (p. 13) relates to the priority of annuities over claims on policies. It is stated that annuities in many instances have priority "by virtue of the deeds of settlement." Now I do not doubt that Companies which have deeds of settlement providing for such priority, issue policies and grant annuities on terms that provide for that priority. But the priority would not exist by virtue of the deed of settlement alone. The other passage (p. 22) relates to the allowance of interest on claims in winding up proceedings. It seems to me a hasty deduction to say that, because interest on debts is to cease as between the creditors, therefore creditors, the dividends on whose claims are deferred to suit the convenience of all, are not to be allowed interest on such deferred dividends; and in the passage referred to that deduction has been drawn.

I am, Sir,
Your obedient servant,

Lincoln's Inn, 16th Feb., 1870.

DAVID PITCAIRN.

* * The suggestion to reduce the premiums payable by the assured in the same proportion as the sums assured, appears to us to be novel, and has much to recommend it on the ground of simplicity; but it appears to us to overlook the circumstance that a considerable part of the sum assured under a life policy is provided for by the future premiums. To take an extreme case, suppose that the whole of the funds of the Office have been spent, and that there are no shareholders to fall back upon. Here Mr. Pitcairn's scheme would virtually say—there is nothing left to wind up; there is an end of the whole concern. But a scheme of liquidation, to be complete, should take into account the possibility of the lives assured, or some of them, being willing to constitute themselves a Mutual Insurance Society, paying the old premiums, but with reduced sums assured. In this case, it is a problem of some difficulty to adjust equitably the rights of the assured in different classes, having regard to their several ages and standing. But the problem can be satisfactorily solved; and we shall probably return to the question at no distant date, unless we find our ideas anticipated by others.—Ed. *J. I. A.*
