CORRESPONDENCE

TRANSFER OF LIFE ASSURANCE BUSINESS.

To the Editor of the Transactions of the Faculty of Actuaries.

SIR,—I beg to direct attention to the case of *The Empire Guarantee and Insurance Corporation, Limited, Petitioners.* Reported 1911, *S.C.* 1296; 1911, 2 *Scots Law Times*, 269.

This was an application presented under Section 13 of the Assurance Companies' Act 1909, in which the petitioner's craved the sanction of the Court to the transfer of the whole of their life assurance business to the Royal Exchange Assurance Corporation. In their petition they stated, *inter alia*, that they had developed a certain amount of life assurance business, but not enough to make it profitable, and that it appeared to the directors that it would be to the interest both of the shareholders and of the policyholders if this branch of the business were transferred to a strong and well-established company, doing life business on a larger scale. The Royal Exchange Assurance Corporation, with whom a provisional agreement for the proposed transfer had been made, concurred in the application. One of the objects of the petitioning company, as set forth in its Memorandum of Association, was to sell or dispose of the business and property of the company or any part thereof in consideration of payments in cash or shares of another company, or such other consideration as the directors might deem proper. The Articles of Association conferred upon the directors power to sell any portion of the company's properties for a payment in cash or in shares of another company. They also gave power to amalgamate with any company doing a like business, upon such terms as might be approved of by an extraordinary resolution of the company. The Articles further provided that the directors might, with the approval of an extraordinary resolution of the shareholders, sell the whole business and assets of the company, taking in payment thereof either cash or shares of another company, and also that they might in their own discretion sell any property held by the company, taking payment therefor in any of the ways before stated.

No answers were lodged, and the petition was remitted to a man of business to report. The reporter stated, *inter alia*, that he had doubt as to (1) whether the transaction set forth in the provisional agreement was a transfer of the nature which falls to be submitted to the Court for its sanction in terms of Section 13 of the Assurance Companies' Act 1909, and (2) whether the procedure adopted to carry out the transaction had been regular. He also directed attention to the fact that the petition was presented in name of the Corporation, whereas Section 13 directed that it should be presented by the directors.

As regards the first point, the reporter pointed out (*a*) that under the arrangement proposed in the agreement, the existing policies which were participating policies were not being taken over, but were to be cancelled, and non-participating policies of the Royal Exchange Assurance Corporation issued in lieu thereof, at the same premiums as were being paid on the participating policies of the Empire Corporation, the policyholders to have the option of obtaining participating policies in the Royal Exchange Corporation upon payment of an additional premium, (*b*) that no provision was made for dating back the new policies to the respective dates of the cancelled policies, so as to preserve the surrender value of these policies to the holders, and (*c*) that the proposed transaction was not a transfer of assurance business of a class from one company to another company such as is contemplated by Section 13 of the Act of 1909, and that there is nothing in that section to compel a policyholder to release his

policy and accept that of another company. On the question of procedure the reporter expressed the opinion that the transaction in question was not a sale of any property held by the company, and that it should only have been entered into after receiving the approval of an extraordinary resolution of the shareholders.

The First Division of the Court [The Lord President, Lords Kinnear and Mackenzie, (Lord Johnston dissenting)] granted the prayer of the petition. They held that the petition was competently presented in name of the company. They also were of opinion that under the Articles of Association of the company, the directors had power to enter into the proposed transaction without the sanction of an extraordinary meeting of the company, and that the transaction was a transfer of life business such as was contemplated by Section 13 of the Act of 1909.

As regards the terms of the transfer, Lord Mackenzie pointed out that under Section 30 (*d*) of the Act of 1909 policyholders had the right to object to any proposed amalgamation or transfer, and that if one-tenth of them objected, the Court could not sanction the transfer. No opposition was being made by the policyholders. From the financial position of the Empire Corporation there seemed little prospect of the policyholders getting any profits from that Corporation, and therefore little prospect of their suffering actual loss by the transfer. As regards surrender values, he thought that matter was fully met by a provision in the agreement that the contracts with the Royal Exchange Assurance were to be "subject to the payment of the like premiums, and generally on the like terms as are reserved and contained in the cancelled policy." Lord Johnston held that the company's life assurance business was not property, nor the proposed transference a sale for consideration, and that the directors had no power to carry through the transfer proposed, except with the sanction of an extraordinary resolution of the company. He was also of opinion that the arrangement proposed in the agreement was not a transfer of the life assurance business of the company to another company in the sense of the Act, in respect that what was proposed was not delegation of existing contracts, but cancellation of these contracts and the substitution therefor of contracts different as regards their date, and also as regards their nature, the new policies being non-participating, whereas the old were participating policies. The Lord President thought that the proposal here in question, namely, the giving up of a certain branch of insurance and getting another company to go on with the existing contracts, was exactly what was contemplated in Section 13 of the Act of 1909, and that it was immaterial whether the form which the transaction took was that of delegation of the existing contracts to another company, or that of cancellation of these contracts and substitution of others in their place. The whole statute would be futile unless it were meant that when the transactions are within the power of the company and are sanctioned by the Court, the old company should be free. As regards the sharing of profits, if the matter were taken with absolute strictness, it was impossible ever to transfer a profit-sharing policy from one company to another, because the profits of *A* company could never be the same as the profits of *B* company. The question was what was the true interest of the policyholders to be secured? The Court must look at that matter with a business eye. By this particular transfer the policyholders were really losing nothing. By the transfer they were getting a very much better security for the capital sum under their policies, and losing a visionary prospect of profits which never had existed, and never seemed to have any chance of existing in the future.—I am, Sir, yours, etc.

JOHN L. WARK.

EDINBURGH, 29*th February* 1912.