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REPORT OF THE COHEN COMMITTEE ON COMPANY LAW AMENDMENT

THE following is an abstract of a discussion which took place at the Institute on 22 October 1945:

Mr Lewis G. Whyte, F.F.A., in opening the discussion, referred briefly by way of introduction to some historical events in the development of Company Law. The genesis of the modern company was to be found many centuries ago in the companies incorporated by Royal Charter. The first such company of note was the 'Merchant Adventurers' formed in 1390. The process of obtaining a Charter was, however, difficult and costly, and a different form of commercial association was found in the common law company, which was really a great partnership with transferable shares. Later the development of communications brought into being many companies which received their incorporation by special Act of Parliament. It was not until the Companies Act of 1844 that incorporation was permitted without Charter or special Act of Parliament. Subsequently the Act of 1862 made compulsory the registration of all associations of more than twenty persons.

Under the provisions of the 1862 Act the privilege of limited liability of shareholders became clearly defined and in the ensuing decades a great increase in the number and importance of limited liability companies took place. The progress which accompanied this rapid growth had, however, as its price the loosening of the bonds linking the owner with the employee and the customer and the introduction to society of a new type of being, namely the absentee shareholder. The means by which the anonymous shareholder could be enabled and induced to fulfil a proper function in the economic structure was still one of the basic problems which would confront the framers of any new Companies Act.

Since 1862 there had been various new enactments and amendments to conform to changing conditions. In the present century the two most important were those of 1908 and 1929, the latter being the Act at present on the Statute Book.

Since 1929 many important events had taken place which had a bearing on Company Law. Opinion also had undergone significant changes. Among the events of widest importance were the world economic depression of the early 1930's, with its consequent heavy losses to many investors, and the recent war, which had brought a tight control of the capital market and had resulted in the transformation of Great Britain from a creditor to a debtor nation. More recent events—which had taken place since the publication of the Cohen Committee's Report—included the coming into power of a new Government committed to a limited policy of State ownership and to the perpetuation of some form of control of capital issues through the formation of a National Investment Board.

He thought it was of particular interest to note the steady increase in the number of shareholders, not only directly but also indirectly through the expansion of the unit trust movement. The number of holding companies was increasing, shares in companies which had been conducted as family businesses were often being made available to the public, while the number of private companies continued to grow at an amazing speed. Of more domestic interest was the formation of the British Insurance Association Investment Protection Committee and of the Association of Investment Trusts, which enabled many corporate investors to speak with a united voice; also of great importance was the increasing sense of extra-mural responsibility shown by many professional bodies, such as those of the accountants, bankers and lawyers, and by members of the Stock Exchange Council.

Regarding general opinion, there had been much comment and considerable worry about the increasing use of nominee shareholders. There had been a tendency to pay greater attention to the profit and loss account and to rely less on the balance-sheet.

Perhaps the most significant change in the trend of opinion was the emergence of a predisposition towards safeguarding the investor by restricting the privileges and increasing the duties of all who were responsible to him. In fact it might be said that the time-honoured maxim of 'caveat emptor' had been replaced by a new one, 'caveat vendor'.

He thought it would be helpful to consider some of the problems with which the Committee must have been faced in their deliberations. Many aspects of their subject would really more appropriately be dealt with by means of a code of conduct than by legislation. But when new or amending legislation was considered necessary there was always the danger that, in prescribing a minimum standard, official sanction might be given for making it also a maximum. The abuses of the minority were bound to feature largely in any evidence put before the Committee and one of their greatest problems must have been how to correct those abuses without hindering and fettering the legitimate activities of the unoffending majority. The Committee were bound also to recognize the trend of opinion which had been swinging so firmly in the direction of safeguarding the investor; yet by giving effect to this in their recommendations there was the risk of encumbering enterprise and initiative and thus restricting the flow of capital for productive purposes. Lastly, there was the problem of how to prevent new legislation from creating new loopholes.

Before referring to any of the specific recommendations of the Committee he wished to comment on what appeared to be some of the more important general findings. He thought the most interesting feature of the Report was that nearly all the recommendations were proposals for making compulsory what could have been and in many cases was done voluntarily. The new privileges to be given to the incorporated company were very few indeed. Much emphasis was placed on the desire for publicity. Penalties for infringement of the law were to be more severe and the onus of proof was to be placed more directly on the defendant.

A noteworthy feature of the Report was its references to the London Stock Exchange Council. The Committee paid a very genuine tribute to the work of that body and conferred a new status on some of its decisions. It was certainly an innovation when a non-statutory body responsible under its constitution only to its electing members, though admittedly interpreting its responsibility in a wider sense, was raised to the status of a quasi-judicial body.

Before commenting on some of the particular recommendations of the Committee, he remarked that he had selected them not necessarily in order of importance but primarily because he thought they provided interesting and profitable ground for discussion.

Prospectuses and new issues. In their introductory remarks the Committee had assumed that special war-time legislation would have lapsed before legislative effect was given to their proposals. The intention to form a National Investment Board might, however, result in the maintenance of certain war-time regulations regarding new issues, though he doubted whether that would materially affect any of the recommendations made.

He was pleased to note that the 'stag' was to have his activities severely restricted. Some of the practices indulged in before the war, as, for example, the device of 'borrowing' names in order to secure the benefit of preferential treatment to small applicants, and the withdrawal of applications before the subscription lists were closed in the case of an unsuccessful issue, had always been reprehensible.

The Committee's recommendation that 'placings' should generally be put on the same basis as issues by prospectus and 'offers for sale' was undoubtedly sound and should remove an obvious anomaly, but the recommendation for the return of the application money in the event of 'permission to deal' in a new issue being refused needed careful thought. He believed that the recommendation paid undue attention to the benefit of marketability, and furthermore, if given effect to, might place the Stock Exchange Council in an awkward position by making it serve two masters. He could not imagine that the advantages of such a safeguard would outweigh the difficulties and uncertainties involved.

Nominee shareholdings. It was interesting to note the actual wording of the Committee's Report: 'the *majority* of the Committee take the view that registration in the names of nominees should not be prohibited'. On the whole the recommendations seemed the best that could be devised, though the determining percentage of 1 % of the capital, above which disclosure would be required, seemed unnecessarily low. The Committee evidently realized that within the principle of their recommendation it would be impossible to draft clauses which would be wholly effective and free from loop-holes. They therefore aimed to create a situation 'in which those who deliberately disregard the provisions of the statute will, if and when their default is detected, be put upon their defence and start that defence under a handicap which will certainly be severe'. He believed that the really important provisions would be the powers to be given to the Board of Trade to investigate beneficial ownership of shares.

Financial relations between companies and directors. Two points on which he wished to comment related to share transactions by directors and to compensation for loss of office. He thought there was a great deal of irrational thought on the subject of share transactions by directors and he did not agree with those who said that they were always wholly wrong. The abuse had probably been greater in America than in the United Kingdom and it would appear that the remedy of publicity in force there had been beneficial. A similar remedy was proposed by the Committee but he thought that much would depend on the use made of it. There was the risk that the authors of really innocent transactions would be unjustly pilloried—sometimes on the mistaken grounds that all profits were immoral and only losses were ethical. The real crux of the question was, of course, what use a director made of his privileged position; but the most effective deterrent to misuse would surely be a refusal by the stockbroker or his agent to handle any order which he suspected of being improper.

With regard to compensation for loss of office, full disclosure and sanction by the company in general meeting was recommended by the Committee. He noticed that no limit was suggested to the amount of compensation. If it were desired to encourage both the belief that ordinary directors were in fact elected by their shareholders and the principle that no director should be deemed to be re-elected unless or until confirmed by the shareholders, then he thought it logical to limit any compensation to the actual emoluments which were receivable up to the date when the director was next due for re-election. Excessive payments by way of compensation implied either underpayment for past services or overpayment for future services.

Accounts. The obligation to publish a definite profit and loss account would remove an obvious anachronism: there were still a few companies, some of whose shares were quoted on the Stock Exchange, which did not give any profit and loss figures whatsoever.

There was a recommendation that all reserves, including hidden reserves, should be disclosed. That was in deference to the provision that the balance-sheet should give 'a true and fair view of the state of affairs of the company'. The room for difference of opinion as to what constituted free reserves was very great and there was much to be said for the principle that where doubt existed the bias should always be towards conservatism. He sincerely hoped that that principle would not be jeopardized by the new recommendation from which, it was satisfactory to note, banking, discount and assurance companies would be exempt.

He was sorry that it would still be permissible to show investments in subsidiaries *en bloc* instead of in detail. Otherwise, the forms in which the balance-sheet and profit and loss account were to be shown would, he thought, give general satisfaction.

There would be regret in some quarters that no recommendation was made for the publication of trading accounts. Arguments had been put forward in evidence that such information would be of great value to the community in framing general economic policy and would provide also some safeguard to the consumer. Without disagreeing with this reasoning it was difficult to be convinced that the directors' report to shareholders was the correct medium through which to convey such information.

Relations between holding and subsidiary companies. There would no doubt be full agreement with the proposed definition of what constituted a subsidiary. The question of control was the obvious criterion. It was to be hoped that the recommendation for the publication of a consolidated balance-sheet and profit and loss account would result among other things in the merging with the parent company of all subsidiaries which owed their separate existence solely to the desire to conceal information.

Banking, discount and assurance companies were to be exempted from the obligation to consolidate fully their accounts if, in the opinion of the Board of Trade, the relationship of subsidiary company and holding company was temporary only. But what was the definition of temporary? Did it mean for a short time, or did it mean the opposite of permanent? Whatever the definition he would prefer a different guiding principle and would suggest the consolidation of the accounts of all like businesses, the publication of the accounts of all allied businesses (which in the case of assurance companies, for example, would include reversionary companies), and the disclosure of holdings only in the case of subsidiaries held as investments in the normal course of business. That would obviate any reference to duration, which did not seem the proper criterion.

Shareholders' control. The recommendations regarding the increased length of notice required for meetings and the proposals concerning facilities for communication among shareholders would, he was sure, be generally welcomed. The recommendations for a retiring age for directors had no doubt already worried many of the present generation, but they would surely have shocked their ancestors as being impertinent interference. He found it easier to put forward arguments against that recommendation than for it. There were cases where men of age and wisdom could be of much value to a board composed for the larger part of young men; on the other hand, a board consisting of directors all approaching retiring age might be most undesirable. Yet to enforce a retiring age might (in spite of special provisions for exceptions) retire a really good man but give official sanction to a less worthy but younger man to stay out his time. But—and that was not as paradoxical as it might sound—though not in favour of the recommendation, he would certainly be against its rejection. To have the medicine prescribed and then to refrain from administering the dose was too much like saying that the disease no longer existed.

There was a paragraph devoted to the rights of preference shareholders and debenture-holders in a winding-up. The Committee were content to rely on the accepted code of conduct to prevent abuses in that connexion, but since the publication of the Report a new factor had appeared which had brought the problem to the fore as one of prime importance, namely the prospect of nationalization of certain industries with the expected liquidation of many companies. If the compulsory transfer of a company's business to the State left no alternative to liquidation, which might still legally be termed a voluntary liquidation, it was difficult to see how the distribution of assets could be carried out otherwise than under the terms of the company's articles of association. Those terms might in many cases give results widely different from the respective market values of the different classes of shares when the business was a going concern, and might lead to a consequent feeling of injustice between one class of shareholder and another. The only way in which he thought fair justice could be done would be for the State to purchase the various classes of shares at prices which not only represented in the aggregate the total agreed compensation but which also gave effect to the relative values of the shares regarding the business as a going concern—not necessarily in perpetuity but for a reasonable term of years. If that principle were adopted, the cases where part only of the company's assets were acquired by the State could still be met. Where the proportion was small, direct payment in cash or Government Stock would not involve liquidation; where large, the equity capital only could be left outstanding. Where the balance was more even, facilities could be provided, presumably in the Companies Act, for effecting a proportionate reduction in all classes of capital, each shareholder receiving from the State payment at the agreed price in respect of the proportionate amount repaid.

Finally, he wished to refer to what might be termed the limitations of company legislation. When effect had been given to the recommendations of the Committee—which he hoped would be as quickly as possible—there would be on the Statute Book what would in effect be a new Companies Act based on the most up-to-date and enlightened thought. There might be a danger that too much would be expected therefrom.

Legislation could not achieve everything. There would still be as great a need as ever for guidance and vigilance from all responsible bodies, including the Press, accountants, lawyers, members of the Stock Exchange and also, he trusted, the Institute and the Faculty of Actuaries.

Mr H. E. Melville said there would be general agreement that those who were concerned in life office administration should have a working knowledge of the law of contract and of life assurance, and equally he thought that those who were dealing with investments, and particularly those who were concerned with advising their boards of directors, should have some knowledge of the law of property and of company law and be familiar with the characteristics of the various types of investment with which they had to deal. Those subjects were outside the scope of the Institute's examination syllabus, but they were very suitable for post-graduate study.

The Report, in his opinion, was a good Report, and on the whole he agreed with its conclusions, although on some points he felt that there was room for difference of opinion. The Report, moreover, was easily understood by anyone with only a limited knowledge of company law, because the points were first clearly explained and then the detailed recommendations were set out.

A good deal of the evidence related to private companies, with which insurance funds were not very much concerned. There were, however, one or two points in connexion with private companies which were of interest. If a public company had an issue of debentures, then the debentureholders were entitled to see the balance-sheet, but not the profit and loss account, because, as the opener had pointed out, it was not necessary to publish it. If, however, the public company was bought up by another company and turned into a private company (as had happened in some cases), the debentureholders immediately lost all right to see even the balance-sheet. If the recommendations of the Cohen Committee were put into effect, the debentureholders on a merger of that kind would be entitled to see not only the balance-sheet but also the profit and loss account, which was what they would wish to do. The Committee also recommended that if a private company was to be exempted from filing its accounts it would have to accept certain restrictions on the use of loan and debenture capital. There was to be an exception in the case of money lent by the company's bankers 'or by any other company whose ordinary business...includes the lending of money and whose shares are for the time being quoted or dealt in on a recognized Stock Exchange'. He was not sure that that definition was wide enough to cover a statutory or a chartered company, and it was certainly not wide enough to cover a mutual life assurance company which had no capital. He thought, therefore, that that recommendation required some amendment.

Turning to some of the more important matters with which insurance companies as investors were concerned, it would be recalled that the Insurance Offices, through their Association, had submitted a memorandum to the Committee and had followed it up with evidence. The memorandum dealt with some matters which the Committee felt were not within their terms of reference, but they were none the less important to investors, and he wished to refer briefly to one of those points. A company incorporated by Act of Parliament and carrying on business abroad had found its business acquired by the foreign Government concerned, and it became necessary to wind up the company. Simple machinery was provided by Section 321 of the Companies Act to enable a statutory company to go into liquidation and be wound up, but in the case of the company in question it was decided—why, he did not know—to apply to Parliament by the Private Bill procedure for a special Act of Parliament in order to liquidate it. A meeting was called at the Company's country office during war-time, and the notice that was sent out merely indicated that the shareholders would be asked to authorize the promotion of a Bill in Parliament in order to liquidate the company. On inquiry, it was found that the Bill in its final form did not exist, but the draft which was produced showed that the directors proposed in the Bill to ask for their full fees during the whole duration of the liquidation, however long that might last; and it was well known how long liquidations could last. That was in addition to compensation for loss of office, which the shareholders had also been told they would be invited to provide. Some of the principal shareholders, on learning the facts, consulted together and told the company that they were not prepared to let the Bill go through in the form proposed, and eventually a lump sum was agreed for the remuneration of the directors as liquidators and the question of separate compensation for loss of office was dropped. Unfortunately, it was not realized at the time that the Bill, when it became law (as it did), would in fact relieve the directors of the need to call any meeting of shareholders during the liquidation and would apparently relieve them of the obligation to produce any accounts. That liquidation had been going on for 3½ years. No intelligible accounts had been produced, no one knew what was being spent on the liquidation or what was being recovered, and it was quite impossible to judge whether the liquidation was being conducted diligently or effectively.

As a result of that case, the insurance companies succeeded in obtaining an alteration in the Standing Orders of Parliament, and at the present time it was not possible for any company to promote private legislation without disclosing fully to the shareholders what they proposed to do; but unfortunately the position was still unsatisfactory so far as debentureholders were concerned, for there was no obligation at present to give notice to debentureholders of the promotion of a Bill which, if it became law, might interfere with their rights. The result was that the insurance companies, through their Association, had still to have all Private Bill legislation examined for them to make sure that there was nothing which might be cause for reasonable objection on the part of debentureholders.

To return to the recommendations of the Cohen Committee, he himself had been particularly interested in the question of debentures, of which insurance funds were very large holders, and in the unsatisfactory nature of the existing type of trust deed. The Companies Act said very little about debentures and was silent on the question of trustees and their duties. The practice had grown up of preparing a deed under which the trustee, while receiving a fee, and sometimes quite a substantial fee, undertook no legal obligations at all. It might be of interest to quote the kind of clauses which appeared in deeds, and he had extracted the following from a typical deed:

> 'The trustees shall not be bound to take any steps to ascertain whether any event has happened upon the happening of which the security hereby constituted becomes enforceable or to give notice to any person of the execution thereof.
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> 'The trustees shall not be responsible for the money subscribed by applicants for the stock or be bound to see to the application thereof.
>
> 'The trustees shall not be bound or concerned to examine or inquire into nor be liable for any defect or failure in the title of the Company to the mortgaged premises.
>
> 'No trustee shall be liable for anything whatever except a breach of trust knowingly and intentionally committed by himself.'

Having established the trustees' position with clauses of that kind, the deed went on to provide that

> 'The trustees may, whenever they think it expedient in the interests of the stockholders, waive, on such terms and conditions as to them shall seem expedient, any breach by the company of any of the covenants and provisions herein contained, without prejudice to the rights of the trustees in respect of any subsequent breach thereof.'

In the particular deed from which those clauses were taken the fee paid to the trustees for those very onerous duties was £500 a year, and the two trustees were themselves directors of the group of companies concerned, though not of the actual company in question.

He himself had first become interested in the question of trust deeds some ten years ago, in connexion with the debentures of a foreign company which was a subsidiary of a well-known British company. He was approached by the Secretary of the parent company, who told him that the subsidiary was doing badly, and that it would be necessary to ask for a moratorium in connexion with the debentures. On looking into the matter he found that the interest on the debentures had been paid promptly, but that the sinking fund was about two years in arrear, and that the debentureholders had been told nothing about it. On approaching the trustees, a well-known trust company, it was found that they refused to take any action or to accept any responsibility, and it was clear on examining the trust deed that they had no responsibility. About the same time, he had been concerned with a case of the subsidiary of an important British company. That subsidiary had issued some debentures at a comparatively high rate of interest, and it was decided that it should be put into liquidation and the debentures paid off, the money to be produced by a new issue of debentures by the parent company, at a lower rate of interest. Notice of the liquidation was given to the trustees, who were told that the debentures would be repaid. They in turn informed the stockholders, a group of insurance companies, without apparently seeing anything unusual in the transaction. The insurance companies took rather a different view. On examining the trust deed, it was found that it did contain a clause stating that on liquidation the debentures should be repaid at par, but that clause had obviously been put in originally in order to protect the debentureholders and to provide for the contingency of an insolvency. It seemed that the company was seeking to take advantage of that clause for its own immediate benefit. Discussions were opened with the parent company, and he was glad to say that a satisfactory arrangement was made, and the debentures were paid off at a suitable premium.

Difficulties such as those he had mentioned had arisen very largely, in his view, from the fact that it was nobody's business to see that the trust deed was drawn in such a way as adequately to protect the interests of the investor. He recognized that trustees generally were more alert than they used to be to their moral obligations, and most of them did their job well, but he did not feel that the position was yet satisfactory. What often happened was that a prospectus was issued giving particulars of the stock and the nature of the security, the rate of interest, the terms for redemption and so on, and stating that a draft trust deed could be examined at the solicitors' offices, but it was made clear that it was not necessarily the final draft and that it might be altered before it was finally signed. The money was subscribed, and perhaps five or six months later the terms of the trust deed were finally agreed and signed. The solicitors of the borrowers were no doubt concerned to protect their clients, and the solicitors for the trustees no doubt sought to protect the trustees; but there were no solicitors for the lenders, and, while all the parties no doubt felt quite sure that they were giving a fair deal to the lenders, experience of recent years had convinced him that, if they thought that, they were wrong. As an example of the kind of thing he had in mind, he quoted a case which was referred to in the Insurance Offices' memorandum to the Cohen Committee, where a borrowing company claimed that: 'in the absence of express provisions to the contrary a company is always at liberty to purchase its debenture stocks on such terms as it can, and either to cancel the stock so purchased or to keep it alive for re-issue. In either event, the result of such a purchase must be to accelerate operation of the sinking fund as regards the stock still remaining outstanding.' That claim was put forward, he believed, on the advice of an eminent firm of solicitors, themselves responsible for drafting a great many trust deeds; and if it was correct it meant that with the ordinary form of trust deed the investor could no longer rely on a prospectus statement as to how the sinking fund would operate.

The Cohen Committee had accepted the view that trustees should not be able to escape legal obligations entirely, but, having done so, they left the question of trustees and trust deeds almost untouched. He thought that that was not really unreasonable, because it was for the investor to find some way of ensuring that the terms of the prospectus were made effective and that the deed did not incorporate clauses to which reasonable exception could be taken. He doubted whether it was possible to devise any standard clauses, because circumstances varied so much from one case to another; but he believed that a great deal could be done by the Stock Exchange, if they were willing, by making it a condition of any quotation that they should be satisfied not only that the terms of the prospectus were adhered to but also that the duties imposed on the trustees were reasonably adequate to protect the investor. Some of those duties had been referred to in the evidence which the Insurance Offices gave to the Committee. He could see, for example, no legal or practical difficulty in incorporating the prospectus in the trust deed and stipulating that, if there were anything else in the trust deed which conflicted with the prospectus, then the prospectus should prevail. In the same way, it should not be difficult for the Stock Exchange to ban certain types of clause which, in his opinion, had in practice proved undesirable.

It was a matter of satisfaction that the Cohen Committee had accepted the view that trust deeds imposing no responsibilities on the trustees should no longer be tolerated. At the same time, he hoped that the insurance offices would not wait for legislation, but would pursue their consideration of the difficult problems that arose in connexion with trust deeds; he hoped also that they would enlist the co-operation and sympathy of the Stock Exchange.

Mr E. Wm. Phillips thought it would have come as a great surprise to many to learn that in the existing state of the law no private limited-liability company need have any directors, and that no company, large or small, public or private, need have a secretary. It was certainly appropriate that these and similar anomalies should be removed by amending the law.

With reference to the question of a company's 'objects', the Companies Act, 1929, clearly contemplated that the 'objects' clause in the memorandum of association could be limited to a few lines, as in Tables B, C, D and E of the Act; but, owing to the difficulties of enlarging the objects, the practice had grown up of setting them out at great length. Thus, in the memorandum of a small recently-formed private company of insurance brokers, powers had been taken 'to build, construct, maintain, alter, enlarge, pull down and remove or replace any buildings, offices, factories, works, machinery, walls, fences, banks, dams, sluices, or watercourses, and to clear sites for the same, or to join with any person, firm or company in doing any of the things aforesaid, and to work, manage and control the same or join with others in so doing'. The company in question had been advised by eminent authority that it was advisable to have those powers, and many others equally astonishing. Like the Cohen Committee, he hoped that something would be done to enable the 'objects' clause of the memorandum to be simplified, though he was a little dubious about the recommendation on p. 10 of the Report that 'existing provisions in memoranda as regards the powers of companies and any like provisions introduced into memoranda in future should operate solely as a contract between a company and its shareholders as to the powers exercisable by the directors', the result of which would be that the provisions would be at all times subject to alteration merely by special resolution. He could visualize circumstances in which it might be a matter of great importance to others besides the company and its shareholders if a company were suddenly to change its objects.

Another point of interest to those concerned with commerce and industry was the question of a company's name. He was surprised to read in the Report that the Board of Trade had not sufficient power to refuse registration of suggested names and was sometimes 'unable to persuade the applicants not to take the names for their companies'. He had never seen any attempts to 'persuade'; in his experience the Registrar of Companies simply said 'No'. He would like some more enlightenment on that point, and also on the view expressed by the Cohen Committee that in rejecting a request for a name under the new powers which it was suggested should be given to it the Board of Trade 'would not be depriving anyone of an existing right, but would, in effect, be doing no more than rejecting a request that a vested interest in the name proposed should be created and conferred on the Company'. That sounded logical enough, but what machinery would be set up to prevent some other company inadvertently getting the same name eighteen months later? The Report referred to the contact maintained by the two Registrars of Companies and the Registrar of Friendly Societies 'with a view to preventing the incorporation of companies with names which closely resemble those of existing industrial and provident societies', but he could find no reference in the Report to the Registration of Business Names Act. Did the two Registrars of Companies consult with the Registrar of Business Names? He had always hoped and believed that the registration of a business name under the Act of 1916 gave some protection against the registration of another company with a similar name, but he was a little dubious about it after reading the Cohen Report.

It was interesting from a lawyer's point of view that sooner or later people got the laws they desired and deserved, and that laws for which they had no enthusiasm were eliminated. To mention an illuminating example, no fewer than twenty-three advertisements in a recent issue of *Punch* and eleven in an issue of the *Observer* had apparently rendered each company liable to a fine of £50, and had rendered each director, manager and officer of each company who had issued or authorized the issue of the advertisements liable to a fine of £50, because the name of the company had not appeared in the advertisement as required by Section 93 of the Companies Act. The Cohen Committee advised that that requirement be abolished. It was certainly unsatisfactory to have laws which were not enforced, as it left the citizen in doubt as to his duty and undermined his respect for other laws.

A similar point concerned the names of directors, which, in the case of companies registered on or after 23 November 1916, had by Section 145 of the Companies Act to be printed on the company's letter paper and in various other places, including showcards. If such a company had ten or twenty directors, every one of their names had to be printed on every sheet of letter paper, the size of which was now restricted by law, and in all trade catalogues, trade circulars, and showcards. He would guess that no name of any director was ever 'stated in legible characters' on any showcard, but there would be a great outcry if the directors' names were left off the letter paper. He asked why the differentiation between companies registered before and after 23 November 1916 should be perpetuated indefinitely. He suggested that Section 145 might with advantage be repealed, except perhaps where the nationality of one or more of the directors was not British. Again, if a director of a company changed his name he had to add after his name 'in all trade catalogues, trade circulars, showcards and business letters', a statement of 'any former christian names and surnames'; the plural should be noted.

Turning to private limited-liability companies, by 1944 there were fifteen times as many private companies as there were public companies, and in the figures of new companies registered each year the proportion of private companies was still greater. The private companies admittedly included many with a capital of only a few hundred pounds, but there were also many private companies of considerable size. The law affecting the private limited-liability company was, therefore, of great importance. Such a company had so far had the privilege of not being compelled to file a balance-sheet; but under the recommendations of the Cohen Committee, unless it could qualify as an 'exempt' company, it would have to file both a balance-sheet and a profit and loss or income and expenditure account. The Cohen Committee recognized some of the reasons (but, he would suggest, only some) why it was important to many private companies that their balance-sheets, and still more their profit and loss accounts, should not be open to the inspection of the public, including that of their competitors—some of whom might be big partnerships which published nothing. On p. 14 of the Report, the Cohen Committee said: 'Where a company issues shares or securities to the public the latter naturally expect to obtain a marketable investment'; but private companies were specifically forbidden to invite the public to subscribe, their articles were required to restrict the right to transfer shares, and usually there was no marketability and no intention of any. Thus the investing public was not interested in private companies and had no need to know anything of their accounts. Why then should those companies be put in a position where they might incur the dangers which the Cohen Committee foresaw, and other dangers which, he suggested, the Committee had not foreseen, through having to publish their accounts?

A private company, it was recommended, should be an 'exempt' company so long as it complied with a somewhat formidable list of conditions, one of which, as he understood it, was that not one single share of the company, other than those held in strictly limited circumstances by an executor, administrator, or trustee, might be held by any person other than for his own absolute, exclusive and beneficial interest; so that if anyone acquired even an equitable interest in even one single share the company would cease to be an 'exempt' company. It was true that the articles gave the directors power to prevent the transfer of a share from the name of one holder to that of another, but, as the Cohen Committee's recommendations stood, what was to prevent a disgruntled and perhaps dishonest ex-employee, who had in the past been allowed to acquire one share, from charging that share, informing the company he had done so, and thereby forcing the unfortunate company to file a balance-sheet and a profit and loss account every year thereafter? He felt that the conditions entitling a private limited-liability company to be an 'exempt' company needed further consideration.

Mr H. B. Turle (a visitor) mentioned that he had represented the Committee of the Stock Exchange before the Cohen Committee. He referred to the recommendations concerning 'stags', and said he regarded it as most satisfactory that the Cohen Committee proposed that applications should be made irrevocable. Some people wondered why the Stock Exchange Committee did not insist on an irrevocable form of application; but that was not possible, because an application was an offer and the allotment was the acceptance, and the Common Law could not be circumvented.

He thought that there was a tendency to exaggerate the importance of 'permission to deal'. When he had appeared before the Cohen Committee, he was pressed very strongly to ask the Stock Exchange Committee to give permission to deal before rather than after the publication of the prospectus. They resisted that emphatically, because they had found that sometimes they obtained information on which they might decide to refuse permission as the result of publication in the newspapers. They were also pressed, and particularly by Mr Wilmot, with regard to the suggestion that 'where the prospectus contains a statement that application has been or will be made for permission to deal' the application should be made 'not later than two days after the issue of the prospectus and, if permission to deal is definitely refused within 21 days of the closing of the lists', the company should be required 'to cancel allotments and return subscription moneys'. In their recommendations he thought that that proposal had been reasonably safeguarded, but what Mr Wilmot wished originally to suggest was that in every case if the application was not granted all the money should be returned. He himself had strongly resisted that suggestion, because it would put the Stock Exchange Council in an almost impossible position. They might be doubtful about the *bona fides* of a company, but they would know that if they turned it down they would completely ruin the promoters, and possibly stop an excellent company from coming into being. Mr Wilmot had said that the speaker seemed to be more solicitous of the interest of the promoters than of that of the shareholders, but he had replied that he did not think that that was so, because if the company turned out to be a good one permission to deal would probably be granted later on, and if a bad one the shareholders would lose their money whether or not there was a Stock Exchange quotation.

He was sorry that it had not been possible to find any solution to the vexed question to which the opener had referred of the price at which preference shares were to be repaid in the event of a liquidation. It was a pity that more companies had not followed the lead of the Anglo-Iranian Oil Company, whose articles included a clause that in the event of liquidation the preference shares would be repaid at 22*s*. or the average price on the London Stock Exchange over the preceding six months, whichever was the higher.

With regard to Mr Melville's point about debentures and prospectuses, he believed that in the Insurance Offices' evidence reference had been made to the case of a Canadian railway company, where in the prospectus it was stated that the debentureholders had the option of having their money repaid in London or in Montreal. The change in the exchange rate between the Canadian dollar and sterling would have made that a very valuable privilege, but by an oversight it did not appear either on the body of the debenture or in the debenture trust deed. It was a pity that no recommendation had been made by the Cohen Committee to the effect that a debentureholder should have the right to any privilege granted to him in the prospectus whether it was included in the debenture trust deed or not.

The only other point which he wished to mention was one which he had discussed with Mr Melville on several occasions, the indemnification clauses relating to trustees. He thought that the general principle on which the Stock Exchange Council proceeded was not so much to tell companies what they should do, but rather to insist that there should be full disclosure to the shareholders and debentureholders and, as far as possible, effective control by the shareholders. With regard to the indemnification of trustees—and, as Mr Melville had pointed out, after a number of other clauses there often finally came a statement to the effect that the trustees were not responsible for anything whatever—the Stock Exchange Council had insisted about three years previously that indemnity clauses should be disclosed in all future prospectuses. The result had, on the whole, been disappointing, because although the clauses were disclosed nobody took any notice of them.

Mr J. Ivan Spens (a visitor) agreed with the opener on the question of nominee holdings, and thought that what was proposed was really unworkable. He suggested that if it were left to the Board of Trade and the Treasury to agree that an investigation should take place, that would be much more effective than anything else.

The question of compensation to directors had been touched on in the discussion, and he felt that a differentiation should be made between an ordinary director and an executive director. In the case of an executive director, he considered that it should be a matter not for the shareholders but for the board. He took the view that there were disadvantages in disclosing the remuneration of those of the management who were on the board or the compensation paid to such persons. It was particularly hard in the case of a small local company with one managing director, because he might be put in a somewhat invidious position.

On the question of consolidated balance-sheets he was somewhat conservative in his views. He was in favour of consolidated balance-sheets where they were possible, but he was against full consolidation in certain cases where the businesses had really nothing to do with each other, or where it might give misleading information owing to there being a series of underlying securities in subsidiary companies. He thought that consolidation required great care, and that some latitude should be allowed subject to satisfactory explanation by the board. It had been suggested that it would be desirable to have the details of subsidiary companies in the ordinary balance-sheet and then to have separate balance-sheets for allied businesses which had not been consolidated. He did not think that that was possible in the case of larger businesses, nor did he think that it would help in many cases.

He agreed with the opener that there was a difficulty in regard to preference and debenture stocks in connexion with the nationalization of certain industries. It was clear that in some cases the Government intended to buy certain assets, and he was afraid that in those cases the suggestion put forward by the opener was unlikely to work. A similar point arose in connexion with Mr Melville's reference to trust deeds and voluntary liquidations. He could say frankly that he had had a difference of opinion with Mr Melville on that question, and he still took the view that in cases where there was a provision covering liquidation for purposes of amalgamation it was difficult to think that the investor had not been warned. Presumably there would be a great fuss if two investment trust companies were to amalgamate and pay off their debentures, yet one would find any number of clauses in their trust deeds permitting them to do so.

Mr Melville had suggested that no one was responsible for looking after the interests of the investor when trust deeds were drawn up. Where there were issuing-houses concerned, he thought that they took a great deal of trouble over the trust deeds and employed lawyers to advise them. Many existing trust deeds had been drawn up before or during the last war; but there had been a material change since then, as for instance with regard to the exhibition of balance-sheets to debentureholders. Trust deeds were better than they used to be some years ago.

He agreed very largely with what had been said on the question of private companies, but he thought that they served a very useful function for public companies, who used them for a variety of reasons, as for instance in connexion with taxation. It was very much simpler, for example, to settle the problem of taxation in India in the case of a large company by means of a private company operating in that country, so as to have a clear-cut division between the accounts.

Mr L. Brown agreed with Mr Melville that the Report of the Cohen Committee was a good one. In reading it through with as unbiased a view as possible, he was struck by the fact that although taken in detail the changes recommended were important, yet taken as a whole they were not very revolutionary. That seemed to demonstrate that there was not much wrong with the way in which the business of the country was conducted by joint-stock companies.

Insurance companies were interested in the Report both as companies and as investors, but he thought it was right to say that their interest as investors was much the more important of the two. They were so much interested in their investments that they were, he imagined, prepared to accept obligations as companies in order that all the other companies on whom they relied should accept similar obligations—all the more so since they themselves were apparently to be exempted from some of the more onerous obligations.

Insurance companies would, of course, be affected in a number of ways, as, for example, in the production of their accounts. Particular reference might be made to the consolidation of accounts, where difficult technical problems of detail would undoubtedly arise in carrying out the proposals. How a company was to consolidate the accounts of a foreign subsidiary in its own accounts, particularly where the foreign subsidiary was governed by laws of accounting quite different from the law or practice of the United Kingdom, he did not know; and it might be well to consider whether the accounts of an American or other foreign company should be consolidated as they were published or whether they should first be put into the form used in the case of a British company in order that the figures might be on a comparable basis. Important differences could arise from the two methods of presentation. Clearly, as was visualized in the Report, where an insurance company had a subsidiary that was purely a trading company, having no connexion with insurance, it would be inappropriate to attempt to consolidate the figure; and he agreed with the opener in finding difficulty in understanding why the condition of exemption from consolidation was based on the criterion of temporary ownership.

The question of directors' ages might be a very delicate matter for insurance companies, but there was a distinction in that connexion which ought to be borne in mind. With a trading or industrial company, where the directors were mainly whole-time executives of the business, a general age limit of, say, 70, with exemptions in special cases, might be very reasonable; but with a big finance company or an insurance company or a bank, where the directors were mainly advisory and consultative and the executive work was done by a salaried staff, he thought that different considerations arose. If in practice the position turned out to be that such companies were freely permitted exemptions, then he thought that the new regulation might be a very wise one, because it would keep in front of all companies the fact that age was a detriment to the continued carrying out of the duties of a director, with the result that there would be far fewer cases of directors who were old not only in age but in mind and ability.

The question of trustees and their duties was an important matter affecting insurance companies, but one which, he suggested with due deference, had been given rather undue prominence in the discussions of the insurance world. He thought it should be borne in mind that there was another side to the question, and perhaps Mr Turle had given one significant answer, namely that the publication of the terms of indemnity clauses had made very little difference. Another important practical point concerned conflicting interests. It was easy to see that serious difficulties could arise if a trustee was trustee for two different debenture issues, the holders of which might in times of difficulty take opposing views on the course of events. Conflicting rights or considerations might arise where a banker was trustee for a debenture issue of a company for which he also held the cash account. If a big investor, such as a trust company or insurance company, held a very large share interest in a company, conflicting considerations might arise making it improper for him to retain or to hold a debenture trusteeship. On the other hand, as a number of insurance companies did trustee work and were also very big investors, he hoped that it would not be felt to be necessary to take the extreme view that the trustee of a company's debenture issue should not hold any interest in any of the other securities of the company. That would make matters very difficult for an insurance company whose investments were at all widely spread.

There was a reference in the Report to the desirability of a general code of conduct rather than legislative requirements. The insurance companies, through their Association to which Mr Melville had referred, were collectively doing very substantial and valuable work in endeavouring to keep other companies up to the best practices. He suggested that they could individually carry out similar work on occasions when, as often happened, they were consulted in connexion with the making of new issues or with alterations in the terms of existing issues, matters which would not necessarily come to the ears of the Association as a whole.

Mr S. H. Levine (a visitor) said that he was not surprised that there had been a good deal of discussion on the point raised by Mr Melville regarding the rights of trustees, and he wished that Mr Melville had said whether he thought that the proposed amendment of the Companies Act would put an end to the difficulties which, at any rate in theory, had existed. The proposed clause provided that any indemnity of the trustees from anything except wilful default should be void in relation to their duties; in other words that they should be liable for negligence or breach of duty in relation to their duties. If, however, the trust deeds continued to make it not a duty of the trustees to do such things as discover whether the security was enforceable, he doubted whether that particular protection would be of value. It was easy to remove duties from the trustees so long as there was no code prescribing minimum duties. He appreciated the risk that a minimum, once prescribed, tended to become a maximum, but he was not sure whether, in view of the prevalence of extremely narrowly restricted trust deeds, that risk might not be worth taking. He might add that, in case the clause making a trustee liable for default should in fact hit anyone, it was suggested that a proviso should be inserted that any provision authorizing a trustee to rely upon opinions or evidence on which he might not otherwise be entitled to rely should be perfectly good. If a trustee were given that, he could go on his way rejoicing.

The personal liability of receivers had not been mentioned in the course of the discussion. The proposal was that receivers should be personally liable except where their contract expressly or implicitly stipulated that they should not. He doubted whether in fact that made a very great difference, because as a rule receivers contracted for the disclosed principal. However—in form at any rate—it put a new obligation on receivers for the benefit of those people entitled ultimately to the benefit, and as such it would possibly be something against which receivers would in due course be endeavouring to insure.

The effect of one of the Committee's recommendations was that the onus would in many cases be shifted from anyone who wished to proceed against a director (for some false statement in a prospectus or elsewhere) on to the director, in the sense that once the person (usually the plaintiff) who was attacking the director's conduct had proved the falsity of the statement it would then be for the director to show that he acted reasonably, instead of it being for the other side to show that he did not. At first sight that recommendation appeared sound, but in practice there would probably be few cases where a director could not show that he had relied on expert advice—in the case of a valuation, for example, on someone with letters after his name qualifying him to be a valuer. Although 'nugatory' might be too harsh a term, personally he doubted whether any great difference in the position of directors would be effected by the shifting of the onus in the rather limited way recommended by the Cohen Report.

Mr D. Houseman called attention to the recommendation of the Committee on p. 88 of the Report dealing with the certification of transfers. The Committee recommended that a company should certify a transfer of stock or shares, and that, if it did so, the certification should be *prima facie* evidence of title. What purpose would be served by *prima facie* evidence of title? It was disappointing that the Committee had not proceeded to examine how far the stock or share certificate served any useful purpose. The Company itself was the one body which could give a certificate of registration of title, and it seemed that on any sale of stock or shares it could be made quite sufficient for the purchaser to receive a certificate by the company of the vendor's title, whether or not a formal stock or share certificate were produced. Any such movement would be in the direction of the procedure for a transfer of inscribed stock.

The Committee might have taken a further step and recommended the abolition of the old doctrine of consideration for transfers. A transfer was often expressed to be made in consideration of 10*s*., when everyone knew that no such consideration had passed or ever would pass. A further reform might be to make it sufficient for transfers to be given under hand, and to abolish the requirement for them to be under seal.

When some years ago photostat copies of probate acts were made obtainable at the small fee of 1*s*., the intention was that any person who wished to register a grant with a company or in connexion with an insurance policy or any other asset should send a photostat copy of the probate act for retention by the company or debtor. The Committee might have recommended that such a practice should be compulsory.

Mr Geoffrey Crowther (a visitor) said that he was neither a lawyer nor an actuary nor an accountant nor a stockbroker; he had no professional qualifications in the matter at all, and approached it entirely from the point of view of the simple realities of economics. When, with the advantage of the outside observer, he contemplated the history of company legislation, it had always seemed to him that it was a long and involved attempt to escape back to reality from the curious collection of legal fictions which were originally imposed upon the corporate method of doing business by the Companies Act of 1844. The legislators of those days had a number of curious notions which they riveted upon the joint-stock company. For example, they had the curious notion that shareholders in a company were capable of controlling the directors, and indeed of taking an interest in the affairs of the company, a notion from which all subsequent company legislation had been trying to escape. Another curious fiction was that the assets and the liabilities of a company should exactly equal each other. That was something which he had never been able to understand, but to the meeting of that requirement an immense amount of assiduity, skill and ingenuity was applied every day by the accounting profession.

The Cohen Report seemed to him to be in general of powerful assistance in the return to reality, but there was one matter in which, so far from assisting those who wanted to get back to reality, the Cohen Committee positively ordered them to remain in the wonderland of legal fiction. He referred to their decision not to facilitate the introduction of the share of no par value. Everybody who approached the matter with common sense and not with a professional education knew that no equity share could have a par value—it was a contradiction in terms—yet all companies had to pretend that their ordinary shares continued to enjoy this curious par value. If it were merely a question of obscuring the truth perhaps one would not mind so much, but it did have practical disadvantages. It had disadvantages whenever there was a reconstruction of a company, when an immense amount of time and trouble had to be devoted to seeing that the alteration in the par value of the ordinary shares was approved by the ordinary shareholders, although it did not make the slightest difference to them or to anybody else.

He remembered a particular instance which had come to his attention some years previously. Several of the investment trust companies which had been formed about the year 1928 found themselves a few years later through no fault of their own—or perhaps he might say through no particular fault of their own—with a considerable depreciation of their investments. They were forced, owing to the peculiar convention to which he had referred, into the remarkable position that they were able to sell only their good investments, because if they had sold any of their bad ones they would have had to show an impairment of capital. Many of them kept quite active by selling their good investments and buying others, retaining meanwhile their bad ones; but some of them, getting tired of that after a year or two, began to sell some of the latter. They then had to put an item on the assets side of the balance-sheet to show that they had lost some money, which some of them called a 'realization account'. Had it been admitted from the start that the ordinary shares of those companies had no par value, and that their value was what was left when the prior interests had taken their share, that sort of practical difficulty would never have arisen.

Another example concerned insurance companies; they lived by accumulation, and that was their business. It was considered wholly proper for an insurance company to keep all its profits and to distribute only the interest on its reserves, which resulted in a natural accumulation; that led to a process by which insurance companies, after they had been in business for some years, started paying dividends which, when expressed on a percentage basis, were of a colossal size—40%, 50%, 60% or 70% on capital. If it were merely a question of misleading the incurious, no very great harm might be done; but a company which, for wholly proper reasons, distributed a dividend which it described as 60% on its capital might under the current trend of opinion find itself in a somewhat vulnerable position. There again it seemed that the only remedy was the adoption of the no-par-value share. It might be said that an insurance company could capitalize its reserves and in that way reduce the rate of dividend; but then, of course, the reserves would no longer be free, according to the convention that if they were called capital in a balance-sheet they could not be used.

Though it might seem to be a very revolutionary suggestion that insurance companies should state their capital in shares of no par value, he regretted that the Cohen Committee had not seen their way clear to say that those who wanted to make this experiment should be allowed to do so. In that one respect, a Report which in every other respect seemed to him to be an admirable step back to reality had perpetuated a legal fiction which derived from the quite false theoretical preconceptions of the draftsmen of the original Act of 1844.

Mr A. S. Holness, in closing the discussion, said there would be general agreement that the opener had been well advised to frame his remarks on broad and general lines, without attempting to deal in close detail with the enormous number of considerations and recommendations in the Cohen Report. Probably everyone who had read the Cohen Report carefully would agree that it was a most comprehensive document, and showed an extraordinary grasp of all the general principles of the subject, as well as a very close acquaintance with the detailed practice of company legislation. Members of the Institute largely represented the insurance company point of view, and they were interested first of all in the effect of the proposals on insurance companies. Naturally they looked at the amount of work that the new requirements would throw on insurance companies, and would wish that they were less rather than more. They had always wondered why they should already be required to do so much more in the matter of accounts and returns than the general limited-liability company, and in particular than the banks, whose obligations to the general public were at least as great as their own. But they had always been quite content to do it, and the methods by which they handled their accounts and their resources were very well known to the general public.

He thought, nevertheless, that the insurance companies would be glad to see the extensions of requirements which were proposed, because they believed that those extensions would tend to improvement in the working of the joint-stock limited-liability principle, in which they had a very great interest. Moreover, as investors they were deeply interested in the question of prospectuses of new issues. They obtained their own investments to quite a considerable extent through new issues, and they were interested in seeing that the business of making new issues was done properly, not only for themselves but also for the general public.

On the question of investments he thought that, because of the defective nature of accounts as they had been presented in the past, one of the greatest difficulties of the investor was to ascertain even approximately the true value of a security. Personally, he believed that those responsible for the care of the investments of insurance companies would rejoice to see the accounts published in such a way that they would be very much clearer and give a very much truer picture. In the past, a property company might have shown as the only item of income 'rents and profits on realization'. The profits on realization might have completely overshadowed the rents, which might have fallen heavily from the level of the year before, and the profits on realization might have been quite exceptional and unlikely to recur. From such a statement of income, therefore, no true view whatever could be obtained. Again, on the question of reserves and the handling of subsidiary companies and private companies, in the past it had not been possible from the ordinary accounts of a holding company which included a number of subsidiaries to discover, if the company had not consolidated its accounts, how much of the profits of the subsidiary companies was retained in those subsidiary companies and how much was passed on to the holding company.

In the case of insurance companies, their obligations to the general public represented by their policyholders were so much greater than their obligations to their shareholders that it was right and proper that they should receive some dispensation; he was very glad to see the special exceptions recommended as to the treatment of reserves in the accounts of insurance companies.

He and Mr Melville had often discussed the question of trust deeds and trusteeships, and not always from quite the same point of view. He thought it ought to be said, in defence of the trustee and the present form of trust deed, that the trustee of a debenture stock was in a totally different position from the ordinary personal trustee under a settlement. He was not handling the property concerned or carrying out obligations under the trust deed; he could only be a watch-dog on behalf of the stockholders, and had no control over the company's operations whatever. In those circumstances, he had to be very careful about what obligations he undertook. Under the Cohen Committee's recommendations the general indemnity was to be made illegal, but the trustee was to be protected, if he so desired, by enabling clauses. In future trust deeds care should be taken to protect the trustee, who would be the target for any disgruntled stockholder who had lost money on a security, by seeing that his obligations were specifically defined and his liability limited to the obligations imposed on him by the trust deed.

A point which had not been mentioned in the discussion was the recommendation that a new trustee should not get the benefit of the old trust deed. Existing trustees would be protected by the indemnity; but if they were to resign and new trustees were to take over the trusts, then the new trustees, even though they had had no hand in the framing of the trust deed, would lose the benefit of the indemnity clauses. Personally, he thought that most institutional trustees of any responsibility would examine the trust deeds very carefully before undertaking fresh duties, and it might be exceedingly difficult to find new trustees.

The opener had referred to the compensation to directors on the liquidation of a business. Personally, he thought that his suggestion—that, because they would not necessarily be re-elected at the date when they were next due to retire from the board, their compensation should be limited to the fees that would accrue to that date—was not actuarially sound. It was in fact known that in a well-run business the directors generally remained directors, if they were useful as such, for many years; he thought that the compensation should be determined by means of a double-decrement table, taking into account both mortality and the risk of non-election.

The President (Mr R. C. Simmonds) proposed a vote of thanks to Mr Whyte, not only for the great service that he, a member of the Faculty, had done to the Institute by introducing the subject and for the intrinsic merit of what he had said, but also for the very attractive and useful discussion that he had provoked.

Mr Lewis G. Whyte, in reply, said that, after listening to the most interesting discussion which had taken place, the thought that was uppermost in his mind was what an immense amount he had left out in his opening remarks; but in that there were compensations.

He agreed with Mr Crowther that all the logic was in favour of shares of no par value, but he was doubtful how they would work out in practice. Even if the no-par-value basis was adopted, it would still be necessary to have a stated value for balance-sheet purposes; the parity could not be entirely eliminated.

With regard to the rights of preference shareholders and debentureholders in a liquidation, and the position that would arise should a company be forced to part with some of its assets, he thought that that problem would have to be dealt with before long, because in the comparatively near future many businesses might be forced to part with a portion of their assets to the State—for example, the iron, coal and steel companies might have to part with their coal assets. If no means were devised whereby the money received could be passed on to the shareholders and debentureholders by way of partial repayment of capital, many companies would be obliged to hold large amounts of cash or gilt-edged securities, which would not necessarily be in the national interest.