Reflections On Comparing The Irish And English Companies Acts

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Some time ago the Government appointed a Committee of distinguished experts to consider the amendment of Irish Company Law. You may wonder, therefore, why anyone else should read a paper about it. There are two reasons. First, it has been suggested to me that there are many members of this Society who, from different angles, could speak on this topic much that would be useful for all to hear, if only they had the occasion to do so. My function is to provide the occasion.

Secondly, it has been suggested that since sooner or later the Committee will lay a report before the public it might be interesting to other members not familiar with the subject to hear a little about the present state of Irish Company Law.

It was in 1922 that this Country ceased to be part of the United Kingdom, but under Article 73 of the Constitution of that year the Laws in force in the Irish Free State at the date of coming into operation of that Constitution were to continue to be of full force and effect until the same or any of them should have been repealed or amended by the enactment of the Oireachtas. There has been no such enactment in respect of Company Law and our Law in that respect remains the same as prevailed throughout the whole of the United Kingdom in 1922.

It is true that a good part of Company Law, as indeed most of our Law, is to be found in the reported decisions of the Courts ; that is Case Law. With that I do not attempt to deal. One can, however, say that the basis of Company Law is the relevant Statute. In this country it is the Companies (Consolidation) Act 1908 as amended by the Companies Act, 1913, and the Companies (Particulars of Directors) Act, 1917. The Companies (Registration of Records) Act, 1924 does not affect in any significant degree substantive Company Law. A Committee was appointed in 1927 to consider what amendments were necessary to the law of winding-up of Companies *inter alia ;* their Report on this topic was made in 1930, but the recommendations of the Committee were never passed into Law, and we are still governed by the Companies Acts, 1908-1924.

In England (I hope I may be forgiven for using that name instead of United Kingdom) it was very different. In 1925 the President of the Board of Trade appointed a Committee to consider and report what amendments were desirable in the Companies Acts, 1908 to 1917. The Chairman of that Committee was Mr. Wilfred Greene, K.C., later Master of the Rolls, Lord Greene, and one of the most distinguished Judges that have sat upon the English Bench in our time. The recommendations of the Greene Committee were largely

accepted and were brought into the force by the Companies Act, 1928. This was an amending Act, and in the Companies Act, 1929, a codifying Act, the 1928 Act was repealed and the substantial innovations made by it were incorporated in one all-embracing Act.

Even before the 1929 Companies Act could come into force the heavy slump began, which ended in the departure from the Gold Standard and brought serious losses to investors, and bitter complaints that the law with regard to prospectuses was far from perfect. As early as 1943 the President of the Board of Trade appointed another Committee to consider and report what major amendments were desirable in the Companies Act, 1920, and in particular to review the requirements prescribed in regard to the formation and affairs of Companies and the safeguards afforded for investors and for the public interest. The Chairman of that Committee was Mr. Justice Cohen, who had been a well-known Company Lawyer and is now a Lord of Appeal in Ordinary. This Committee made its report in 1945, and, as before, an amending Act was passed in 1947, in which most of the recommendations contained in the Cohen Report were adopted. Then a Consolidation Act was passed, the Companies Act 1948, which now contains the Statute Law of England on this topic.

The Companies Consolidation Act, 1908, seems to have *settled* in this country, and may perhaps be called the " Irish " Act. It contains 296 sections in 10 parts and, in addition, there are 6 Schedules which take up 30 pages of print. The Companies Act 1948, the " English " Act, contains 462 sections in 13 parts and in addition there are 18 Schedules, which take up 90 pages of print. You will have no difficulty in seeing, therefore, that the English Company Act is very different from the Irish Act. Indeed there are 118 sections and 3 Schedules taking 18 pages in the 1928 amending Act, and there were 123 sections and 9 Schedules taking 24 pages in the 1947 amending Act, so that it took nearly 240 amendments to the Irish Act to produce the Act now in force in England.

Now it would be better not to consider this topic at all than to form an opinion about it after considering it in the wrong way. One has to remember that England is not Ireland, and that the differences between the two countries are as great in respect of Companies as they are in respect of anything. On the 31st December 1925, there were 1,512 Companies registered in this country. That is the first year for which accurate figures are available (as the Companies Office tells me). The Companies Office estimates the number of Companies registered in this country on the 31st December 1922 to have been 1,500. At the end of 1925 the paid up Capital of the Companies then registered was just over £36 million (£36,073,722), and we may assume that at the end of 1922 the paid up Capital of the Companies then registered was not much less. This would make an investment of about £11.5.0 for each individual inhabitant of this country.

At the end of 1922 there were 84,104 companies on the United Kingdom Register, excluding Northern Ireland and, of course, the Irish Free State. Their total paid up capital was over £4,180 million (£4,180,785,838). That was an investment per head of population of about £95.

I am told by the Companies Office that on the 31st December, 1953 the number of Companies on the Register in this country was 7,027,

but the latest Report of the Department of Industry and Commerce on Companies is that for 1952, which shows 6,493 Companies on the Register on the 31st December of that year, with a total paid up capital of £103 million (£103,440,610). That would be equivalent to a total investment of nearly £35 per head of population in this country.

On the 31st December, 1952 there were 259,071 Companies on the Register in Great Britain, of which the paid up capital was £6,244 million. That would be equivalent to a total investment of £127 per head of population there. There were 37 times more Companies in England than here and the English Companies had 60 times the paid up capital of the Irish. On these figures it would be very surprising to find the same Company Law in England as in Ireland.

Mr. D. D. Coyle, the President of the Association of Chambers of Commerce in Ireland, is reported in his address to the general meeting of his Association on the 29th April last to have used the following words :—

> " My feeling is that one of the greatest mistakes was that we ceased to be revolutionary when we stopped fighting. Instead of creating a social and economic life to suit our own circumstances, or at least looking to countries apart from England, for the near ideals to suit the needs of a very small country with an Agricultural economy, we modelled our institutions and our way of life on a great industrial nation with an Empire to rule, and have since followed step by step their developments."

With great respect to Mr. Coyle may I say how thoroughly I agree with those words ?

I do not think that Mr. Coyle meant that we were not to look to England for anything. I do not think he meant that when we already have in operation in this country a Law that grew and developed in England and has been in force in this country for many years we should nevertheless root out that Law, in order to introduce something that might in the beginning have been better for us. But I think Mr. Coyle would agree that when we are of a mind to amend our Law then, without neglecting English amendments, we should scrutinise them with suspicion, because in this sphere they are very often amendments made to adapt their law to circumstances which do *not* exist in this country. Some of those amendments certainly may be adapted to our conditions here but we should not, in my opinion, attempt to introduce here amendments that were made to meet quite different conditions, unless and until we have satisfied ourselves that those amendments are suitable to our conditions here. I am confirmed in that opinion by the words used by the Greene Committee in 1926, which you may find at page 49 of their Report :—

> " We think that legislation to meet the particular circumstances existing in this country should proceed on different lines, and we doubt whether much assistance can be gained by a study of legislation in other countries where conditions are different from those which prevail here."

I confess with sorrow that I should to-night be comparing the Company Law of Ireland with that of Denmark or New Zealand or Northern Ireland, and not with that of England.

I hope that some member of this Society will supply the omission. It is relevant to note that the First Report of the English Royal Commission on Taxation of Profits and Income, published last year, shows that the Royal Commission had surveyed the relevant laws of Western Germany, Australia, South Africa, Switzerland, Canada, the Netherlands, the U.S.A. Belgium and Sweden.

Only a person with considerable practical experience of the working of Company Law in England would be able to judge which of the many amendments that have been made are really important. The question whether any of them would be important in this country calls for similar practical experience in this country. I cannot claim this, and therefore do no more than draw attention to a number of differences between Ireland and England that are generally thought to be important. I have, however, myself had occasion to notice how desirable it is to be able to alter the Memorandum of a Company without too much trouble. Under Section 9 of the Irish Act the Memorandum may be altered with respect to the objects of the Company for five purposes only. These are (*a*) to further economy or efficiency in the carrying out of the Company's own business, (*b*) to use new or improved means for that business, (*c*) to enlarge or change the local area in which it carries on business, (*d*) to carry on some other business that may conveniently or advantageously be combined with its own business, or (*e*) to restrict or abandon some of the objects in the Memorandum. To do this it has first to pass a Special Resolution which requires two meetings of the Members. The Resolution must be passed by a three-quarters majority of those present at the first Meeting. The Second Meeting must be held during the second fortnight after the first when the resolution must be confirmed by a simple majority. When all that has been gone through you must then apply to the Court to make an Order confirming the alteration. Under Section 5 of the English Act two further purposes have been added to effect which you may alter the Memorandum ; one is to sell the business, and the other is to amalgamate. This must be done by Special Resolution ; but in England now a Special Resolution is one passed by a majority of not less than three-fourths of Members voting, personally or by proxy, at a General Meeting of which not less than 21 days' notice has been duly given. The Notice must specify the intention to propose the resolution as a Special Resolution. There is no need to apply to the Court to have the Resolution confirmed, but the holders of 15% or more of the Company's issued share capital or any class thereof or of the Debentures, may apply to the Court within 21 days if they object and the Court has very wide discretion in dealing with the matter. This is a much more business-like method of proceeding with alterations.

An interesting difference between the two countries is to be found in Section 75 of the English Act, which prohibits the registration of a transfer of shares or debentures of a Company unless a proper instrument of Transfer has been delivered to the Company, and this whether the Article provide so or otherwise. Both the Acts provide that the shares or other interest of any member in the Company shall be personal estate transferable in manner provided by the Articles of the Company (Section 62 Irish and 73 English). The Irish Act contains no such provision as Section 75 of the English Act. It is

therefore possible in this country to frame the Articles in such a way that the Directors may register a transfer which is evidenced otherwise than by an instrument in writing. This would have the pleasant effect of avoiding any payment of Stamp Duty on the transfer. So far as I am aware, however, this opportunity has not been taken by any Irish Company.

Incidentally, there ought to be no stamp duty at all imposed on transfers. I am told by a Stockbroker that the difference in stamp duty on transfers in England and Ireland has greatly encouraged Irish people to invest in Irish securities. If that be so, the abolition of all stamp duties on transfers would encourage investment in Irish securities even more. Although this has increased so greatly, we are still in something of a vicious circle. People hesitate to buy shares in Irish Companies because they know they will not be able to dispose of those shares quickly if the necessity arises, by reason of the smallness of the market. The smallness of the market prevents investment and lack of investors keeps the market small. A provident Finance Minister who recognised the importance of increasing Irish capital investment would take this easy and sensible method of furthering that desirable end. According to Table 64 of the Annual Report of the Revenue Commissioners for the year ending 31st March, 1953 the net receipts for stamp duty on transfer of stocks and shares on sale in the year 1952/53 was £132,783. As the amount paid into the Exchequer for duties and taxes for the year 1952/53 was £80,246,000 the remission of stamp duty on transfers of shares would still have left the Exchequer with over £80,000,000. Some people may have the incorrect idea that the removal of these stamp duties would be merely a gift to rich investors, who are not at all numerous. It would be much more : it would be an inducement to poor investors (who might be many) to save and to invest, and the greater the inducement to invest the greater the inducement to save.

One of the chief reasons for the appointment of the Greene Committee was the amendment of the English Law with regard to the prospectus.

Section 81 of the Irish Act prescribes what must be included in the prospectus with which the Company offers to the Public, for subscription or purchase, its shares or debentures. In the English Act there is a whole Schedule in which these requirements are set out, and as the amendments have been designed for the protection of Investors it may be well to deal with them at some length. The Subscription List may not be opened for two clear days after the prospectus is first issued (Section 50), and the time of that opening must be stated in the prospectus. The purpose of this amendment is to allow the press to comment on the prospectus, and the public to obtain expert advice before subscribing.

Short particulars of any transaction relating to any property purchased or acquired or proposed to be purchased or acquired, which was completed within the two preceding years, must be given when any Vendor of the property to the Company or any person who is, or was at the time of the transaction, a promoter or director or proposed director of the Company, had any interest therein direct or indirect. The reason for this amendment is that promoters sometimes enter into a contract with the vendor for the purchase of property

which they re-sell to the company at a higher price. If the first and second contracts were both completed prior to the issue of the prospectus there was hitherto (and is still in Ireland) no need to disclose the purchase price under either contract. Hitherto also (and still in Ireland) if the second contract alone was completed after the issue of the prospectus then that purchase price only had to be disclosed. But in either case investors were (and here are still) left in ignorance of the margin between the price at which the property was originally acquired by the promoter and that at which the Company buys it.

Under the Irish Act the prospectus must disclose the dates and parties to every material contract and a reasonable time or place at which the contract or a copy thereof may be inspected. The English Act requires instead that the general nature of all such contracts must be stated in the prospectus. Neither provision applies to contracts made in the ordinary course of the business of the Company. The contracts which must be disclosed are those which are likely to induce a person to subscribe or refrain from subscribing for shares. The reason for this amendment is that the two days between the issue of the prospectus and the opening of the Subscription List do not leave most investors time enough to inspect such contracts.

The English Schedule IV requires that Reports by the Auditors of the Company as to profits and losses and dividents paid by the company have to be given relating to the last preceding five years. There is no such provision in the Irish Act, although such details are, I think, generally given. The Auditors' reports must also state the assets and liabilities of the company and the last date to which the accounts of the company were made up. There is no such provision in the Irish Act. It would be difficult of course to omit any statement of assets and liabilities from any prospectus, but the point is that in England there is an obligation to have the *Auditors'* Statement on these points. Further, if the issuing company is a holding company the Auditors' report must deal separately with the holding company's profit or loss and also give either a statement of the combined profits or losses of the subsidiaries or, alternatively, a statement dealing individually with the profits or losses of each subsidiary. Disclosure of the affairs of subsidiary companies is a matter that has received great attention in England.

Again, if any part of the proceeds of the issue of shares or debentures is to be used in purchasing another business then the prospectus must include a Report by named Accountants qualified to be Auditors containing the same details in respect of the business to be purchased as have to be given by the Company's own Auditors in respect of the company's own business.

Under Section 40 of the English Act any such statement purporting to be made by an expert cannot be included in the prospectus unless the expert has given his written consent to the issue of the prospectus with the statement included in the form and context in which it is included and the prospectus must include also a Statement that the expert has given that consent and has not withdrawn it. A penalty for contravention of this Section is a fine not exceeding £500 on any person knowingly a party to the contravention. Under Section 41 a copy of the prospectus must be delivered to the Registrar of Companies on or before the date of its publication. To that copy must be

attached a copy of any material contract which has to be disclosed in the prospectus. Under Section 426 any person may inspect the copy or copies of such Contracts during the 14 days beginning with the date of publication of the prospectus.

The Irish Act is not without protection for investors, for under Section 84 a Director or Promoter is liable to compensate anyone who subscribes for shares on the faith of a prospectus for damage sustained by reason of any untrue statement in it unless the Director or Promoter has reasonable grounds for believing the untrue statement to be true, or had made the statement on the authority of an expert whom he reasonably thought to be competent. He would not be liable if the statement was a correct copy of an official document.

The English Act is far more sweeping. Under Section 43 of the English Act, if losses follow an untrue statement in a prospectus every Director and every person who has allowed himself to be named in the prospectus as a Director, every Promoter, and every person who has authorised the issue of the prospectus, is liable to pay compensation to those who have thereby suffered loss. This liability may be avoided by proof of previous withdrawal of consent to become a Director, or of want of knowledge of the issue of the prospectus, and public disclaimer of it so soon as possible, or of withdrawal of consent on becoming aware of any untrue statement with publication of the reasons for the withdrawal. There is no such liability for the consequences of an untrue statement of an expert if the expert was believed to be competent and had consented to the publication. The expression "person who authorised the issue of the Prospectus" includes the expert although he would not be liable unless the untrue statement was contained in his own report. The civil liability imposed on a Director by the English Law is therefore considerably more stringent than that under Section 84 of the Irish Act. The English Act, however, goes farther: "Any person authorising the issue of a Prospectus containing any untrue statement is liable on conviction to two years imprisonment or a fine of five hundred pounds or both" unless he proves that either the statement was immaterial or that he had reasonable grounds to believe and did in fact believe it to be true. (Section 44). The effect of this Section is to put the burden of proving his innocence on a Director once the falsity of a statement in a prospectus signed by him has been proved. In this country he might be convicted under Section 84 of the Larceny Act 1861, but the burden would remain throughout upon the prosecution.

In England allotments of shares or debentures may not be made before the beginning of the third day after the issue of the prospectus, or such later date as may be specified in the prospectus, contravention of which rule involves a penalty of £500. More important, an application made under a prospectus issued to the public is not revocable, until after the third day after the time of opening of the subscription list (Section 50). In this country an application for shares may be withdrawn at any time before the Notice of Allotment has been posted. This leaves the door open to an abuse, which the English Law is designed to check. Applications for shares or securities are normally made by genuine investors, but there are some who apply only in the hope that if the issue is popular and over-subscribed, they may be able to sell at a premium any shares allotted to them. If, before

the shares have been allotted, " the Stag " (as he is called) has reason to think that they will not be saleable at more than the price of issue, he withdraws his application. Such withdrawals are sometimes very numerous and cause great inconvenience. It is worthy of note that occasions have been known when an offer which had been over-subscribed when the Lists closed became under-subscribed before the allotment letters could be posted. The practice of stagging is not unknown in this country, although its results have not perhaps been as serious as in England.

Another important protection for investors has been introduced in England. Nobody wants to buy a share that he cannot sell, therefore Companies normally apply to a Stock Exchange, through a broker who is a member, for permission to deal in the shares, and the prospectus generally contains a statement that such application has been made or will be made. The Committee of the Stock Exchange make searching enquiries as to the promotion and the people connected with the Company and also scrutinise the Articles of the Company. Permission to deal is not granted unless the Committee is satisfied on all such points. Permission to deal is never granted until after the publication of the prospectus, and if it turns out that permission is refused, then the unfortunate investors find themselves with shares that are practically unmarketable. This does not, of course, happen at all frequently. The very fact that permission to deal is necessary is in itself a protection since promoters generally take care to see that the Stock Exchange Committee will have nothing to complain of. To make assurance doubly sure, however, the English Law now provides (Section 51) that where the Prospectus states that application has been or will be made for permission to deal the allotment will be void if permission has not been applied for before the third day after the first issue of the prospectus, or if permission has been refused before the expiration of three weeks from the date of closing the Subscription Lists. If permission is not obtained, the directors are responsible for repaying the money subscribed.

Businessmen tend on the whole, I think, to be secretive, and it is perhaps for this reason that there are very many more private companies in existence than public companies. One of the privileges of a private company under the Irish Act (Section 26 (3)) is that it need not attach an audited balance sheet to the annual summary which has to be filed in the office of the Registrar of Companies. The Cohen Committee explicitly based their Report on the principle, of the validity of which they were convinced, that the fullest information practicable about the affairs of Companies should be available to the Shareholders and to the Public, and they considered that this principle applied to the question whether private companies should be compelled to file their Accounts, except in the case of private companies with a small number of members carrying on businesses of no great size in which no other company is the beneficial owner of any of the shares (see page 26 of the Report). The last words hit at a practice common in England whereby a public company used to carry on much of its business discreetly by means of subsidiary private companies ; the practice is not unknown in this country. The English Act has therefore invented (Section 129) a new animal called " An Exempt Private Company." There is a whole Schedule (the Seventh)

setting out a description of the animal, but its basic characteristics are that no other company holds any of its shares or debentures and that all the shareholders or debenture-holders are beneficial owners of their shares or debentures. This does not, however, prevent shareholders or debenture-holders from charging their interest in favour of a Banking or Finance Company by way of security in the ordinary course of business.

It is interesting to note that the English Act provides that a private company must have at least one Director. In this country a private company need not be required to appoint any directors. The Act also provides that every Company shall have a Secretary. These new provisions have not much practical importance, but the picture they evoke of a Company without head or hand has a pleasant flavour of the Mad Hatter's Tea Party.

It is not generally known that there is no direct statutory obligation on a Company in this country to keep proper accounts. I am not aware of any widespread complaint on this score in Ireland, but the Greene Committee noted that in many instances, particularly in the case of Private Companies, accounts were not properly kept, with the result that when liquidation ensues the Company's books are so defective and confused that it is impossible to find out what has become of goods and money belonging to it. In England it is now provided that Books of Accounts must be such as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions (Section 147 (2)). The Legislature seems to have accepted the Cohen Committee's principle that the fullest information practicable should be available to all. Not so here: I induced an English connection of mine to invest in an Irish Company; their first Balance Sheet horrified him. He complained that it gave him no information about the affairs of the Company in which he had invested.

The most important single Section in the English Act is probably Section 149, when read with the 8th Schedule. This Section provides generally for the contents and form of Accounts. The second subsection provides that a Company's Balance Sheet and Profit and Loss Account must comply with the requirements of the 8th Schedule, but the requirements of that sub-section and of the 8th Schedule are without prejudice to the general requirements of subsection 1 of the Section save with certain express provisions to the contrary. Subsection (1) reads:

> "Every Balance Sheet of a Company shall give a true and fair view of the state of affairs of the Company as at the end of its financial year, and every Profit and Loss Account shall give a true and fair view of the profit and loss of the Company for the financial year."

The Schedule is divided into four parts. Part 1 contains general provisions as to the Balance Sheet (paragraph 2 to 11) and to the Profit and Loss Account (paragraph 12). Part 2 contains special provisions applicable where the Company is a holding or subsidiary company, and Part 3 contains exceptions for special classes of Companies.

I do not think that Part 2 is of interest to us. I believe that the Hammond Lane Foundry Co. Ltd., has nine Associated Companies, and in that respect holds the record in this country. Next comes, I

think, Williams and Woods Ltd., with six subsidiary companies. I do not know whether all these would come within the definition of subsidiary in the English Act, but they are the best we can do. Some years ago the Anglo-Iranian Oil Co. had 52 subsidiary companies, and may have more now. It is, I think, quite obvious that legislation which is necessary for dealing with a flock of hens with 50 chickens each is not appropriate to our little chicken run.

Part 1 of the Schedule specifies a considerable number of matters that are to be stated in the Balance Sheet under separate headings and, in particular, that reserves, provisions, liabilities and fixed and current assets shall be classified under headings appropriate to the Company's business. The Schedule contains another part (part 4) dealing with interpretation in which the expressions "provisions, reserve, capital reserve, and revenue reserve" are defined. I should hazard a guess that this must be a great relief to Auditors when dealing with imaginative Directors.

Part 1 of the Schedule contains quite elaborate directions for valuing fixed assets, and provides that the aggregate amounts for capital reserves, revenue reserves, and provisions, are to be stated under separate headings. Moreover, when any of these items show an increase for the year the source from which the increase has been derived must be shown, and where they have decreased since the previous year the application of the amounts derived from the difference must be shown.

Part 3 of the Schedule is an interesting lapse from principle in deference to human weakness, in that it provides that Banking, Discount, and Assurance Companies are to be exempt from the provisions which relate to the disclosure of reserves. The Cohen Committee acknowledged that this was the chief matter that had aroused controversy, but pointed out quite properly that in those cases the interest of the depositors and the policy-holders outweighed the interests of the shareholders. The Committee absolved Banking, Discount and Assurance Companies from the obligation of showing separately reserves and provisions, and transfers to and from such accounts, in order to preserve the reputation of stability of these companies. Obviously, if such a company were able to report that its profits allowed it to increase its reserve, it would not endanger its stability by publishing the news. The exemption is directed to absolving such companies from telling their depositors or policy-holders and the public when they have had to draw on their reserves. The Committee referred to especially to the very large holdings of Government and other gilt-edged securities which such companies hold, which are adversely affected by political disturbances and by economic conditions.

This topic is much too wide in its implications to be satisfactorily treated in passing. If these matters are to be discussed, they must be treated at much greater length than I am able to afford here.

In this country Bankrupts who have not obtained a Discharge are able by using the machinery of the Companies Acts to continue trading under the disguise of a Limited Company. In England an undischarged Bankrupt may not act as a Director of any Company or directly or indirectly take part in or be concerned in the management of any Company, except with the leave of the court by which he was adjudged Bankrupt.

In this country it is possible for a person in control of a Company to arrange for a floating charge in his own favour and, while knowing that the Company is on the verge of liquidation, so to arrange matters that the Company may obtain sufficient goods upon credit to satisfy his floating charge, whereupon he appoints a Receiver. (Greene Report, para. 61, p. 28). In England, if in the course of winding up a Company it appears that any business of the Company has been carried on with intent to defraud creditors the Court may declare that any person knowingly a party to the carrying on of the business in such manner shall be personally responsible without any limitation of liability for all the debts of the Company (Sec. 332). I have not heard of any instance of filling up the security, as it is called, in this country. Under the English Act a Company cannot give any financial assistance for the purpose of or in connection with a purchase by any person of any shares in the Company (with certain irrelevant exceptions; Sec. 54). In this country there is no statutory bar to prevent you forming a syndicate which can agree to purchase from the existing shareholders of the Company sufficient shares to control the Company; you then obtain the purchase money from a Bank by a temporary loan for a day or two, your syndicate's nominees are appointed Directors in place of the old Board and immediately proceed to lend to the syndicate out of the Company's funds the money required to pay off the Bank. I do not know that this has ever happened in this country.

I am tempted to believe that dubious practices of this nature are foreign to the Irish character. Whether that is so or not, the law of a country should be a law which is not only suitable to its economic circumstances but which is also suitable to the national characteristics of its people. I think we all realize that, without giving the matter much thought, but if attention is drawn to it I do think there would be a great measure of agreement that Irish Law should be made to match Irish ideas, Irish habits and Irish customs so far as is consonant with the best standards of our people. What in fact our national characteristics are is, however, a matter upon which I should expect a much smaller measure of agreement. There is only one point upon which I wish now to venture an opinion, because it seems to me of very great importance. It so happens that people who work on the land are generally, perhaps happily for themselves, people who have not subtle minds, and who think simply. If you wish to encourage the majority of Irish people to invest in Irish industry you must remember to be simple. It may be necessary and useful to produce the detailed Accounts prescribed by English Law for England; if it is thought necessary let it be so, but there should be provided in Ireland in every case an Abstract of those Accounts to be made and attached to each Balance Sheet showing in a simple way what the Account means, so that the man in the street and the man on the farm may understand how the Company is doing in which he has put his savings. What he wants to know is whether the Company is paying and likely to go on paying. I believe that Accountants could, if they have to, extract from the Accounts of any Company, however large, the significant figures which would let anyone read and understand the state of the Company's affairs. I do not see why, if necessary, there should not be a Shareholder's Auditor as well as a Company's

Auditor, the latter being responsible for the audited Accounts, and the former being responsible for a Report setting out his opinion of the Company's prospects as disclosed in the Current Accounts, with reference to all relevant previous Accounts. Certainly, such a suggestion would be preposterous in England. And would it be for the public good in Ireland ? You can't expect a farmer to put his money into something he doesn't understand.

In closing I bring to your notice two sentences from the Greene Report. First, " it is often forgotten that when dealing with a matter such as Company Law which affects so closely the whole business life of the nation, a certain amount of elasticity is essential if the system is to work in practice."

Secondly, " It appears to us, as a matter of general principle, most " undesirable, in order to defeat an occasional wrong-doer, to impose " restrictions which would seriously hamper the activities of honest men, and would inevitably react upon the commerce and prosperity of the country." (Greene Committee Report, page 4).

DISCUSSION

In proposing a vote of thanks Mr. Howard W. Robinson F.C.A. said :—

I have very great pleasure in proposing a vote of thanks to Mr. Rowland Healy for his paper to-night. I feel that I have the opportunity of doing so only because those most qualified to speak are at present preparing a report for the Government on the subject.

I think it is particularly appropriate that a paper on this subject should be read at this time by a Solicitor and that the vote of thanks to him should be proposed by an Accountant. For it is Accountants and Solicitors who have to apply Company Law from day to date ; who have the greatest opportunity of judging the merits and defects of the Law in its practical application and who, when, and if, a new Companies Act is introduced, will have to make it work.

Before saying any more let me make my own views on the desirability of a new Companies Act clear. I consider, and in this I believe I am expressing the opinion of the majority of Irish Accountants, that the 1908 Act forms a reasonable basis for Company Law in this country, that there are a number of amendments that might well be made to that Act in view of our experience during the past forty five years, but that an Act similar to the 1948 British Act would raise far more problems than it would solve and would be far too elaborate and complicated to meet the conditions prevailing here. I am told by my English colleagues that even now, six years after the passing of the 1948 Act, they are having the greatest difficulty in applying the Act in practice and am congratulated by them that our conditions here have made such unwieldy and awkward legislation unnecessary.

I am pleased, although not surprised, to find that Mr. Healy's views seem to run parallel to my opinion on this question. He has pointed out and rightly that the number of Irish Companies is about seven thousand as compared to over a quarter of a million English Companies and that the paid up capital of Irish Companies is about £100 million as compared to £6,000 million English Companies. The comparison

would, I imagine, be even more pointed if a contrast were made between the number and capital of Public as distinct from Private Companies in both countries.

The object of Company Law as I see it is to protect in particular three classes of people:

(1) Prospective investors in the Company.
(2) Shareholders and in particular minority shareholders in the Company.
(3) Creditors of the Company, including the revenue authorities and other Government Departments concerned.

The great majority of Companies in this country are private companies which are debarred from making an offer of shares to the public and in respect of which there are no prospective investors other than individuals who might consider purchasing the whole business or investing money in the company on the basis of a personal approach. Such an individual makes the same enquiries as he would make if the business were owned by an individual or partnership. Alteration in the Law regarding the form of account, etc. would not in my opinion give much assistance to such a prospective purchaser or investor who, if prudent, already looks very much further than the published Accounts and requires all sorts of details before investing his money.

I should imagine also that in most private Companies the holders of the great bulk of the shares are the Directors of the Company and do not require to be protected against themselves. While minority shareholders in private Companies need protection where injustice may be done by the majority, too much stress can be laid on the importance of such protection. In my experience a discordant minority often cause considerable trouble and have sometimes to be bought out at prices very much more than their shares are worth in order that the business of the Company can be carried on effectively.

As regards creditors, it is essential of course that the gift of limited liability should not be abused and amendments to the existing Law, such as that suggested by Mr. Healy in connection with undischarged bankrupts, which close any loopholes in the present legislation are to be welcomed. I would not say that in this country the limited liability company is at present, or is likely in the future to be, used to any great extent as a means of defrauding creditors. Our social system is such that credit is given normally to an individual because of his personal reputation and very often persons giving credit are not even aware that the individual is carrying on trade in the name of a private Company.

So much for Private Companies, as regards Public Companies there are more grounds for introducing further requirements regarding the form of Accounts, information to be given in prospectuses, etc. though I doubt if the practical effect is likely to be great. We have not in the past been subjected to bogus issues and the like in this country and while our population remains as it is we are unlikely to be in the future. Where new shares are being issued or existing shares offered for sale, the public or at least the public's Stockholder, Solicitor, or Accountant, is aware of the standing of some at least of the Directors of the Company and it is on their reputation more than on the terms of the prospectus that the public makes its decision.

In addition to the safeguards provided by Company Law the investing public has the additional protection afforded by the regulations and requirements of the Dublin Stock Exchange before permission will be granted to deal or an official quotation given. These requirements, which are published in a small booklet, can be obtained from the Secretary of the Stock Exchange and although time does not permit me to deal with them in detail, they do, along with the existing law, provide a reasonable protection to the public and have the additional advantage that they can without difficulty or delay be added to from time to time.

Let me once again congratulate the speaker on his interesting paper and on the moderate and reasonable attitude that he has adopted.

Mr. J. F. Kearney said: It gives me great pleasure to second the vote of thanks to Mr. Healy for the paper which he has just read. I congratulate him on the very capable way in which he has handled his subject. I think you will agree that its preparation must have entailed considerable research and a tremendous amount of painstaking work in comparing the two Acts to cover the points as well as he has done.

Mr. Healy states he was diffident about offering a paper on the Companies Acts while the Committee of distinguished experts is sitting to consider the amendment of Irish Company Law. I say to him that it is refreshing to listen to a paper on this very important matter, read by a man with such an obvious grasp of his subject. I think we have learned a great deal from him this evening. It would be indeed regrettable were we to be deprived of this evening's paper because Mr. Healy felt he should not wish to be regarded as prejudging the Commission's report.

Such reports are often very much delayed and on occasions never see the light of day, even though it be not the fault of the Commission.

I do not know if Mr. Healy has given evidence before the Committee on Company Law Reform. If he has not, might I make bold to suggest in all sincerity, that he be given the opportunity to do so.

As a Company Secretary whose daily duty it is, to endeavour to fulfil, to a greater or lesser degree, the requirements of the Companies (Consolidation) Act 1908, might I say here how much I thoroughly agree with Mr. Healy in most of what he has said this evening. The 1908 Act is undoubtedly not suited to the requirements of modern commercial conditions in this country, and more up-to-date legislation is required to correct some anomalies which are evident in Company procedure here, and which have crept in over the past 40 years. Might I hasten to add, however, that I do not feel that an Act as comprehensive as the 1948 English Act is required, in view of the vast difference, not only in the number and composition of Public and Private Companies in the respective countries, but also in the conditions under which they operate. The speaker has not left us in any doubt as to his views on this particular point.

In the short time at my disposal, I could not attempt to do justice to Mr. Healy's paper; he has covered the salient points so adequately within the limits imposed by the time allowed.

He has mentioned *inter alia*:—

1. How improvements have been made in the 1948 Act in the provisions regarding the Memorandum and its alteration, surely the most far-reaching provision of any Act which endeavours to deal with Companies, whether public or private.

2. He has dealt at some length with the position regarding Prospectuses. I would go further and suggest that, as offers for sale of Shares and Stock are becoming increasingly common in this country, they should be subject to statutory control.

3. With regard to Private Companies, I feel that drastic changes are not required, as Private Companies in this country cannot be compared in size or scope with Private Companies in England. Here they are for the most part small Companies, many being family businesses or individuals adopting limited liability. I would suggest, however, that the Act should set out in greater detail all the requirements for converting Private Companies into Public Companies, and for reconverting Public Companies into Private Companies. It has been found, from experience, that the present Act is of very little help in this connection.

4. Mr. Healy states that he is not aware of any widespread complaint in Ireland with regard to the lack of statutory obligation to keep proper accounts. This provision has hitherto been left to Table A. It is interesting to note, however, that many Companies are realising the advantage of setting out their Accounts in a more explanatory manner, and the Reports of the Chairman to Annual Meetings are tending to give much more information. I think that this practice will spread, and will undoubtedly help investors in deciding where to invest. I think I am also correct in saying that one or two Companies in this country have both a Shareholders' Auditor and a Company's Auditor, who act as outlined by the Speaker. I think that Accountants would be pleased, however, if they could receive some statutory advice to clarify the position with regard to the presentation in Accounts of such items as—depreciation, reserves, provisions not required, income from investments etc.

5. The position regarding Holding Companies and Subsidiary Companies is one which will, undoubtedly, receive attention in any future Company's Act, but as Mr. Healy so rightly states, not on nearly the same scale as has been found necessary in England. Here I might add that Williams and Woods Ltd. is a holding Company within the definition of the English Act. I regret I cannot advise him as to the position of the Hammond Lane Foundry Co., Ltd.

6. The position regarding registration of Mortgages and Charges is another which I think should be clarified as with the increased number of Companies operating now, such charges are likely to occur more frequently now than in 1908.

In addition to these points which Mr. Healy has set out there are a number which I would like to make from the point of view of the Secretary and his practical application of the Company's Act.

1. I do not agree with Mr. Healy that the provision in the 1948 Act that every Company shall have a Secretary has " not much practical importance." I think it should be obligatory on every Company to have at least one Secretary, and that the Secretary should attend all Meetings of the Company and all Meetings of its Board of Directors. Undoubtedly much trouble and delay would be avoided

in Company matters and the requirements of the Act from a practical viewpoint would be carried out much more effectively, if the person responsible were trained to carry out such functions and legally responsible for so doing.

2. Under Section 22, sub-section 2 of the 1908 Act, each share in a company having a share capital, must have a number. I feel that such numbering involves considerable clerical work with no safeguard or other advantage. I would suggest that Shares of a particular class which are fully paid up and rank *pari passu* for all purposes, need not have a distinguishing number so long as they remain fully paid up and rank *pari passu*.

3. I would also recommend that Clause 20 of Table A of the 1908 Act be extended to give the directors the power to decline to recognise any instrument of transfer which covers more than one class of share or which covers shares in more than one Company.

It is found in practice that the limitation of a transfer to one class of share, simplifies the work in the Company's transfer office. Such a provision would also permit a Secretary or Registrar to retain all transfers relating to the shares of his own Company, which he is unable to do if shares of more than one Company are covered by one transfer document.

4. It is a fairly common practice in this country, although not universal, for shareholders to vote for two or more persons to be appointed as Directors on the one motion. I feel there should be a separate motion for each appointment. This would give Shareholders an opportunity of discussing individual appointments.

These are just one or two random thoughts which I feel might bear consideration in any future Act. However, as Mr. Healy says whatever Act is brought into force should be for the public good. I think it was a certain well-known figure in Irish history who is reputed to have said " he could drive a coach and four through any Act of Parliament." If that is so why not through a Companies Act as easily as through any other. Therefore, if I might be permitted to exalt myself out of all recognition, I would agree with the learned judge, Lord Greene and say to our legislators, that when the time comes for the preparation of the Company's Act, as it must come soon ; " let us have sensibility in its preparation," and provision for " that certain amount of elasticity in its operation " both of which are undoubtedly necessary if we are to have a good Act.

I am deeply appreciative of the opportunity given to me to speak to this paper, and I can assure Mr. Healy that it will give me many hours instructive and useful reading. I have great pleasure in seconding this vote of thanks.

Dr. Geary :—With the other speakers I would like to congratulate Mr. Healy on his excellent paper. I must confess, however, that I would not haven risen at all if it were not for the challenge which implied that this was an evening for the law and accountancy and that statisticians should remain seated. On this subject and in this company I speak with unwonted diffidence and, in the lecturer's almost biblical phrase " as one who thinks simply." I was especially interested in Mr. Healy's observations on the keeping of accounts in Ireland. If, for the protection of shareholders and for the information of the

public, it is considered desirable to publish business accounts, the statistician is entitled to insist that such accounts should be uniform in content, both as regards the headings to be shown and the definition of the different headings. I should emphasise that I am not pressing for the publication of accounts, especially the accounts of private companies, since, as Mr. Robinson has pointed out, a large proportion of the private companies are so small as almost to be family concerns, and it would not be fair to such people to insist on their disclosing capital structure and profits. There is so much diversity in the manner of presentation of these accounts that it is almost impossible to produce aggregates from them for use in economic analysis. The accountancy figure for capital is very unsuitable in this regard since it does not represent the current selling value of the assets or even the value of the assets at some fixed price whereby the trend in the volume of assets could be ascertained. The diversity in content of profits is notorious.

Perhaps Mr. Healy has over-emphasised in his paper the minuteness of the capital structure of Ireland. It is true that the capital in public and private companies is a very small fraction of that of the British. It is necessary to bear in mind, however, that a far larger proportion of the capital structure of this country is in the hands of private individuals and partnerships than is the case in Britain. Since the national income of the countries is in the ratio of about 30 to 1, it might be safe to surmise that the total capital is in the ratio of 35 or 40 to 1.

Mr. Bourke said he wished to add to the observations made by previous speakers his appreciation of the time and trouble taken by Mr. Healy in the preparation of the paper which they had just heard. The subject was very much to the forefront at the present time, and it was to be hoped that, if there was to be a change in Company legislation, the essential elasticity referred to in the Greene Report would be preserved, as also the undesirability of imposing restrictions which would seriously hamper activities that were both honest and desirable. In some respects the English Act of 1948 had gone very far, noticeably in its provisions as to prospectuses. Precautions which might be necessary in the highly developed economy in existence there were not necessarily equally applicable in our simpler one. With regard to the special provisions in the English Act governing Banking, Discount and Assurance Companies, these had obviously been framed with great care after the fullest consideration by the Cohen Committee. The reasons for the Committee's conclusions were clearly set out in their Report. He felt that the conclusions were sound ones and that it had to be borne in mind that these three forms of activity were a very vital part of the British economic and financial system, and that any legislation affecting these activities was likely to have international repercussions.

The Limited Company was a very important organisation in commercial life and it was fair to say that the commercial and industrial expansion of Great Britain in the preceding century, and of the U.S.A. in this century, would not have been possible without it. In this country also it could greatly facilitate the hoped-for industrial and agricultural expansion. He thought that the procedure suggested

on Page 14 of the Greene Report, which in effect enabled a Company to purchase its own shares, was not practicable here. While it was conceivable that a syndicate could obtain an overdraft subject to the customary arrangements as to security, etc., to enable it to purchase shares, yet the action of the new Directors of the Company in paying the Company's money to the syndicate would be *ultra vires*, and if the Bank or lender had notice of the purpose of the borrowing by the syndicate it was very doubtful if it could accept the Company's cheque in repayment of the borrowing. He understood that it was well-established law here that not merely could a Company not apply its funds in purchasing its own shares, but that a loan by a Company to a person to enable him to subscribe and pay for the shares was *ultra vires*.

Mr. Healy's paper was a valuable addition to the records of the Society.

Rowland Healy in reply:—The absence of Statutory provision for the appointment of a Secretary has little practical importance only because the Articles of a Company almost invariably provide for such an appointment. I know how important it is to have a good pilot, such as Mr. Kearney, in the whirlpools of Company Administration.

I did not deal with offers for sale because I had not realized they are quite so common here as now appears. In England there must be a Prospectus whenever there is any offer for sale to the public.

In my view the reputation of a Bank for stability depends not upon the system of accounting it adopts, but upon the public confidence that the State could not and would not allow any Bank to go into liquidation.