announced by Lord Cranworth in the Western Bank of Scotland *v.* Addi, [L. R., 1 H. L. sec. 145] that to make directors personally responsible you must fix them with guilty knowledge of the falsehood. His decision, however, and Lord Cairns' aforesaid dictum, fortify that for which I contend—insisting that every statement in a prospectus should be considered the statement of each promoter with the voucher of whose name it goes to the world, and that in an action for deceit its falsehood should be deemed his, save when he could show that he himself was without wilful negligence deceived.

And whether deceived or not, he should be held to warrant all statements so made. Surely he knows his name is used expressly that the world may believe it is he who makes them, and there is no better fixed principle of common law than that every statement made by a contracting party, for the purpose of inducing the contract, is held to be a warranty of its truth which he is bound to make good, however morally innocent or ignorant he may have been.

In closing my task I would freely recognize the difficulties which beset my subject, and if at times I have appeared to use strong words, I would be sorry they were taken to mean dogmatic confidence in the views I offer. They do but indicate for me the feeling of mixed disgust, surprise, and anger, which thickens daily in those large sections of the public who are jealous for the character of our country and the honour of our times, and who, witnessing these recurrent scandals, begin to ask if we are not fallen on degenerate times, in which the successors of the commercial worthies of other days, of the men whose "honour was ennobled into fame," have forfeited their ancient English dower of truth and single purpose. That something must be done is in everybody's confession, and if my reflections be considered partial and my conclusions crude, resting contented with their condemnation, I shall still be rewarded if even in a little I shall have aided to bring higher intelligence than mine to solve what rapidly expands into one of the chief social problems of our day.

II.—*Some Account of the Laws of the States of New York and Massachusetts regulating the business of Insurance Companies.* By William John Hancock, F.I.A.

[Read Tuesday, the 8th of June, 1869.]

When my learned friend Mr. Falkiner proposed to the Council to read a paper on the very important subject which he has selected, it was stated that arrangements existed in several of the States of the American Union for regulating the business of Insurance Companies. Being officially connected with insurance business in this country, I was requested to prepare a paper with a view to affording the members of this Society some information on the subject. I regret very much that I have been unable to obtain, in time

for this meeting, full copies of the laws of all these States, and am therefore unable to give that full and distinct account of them which I would have wished.

From the best information which I possess, or have been able to collect in the short time allowed for the preparation of this paper, it appears that as far back as 1837 the attention of the State of Massachusetts was directed to this subject, as an act was passed by the Legislature in that year regulating insurance companies, and requiring certain returns to be made to the Secretary of the State. A second act was passed in 1842, and a third act was passed in 1850, on the same subject.

Under the present law of Massachusetts, an officer is appointed called the "Insurance Commissioner of the Commonwealth of Massachusetts," and his thirteenth annual report was published on the 1st of January, 1868.

Under the present law of the State of New York, an officer is appointed called the "Superintendent of the Insurance Department of the State of New York," and his ninth annual report was published on the 1st of April, 1868. This department was established in 1859.

I gather, from perusing these reports, and reading such extracts of the laws as I have seen, that the duty of these officers is to ascertain in an impartial, public, and authoritative manner, first, the solvency and *bonâ fides* of all assurance companies, before they are permitted to issue policies in those States, whether they are companies of those two States, other States, or foreign countries. Secondly, to ascertain annually, or from time to time, that these companies continue in that happy state of solvency which is so desirable for the policy-holder.

As an example of the power of these officers, I give the following extract from the law of Massachusetts, act 1863, chapter 148, fixing the standard of legal soundness of life insurance companies doing business in Massachusetts:—

"When the actual funds of any life insurance company doing business in this Commonwealth are not of a net cash value equal to its liabilities, counting (as such) the net value of its policies according to the 'combined experience' or 'actuaries' rate of mortality,' with interest at four per cent. per annum, it shall be the duty of the Insurance Commissioner to give notice to such company and its agents to discontinue issuing new policies within the Commonwealth until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid"

The law of Massachusetts also requires the Insurance Commissioner to make annual valuations of the policies of all the companies doing business in the State.

In his thirteenth report the Insurance Commissioner does not confine himself to the statistical tables, which are the result of his careful and minute examination into the affairs of the forty-seven companies doing business in his State. On the subject of life insurance he states as follows:—

"This, after making due allowance for the legitimate termination

of policies by death, purchase, and expiry, indicates that some 40,000 policies, insuring more than 100,000,000 dollars, were allowed to drop from a mere want of persistency on the part of the assured. This painful diminution must be very largely due to the absence of intelligent conviction, and an ignorance of the nature and incidents of the contracts they were making—the natural results of a system of extraordinary forcing adopted by too many of the soliciting agents, aided too often by misrepresentations, and the holding out of false or exaggerated inducements, ending only in disappointment, if not disgust, and the consequent abandonment of the policy. The lapse of these 40,000 policies involves in the aggregate the loss of a heavy amount of money to the great majority of those who took them out, and its transfer to those who have no rightful claim to it, and enforces the wisdom of a law like that of Massachusetts, which interposes to prevent the usual effects of forfeiture, and appropriates the money to the insurance of those who paid it."

On the subject of financial growth he states as follows:—"The statement of these figures is sufficient not only to illustrate the magnitude of these interests, but to force upon the mind an inquiry of profound interest to every policy-holder; whether these companies are, after all, funding *enough* to meet their enormous future obligations, or whether—between the ambitious struggle to pay large dividends to the assured, on the one hand, and the temptation to pay large commissions to agents, large salaries and perquisites to officers, and large royalties to stockholders, on the other—the bottom of the fund may not be reached at some day more or less distant, with a deficiency of a few hundred millions of dollars unprovided for? This is by no means an impertinent question. It is one that every policy-holder, and everyone solicited to become a policy-holder, has a right to ask. Shrewd men are asking it every day, and not a few, who might decide more wisely, are deciding it against the companies."

He then discusses the valuation of policies.

On the subject of 'What are Assets,' he states as follows:—"The form of annual statement prepared in pursuance of the legislation of last year has enabled us to discriminate more carefully in this regard, and to exhibit both assets and liabilities with more of analysis and detail. The returns have generally been made with entire perspicuity and straightforwardness. Occasionally, however, some very plausible generic description has been found, upon sifting down, to cover up something that shunned the light, *e. g.*—'Personal property,' 'ledger balances,' 'book accounts,' 'notes receivable,' etc. which may in terms cover anything and everything, have come to be regarded as decidedly suspicious. In some cases items of near 100,000 dollars have been returned in this way, conveying no data for even a shrewd guess of what they consisted, and imposing the necessity of further interrogation."

He then discusses the value of 'Accrued Interest' not due or collected, 'Unpaid and Deferred Premiums,' 'Premium Notes and Loans on Policies' [Premium Notes appear to be equivalent to our half credit system]; 'Commuted Commissions,' [that is, the sum

paid down to agents, solicitors, and others who may be entitled to an annual commission on renewal of life policies introduced by them, and in lieu thereof]; 'Expenses,' 'Mortuary Record,' and 'Distribution of Surplus.'

A perusal of the whole report would afford much and useful information even to those who are but little acquainted with the details of assurance business.

In his ninth report, a volume consisting of 295 pages of text and analytical tables, and 732 pages of abstracts, the Superintendent of the Insurance Department of New York gives the most minute information as to all the insurance companies doing business in that State, not only in separate paragraphs or abstracts relating to each company, but also in very voluminous tables, in which almost every item and figure which could be obtained in the whole range of insurance business for any practical purpose finds a place in some of the columns. These tables give every information as to the number of policies issued, sum insured, premiums received, losses paid, commission and other expenses under different heads, assets and liabilities, and how the assets are invested.

The Superintendent of the Insurance Department of New York, like his official brother of Massachusetts, in his report gives the public the benefit of his experience and views on all matters relating to insurance. He considers loans on personal security an objectionable mode of investment for the funds of life assurance companies, on the ground that such loans belong to and constitute a part of the legitimate business of banks and bankers, and not of insurance companies. He calls attention to the increase in the 'part note' mode of life insurance, as compared with the 'all cash' mode Under the part note system the assured is allowed to retain a portion of each annual premium as a debt on the policy, and on the payment of the claim this debt is deducted from the sum insured. Under the "all cash" system the whole of the premium is paid in cash, and the full sum insured is paid when the claim arises.

A catalogue of insurance literature occupies about forty pages of this report.

The following extract will show the stringency of the law of New York on the subject of insurance companies.—"It shall not be lawful for any fire insurance company, association, or partnership, incorporated by or organized under the laws of any other State of the United States, or any foreign government, directly or indirectly to take risks or transact any business of insurance in this State, unless possessed of the amount of actual capital required of similar companies formed under the provisions of this act; and any such company desiring to transact any such business as aforesaid, by an agent or agents in this State, shall first appoint an attorney in this State on whom process of law can be served, and file in the office of the Superintendent of the insurance department a certified copy of the vote or resolution of the directors appointing such attorney * * No agent shall be allowed to transact business for any company whose capital is impaired to the extent of 20 per cent. thereof, while

such deficiency shall continue. * * Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this section, directly or indirectly, in taking risks or transacting the business of fire or inland navigation insurance in this State, without procuring from the superintendent of the insurance department a certificate of authority stating that such company has complied with all the requisitions of the act which apply to such companies. * * Any violation of any of the provisions of this section shall subject the party violating to a penalty of 500 dollars for each violation, and of the additional sum of 100 dollars for each month during which any such agent shall neglect to make such publication, or to file such affidavits and statements as are herein required. * * The term agent or agents, used in this section, shall include an acknowledged agent, or surveyor, or any other person or persons, who shall in any manner aid in transacting the insurance business of any insurance company not incorporated by the laws of this State"

The following extract from the *Insurance Times* published in New York will illustrate the working of the New York law :—"For some time past rumours, which have gradually assumed a definite form, have been in circulation affecting the credit of the Hartford Live Stock Insurance Company, and the fact that their agents have received orders to stop taking risks, and that a special stockholders' meeting is called for on Friday, the 28th, has made it nearly certain that the company is about to wind up its affairs.

"The facts in the case, as nearly as we can learn from the best authority, are these :—Some few weeks ago, Superintendent of Insurance Barnes, of Albany, called upon the company for a statement of its affairs. This the company could not furnish, as they knew, if furnished, he would close the State of New York against them, which would virtually kill the company Hence a committee was appointed to confer with Mr. Barnes, and the result of the conference was that the directors decided to call for a contribution of 25 per cent. from the stockholders, with a view to sustaining the company, this additional money to be repaid with 6 per cent interest in case the company kept on and made money. But last Saturday it was voted at a subsequent meeting of the directors to refund this money, part of which was paid in, and notes given for the rest, and to call a stockholders' meeting on the 28th, as previously stated."

The accounts of all public companies and public bodies are liable to errors of three classes.

1st. Wilful errors committed with a corrupt intention to deceive or defraud.

2nd Errors honestly committed through error of judgment.

3rd. Clerical errors consisting simply of misplacement of items or figures. It is the duty of auditors to detect these errors where they exist, and ascertain to which class they belong.

The insurance commissioners in America, in investigating for themselves the affairs of the insurance companies, and deciding what items of assets and liabilities shall count towards the legal standard of solvency, and deciding what value shall be attached to each item for that purpose, appear to me to perform many of the duties which

would devolve on a government auditor of public companies. These commissioners also appear to perform the duties of a high police, for when their attention is called to a suspicious company, they immediately call upon that company to account for itself, and if that account be not clearly satisfactory, they immediately compel it to close business in the State which is under their jurisdiction. As New York and Boston are the great centres for banking and insurance in the United States, the jurisdiction of these commissioners has the same effect in America as insurance commissioners for London and Edinburgh would have in the United Kingdom.

The results of the past few years have very properly aroused the attention of the very large class of persons who are shareholders in public companies, and policy-holders in life insurance companies in the United Kingdom, to the management of these companies. That attention has taken one shape in Mr Cave's bill to amend the law relating to insurance companies. When the public mind is thus directed to the question in England, and Mr. Falkiner's paper has aroused attention to it in Ireland, the meeting will no doubt be glad to hear, besides the description of the laws and arrangements as to insurance commissioners, some expression of current American opinions upon the results of their system, and of the policy of extending it to the control and protection of the affairs of public companies in general. For this purpose I give the following extract from a long article on fire insurance legislation from the *Insurance Times* of January last :—

"It is safe to say that some legislative control over the wide-spread and important business of insurance is indispensably necessary for the protection of the companies themselves, as well as the safety and interests of the public at large. The day of irresponsible and fraudulent insurance companies is by no means passed; on the contrary, there are many and very efficient causes at work at the present time which demand more stringent laws, and more rigorous enforcement of those now on our statute books, to protect the public from serious loss and injury. Companies without capital spring up with fearful rapidity in certain parts of the country, under the skilful manipulation of as precious a set of scoundrels as ever sought to defraud a confiding or ignorant public, and, to the shame of our laws and the disgrace of our public officers, have too often and too extensively succeeded in their nefarious designs. The insuring public are in a great measure responsible for the encouragement given to such worthless concerns, by a too willing and confiding trust in the representations of those who thus seek them for their prey. The responsibility is not wholly or primarily with the insured, for in many cases scrutiny and careful investigation is disarmed by a list of respectable directors paraded at the head of irresponsible or fraudulent companies, or lulled into security by official recognition improperly given or corruptly obtained.

"The laws of our own State and those of the State of New York—which we believe to be the best and most stringent of any of the States —are not severe and stringent enough to discover fraud in all cases and fully protect the public. Much less, then, is the needed pro-

tection afforded in those States where no proper legislation exists, or no honest and intelligent officer is charged with a careful and searching examination into the actual standing and condition of companies seeking to do business in those States. We assume it, therefore, as self-evident that there should be sound, conservative, and stringent legislation in every State; that wholesome laws should be enacted and faithfully executed; and that none but irresponsible and untrustworthy companies will complain of such legislation. An honest man has nothing to fear in the laws against crime, nor can a sound, strong, and well-organized insurance company fear any law that compels them to make an annual exhibit of their financial standing, as a condition of doing business in any State. They have no reason to complain of any requirement having for its object a rigid and searching inquiry into their pecuniary strength and business character. Any law that shall compel all alike to disclose their actual condition, whether local or foreign, will be cordially obeyed by every sound company. The policy adopted in this State has driven from its borders nearly all, if not all, companies of a fraudulent character, though a few originally organized on an actual capital are conducting their business in so reckless a manner as will lead them in no long time to grief and bankruptcy."

It will be obvious that some such plan as is adopted in the States of New York and Massachusetts would meet many of the evils incident to public companies as they at present exist in this country, but any expression of opinion by me on the policy or details of this plan would be foreign to the object of this paper. Such matter would form a very proper subject for a paper and discussion at a future meeting of this Society.

III.—*The Dublin Hospitals: their Grants and Governing Bodies.* By E. D. Mapother, M.D.

[Read Tuesday, 22nd of June, 1869.]

TEN reports having been issued by the Dublin Hospitals' Board since its creation by an act in 1857, and it being probable that larger funds may be shortly available for such charities in this city and in Ireland generally, a discussion upon their circumstances and management seems to me opportune and desirable. Public money to the amount of £19,804 annually is divided among 14 hospitals in Dublin, namely, £16,000 voted by Parliament, £230 from the Treasury, £3,020 from city rates, and £554 from county rates. The income of these hospitals from bequests and subscriptions was estimated at £10,947, or about one-third of the whole, in an able paper read to us by Dr. M'Donnell a few sessions back. Private benevolence is, in most cities, inadequate for the support of hospitals, but in Dublin, where the poor so greatly outnumber the rich, the withdrawal of public funds would lead to the closure of some of these great