JOINT OPINION UPON THE FOREGOING CASE

OF

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1. We have carefully considered the questions which have been submitted to us, and have had the advantage of the presence of Mr. Frankland at our consultations, which has been of great service to us by the explanations which he has afforded of the circumstances under which these questions have arisen.

Question I.

2. In answering Question 1, it may be well to set out at the commencement the clause in the prospectus by virtue of which the Temperance Section was opened. It is as follows:—

"To fulfil and encourage the growing desire in favour of a special class of insurance expressed by a large and increasing number of persons in the community who profess and practise the principles of total abstinence from intoxicating liquors, a distinct section has been established in which only total abstainers are insured. On medical testimony and published statistical information is based the contention that such abstinence is greatly conducive to longevity, and to limitation and prevention of diseases. It is recognised that those persons for whom the new section is inaugurated will naturally consider themselves entitled to enjoy whatever increased insurance benefit, in the shape of additional profit, may arise from the lower rate of mortality which is claimed as one result of their abstinence. The profits, therefore, of this section will be divided only amongst those insured within it, who adhere to the practice of total-abstinence principles.

"With a view to prevent infringement of these principles amongst the assured in this section, a declaration of continuous adherence to the practice thereof will annually be required from the insured. A form of declaration will be periodically forwarded to each policy-holder in the section, to be made and signed by him, and returned to the nearest agency, or to the head office.

"For the due protection of the interests of policy-holders who strictly conform to the agreement to abstain from alcoholic liquors, it is provided that a policy-holder who at any time violates the essential condition of the section shall thereupon be entered on a non-profit list of the section, and be debarred from participation in any profits which may thereafter be declared."

3. It will be noticed that in the above extract the statement is emphatic that a *distinct section* has been established in which only total abstainers are assured; and that, although the only difference of profits particularly referred to is that arising from an assumed difference in the rate of mortality, yet the statement is equally emphatic that the profits of the section "*will be divided only amongst those insured within it who adhere to the practice of total-abstinence principles;*" and, again, that those who depart from such principles will be entered on a non-profit list *of the section*.

It may be pointed out that, if the regulations were literally carried out, there would be another source of difference in profits between the General and Temperance Sections, besides the assumed difference in the rates of mortality, because the automatically-created non-profit list in the Temperance Section would, in the course of time, probably produce a surplus. There would, doubtless, be other sources of difference in profits, such as possible difference in the proportionate numbers of policies lapsed or surrendered; but it is needless to particularise them further.