

and Napier, where both the principal chain interests are, or will in the near future be, represented. The latter are able to bring pressure to bear on the renter by refusing to rent films for the city and large-town theatres unless given the privilege of selecting the pictures they desire for towns where they compete with independents. They cannot, however, utilize the full output of all the renters, and will therefore bargain for large rights of rejection, or the selection of a few only of the best pictures in the "service."

45. The only offset which the independent exhibitor can make to these proposals is that he will offer to purchase and screen the full "service" of an individual renter. He knows that this is certain to include some pictures of poor quality, and, unlike the major exhibitor, his rejection rights are limited to those specified in the Cinematograph Films Act (see below).

46. It has been suggested that this position might be overcome by some provision on the lines of the Motion Picture Code recently issued in the United States of America under the National Recovery Act. This provides, *inter alia*, for the division of a renter's "service" between two exhibitors on equitable terms, and that no exhibitor shall be permitted to purchase more film than he reasonably requires for the operation of his theatre.

The Independent Exhibitor.

47. The lists attached show that the independent exhibitors operate the great majority of the theatres in the smaller towns, and a description of the conditions existing will be of interest. The revenue obtainable by the renter from these exhibitors is comparatively small, and, owing to the scattered nature of the towns, there is some difficulty in arranging regular delivery of films, unless a circuit system is established to some extent. The renters usually insist on the exhibitor buying their whole "service," and even the fact that the exhibitor may have the only theatre in the town does not make the renter competition strong enough to enable the exhibitor to purchase a portion only of each "service," as is done by the chain exhibitors. (Note.—One or two of the renters appear to make a practice of giving larger rejection rights, but the above statement applies in most cases. Where the small-town exhibitor has only a limited number of screening-dates available he will occasionally secure a contract for a few selected pictures.)

48. It is therefore customary for this class of exhibitor to buy one or more renters' "services" as a basis for his programmes (depending on number of changes weekly) and to add such "specials" or "road-show" pictures as he can secure from the other renters. (It is very general practice for the renters to insist that a certain number of "programme features" must be taken with these better-class pictures, or, in other words, they will only rent them on condition that a small "block" is taken.) There is a certain amount of pressure from the theatre patrons for the exhibitor to screen the more successful of the season's films, and it should also be noted that the exhibitor usually obtains good net revenue from these films, which he hopes will offset his losses on poor pictures and compensate for films which he may have to pay for under his contract without screening.

49. As a result of these factors, there is a strong tendency for the exhibitor to "overbuy." When it comes to the end of the year he finds that he has not screened a number of pictures for which he is liable to pay under his contracts, and the usual compromise that is made is that the renter cancels the old contract on condition that the exhibitor buys the "service" for the ensuing year. This may be held to be the result of bad business methods on the part of the exhibitor, and to some extent this is the case. He is, however, largely the victim of the conditions existing in the industry. It would also appear from statements made by independent exhibitors that part of the trouble is due to the "high-pressure salesmanship" adopted, and that representations are frequently made by the renters' representatives as an inducement to the exhibitor to sign the contract, but the conditions promised are not included in the latter, which usually contains an express exclusion of such representations, and the exhibitor therefore has no redress.

Proposed Standardization of Renting Contract.

50. It would be misrepresenting the position to give the impression that the exhibitors' difficulties were entirely due to the contracts or other conditions imposed by the renters, and particularly the American renters. As a matter of fact, the conditions imposed by the British renters are similar in many respects, and most of the contentious clauses in the contracts have probably been inserted in consequence of individual cases of the renters' experience with careless, unbusinesslike, or unscrupulous exhibitors.

51. On the other hand, a number of instances have come under notice where the conditions of contract have been varied by renters to the exhibitor's advantage. From the circumstances of these cases, however, there are indications that such action was the result of the realization by the renter of the impossibility of securing compliance with the contract by the exhibitor owing to his financial position.

52. It will be evident that the policy of including in contracts a number of provisions which can be used for purposes other than those for which they were originally intended is bound to cause irritation. The "showman" temperament must also be taken into consideration. Many of the theatre-proprietors have been connected with the stage in some capacity during their career, mainly on the entertainment side, and their outlook is not always that of the ordinary business man. The "blind booking" and "block booking" conditions frequently result in misjudgment of the market by the exhibitor in that the "services" he buys will prove less profitable than anticipated, and some exhibitors will no doubt attempt to obtain relief from unsatisfactory arrangements by any means possible.

53. At least one of the terms of the contract (clause 21 of Warner Bros.' contract-form attached) may be deemed to be against public interest. This provides that if by the reason of the burden of any existing or future taxation, charges, arbitration awards, &c., or by reason of any legislation, statutory orders, or regulations, it should at any time be in the opinion of the distributor (renter) no longer commercially profitable to carry on his business, of which the distributor himself is to be the sole judge, without his decision being subject to review by any Court or tribunal, he may terminate the contract on giving the exhibitor thirty days' notice.

54. This clause was not in the contract prior to the conflict between the Government and the renters on the question of the film-hire tax in 1930. On that occasion the renters withheld film-supplies, but the effect of this action was largely nullified by the fact that most exhibitors had contracts providing for supply of films for at least six months, which was a sufficient period to enable an agreement to be reached, and no theatres were closed up owing to shortage of film.

55. The threat of concerted action by the renters to cancel all contracts, and thus leave the exhibitor without sufficient films to carry on, would form a powerful weapon in the event of any future dispute with the Government, and the experience of 1930 shows that concerted action of this sort is a definite possibility. The clause is accompanied by one which is normal in this class of agreement (clause 20 of Warner Bros.' contract-form attached), providing that any additional taxation imposed during the currency of the agreement may be distributed *pro rata* between the exhibitors having contracts with the renter, so that the clause in question does not appear necessary for ordinary trade purposes.

56. The trade papers indicate that exhibitor feeling in Britain, Australia, and New Zealand is strongly in favour of the standardization of the contractual relations between the renter and exhibitor on more equitable lines, and there is every indication that this would ultimately be in the interests of both parties.

Insurance of Films.

57. An instance of concerted action of the renters with reference to the provisions of the contract, in which the question at issue was one of general policy rather than the effect or intention of the clause of the contract immediately under consideration, occurred recently in connection with the question of film-insurance. All contracts provide that the exhibitor shall insure the renter's film while in his possession or in transport to him, and most of them provide that the company with whom the film is insured shall either be approved or nominated by the renter.