

but if they took a bad turn, then he was to claim for himself the position of a creditor who took the chance of profits instead of specified interest. The danger of being treated as a partner, and, therefore, of being held liable for the borrower's debts contracted on account of the partnership, causes Mr. Morris, in his 'Patents Conveyancing' (1887), p. 31, to suggest that, 'in view of the construction which the Court might, adversely to a lender, put upon an agreement so as to hold him liable as a partner, it seems safer, in his interest at least, not to give him as interest a share of the net profits in specie, but some percentage on the principal moneys dependent on the amount of net profits.' Discretion may be the better part of valour, but this would not in all cases carry out the intentions of the parties. Besides, the Act speaks of a lender receiving 'a share of the profits,' and, as is pointed out in Professor Pollock's fifth edition of his 'Digest of the Law of Partnership,' p. 16: 'The true doctrine, as laid down in recent authorities, and now declared by the Act, is that sharing profits is evidence of partnership, but is not conclusive. We have to look not merely at the fact that profits are shared, but at the real intention and contract of the parties as shown by the whole facts of the case.' If, for instance, a wealthy person wishes to help a friend less well off to bring out and work a patent, for which the former is to receive a share of profits in lieu of interest, he must take care that a loan is made for which the patentee is personally liable (Pollock, p. 17), so that, if the patent business came to grief, the patentee would still be responsible for the money. He should be careful, too, to have no further control over the business than a mortgagee would naturally have, for it is now 'decided that persons who share the profits of a business do not incur the liabilities of partners, unless that business is carried on by themselves personally or by others as their real or ostensible agents' (Lindley, 5th ed., p. 30); so that, if he had further control, he would run the risk of the patentee being held to be his agent.—*Law Journal* (London).

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

[Registered in accordance with the Copyright Act.]

[Continued from p. 215.]

CHAPTER XVII.

OF SUBROGATION.

§ 311. *Subrogation of insurer to claims of insured.*

It is a general principle of the law of insurance in England that where the assured has any claim to indemnity for his loss against a third person who is primarily liable for the same, the underwriters, on the payment of the loss, are entitled to the benefit of such claim, and the assured consequently holds, and can recover it merely as their trustee.

By stat. 7 and 8 Geo. IV, c. 31, s. 2, the above-mentioned stat. 1 Geo. I, st. 2, c. 5, has been repealed, as also stat. 9 Geo. I, c. 22, stat. 22 Geo. II, c. 46, stat. 57 Geo. III, c. 19, and stat. 3 Geo. IV, c. 33, by which the hundred had been made liable for injuries to private property. And it is enacted by stat. 7 and 8 Geo. IV, c. 31, s. 2, "that if any church or chapel, or any chapel for the religious worship of persons dissenting from the united Church of England and Ireland, duly registered and recorded, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hopcast, barn or granary, or any building or erection used in carrying on any trade or manufacture, branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or branch thereof, or any steam engine for sinking, draining or working any mine, or any staith, building or erection used in conducting the business of any mine, or any bridge, waggon way, or trunk for conveying minerals from any mine, shall be feloniously demolished, pulled down or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed,