INSURANCE OF PROFITS.

In several of the recent issues of INSURANCE SOCIETY the subject of the insurance of profits has been incidentally referred to in connection with the discussion of lumber loss adjustments, measure of damage, etc. We now propose to briefly discuss the question of profits in its connection with insurance, and with a view to clearness we give the legal definitions of profits as follows: "any advance in the price of property beyond the cost of purchase or of production, after deducting the value of materials and cost of manufacture, or the excess of returns over the value of advances. "In commercial transactions the term profits has special reference to ownership of property from which such profit may arise; on the other hand, while commissions allowed to agents, factors, executors, trustees, receivers and others managing the affairs of other parties as a recompense for their services are in the nature of profits to the recipients, they differ from actual profits in the fact that they have reference to the gain upon the property of others bailed by the bailees. These commissions do not accrue until completion of the services, and, in case of consignments of goods, until such goods have been sold and the account of sales has been rendered, hence it follows, as a self-evident proposition, that there can be no accrued commission upon unsold goods, nor is a sale to the insurers such a disposal of the goods as would create a right to commissions, and even if it did create such a right the claim would be against the consignor, as in case of actual sales, and not against the Underwriter, who has no interest in the question of commissions between the factor and his principal, because such commissions form no part of the cost of production of the goods, and only arise after the owner has delivered them to the purchaser. It sometimes happens that by *special contract* the factor is entitled to his commissions on all goods coming into his possession, whether sold or withdrawn by the consignor; but, as has already been said, this contract is a matter with which the underwriter has no business. The policy does not insure the goods of the owner, but simply his interest in them to the extent of their cost. This leads to the question of the rights of factors, commission merchants, etc., which will be discussed in a separate article in a subsequent issue of INSURANCE SOCIETY.

All insurances upon profits have reference to what was known among the ancient underwriters as "expected or imaginary" gains, to arise from the sale of merchandise, as distinguised from *realized* profits. Upon the hypothesis that any actual tangible interest in property that may be injuriously effected pecuniarly, by any specified peril, creates a corresponding insurable interest in the party holding such interest, it has been held lawful, from the oldest days of insurance practice, to insure expected, or, as they were first designated, "imaginary" profits. The Ordinance of Hamburg of 1731 (2 Magin's Essays 213) says: "Assurance is also allowed to be made upon an expected or imaginary profit (as it is called), upon commission, against risk of fire, water, war, as well as upon the rise and fall of the prices of goods."

Chief Justice Kent, of the United States, says policies on profits or freights, if insured by the owner of the subject from which the same are to accrue, are not wagers but policies upon a real and subtantial interest" (3 John's Cases 39).

In the English case of Barclay *v.* Cousins (2 East R. 544) t was held that a party may insure the sums which he is to receive by way of commissions on the sale of merchandise; and if the merchandise from the sale of which such commissions were to accrue was only prevented by the peril insured against, the insured may recover to the extent of the loss within the amount of the policy. (See also King *v.* Glover, 2 Bos. and Pull. N. R. 206.)

Profits cannot be insured under the general designation of goods and merchandise; they must be specifically expressed in the policy, and limited to a certain percentage upon the value of the property from which they are expected to arise (Lucena *v.* Crawford, 2 Bos. and Pull. N. R. 315). Whether such property be insured or not, it must be owned by or under the control of the insured.

The right to insure expected profits is fully recognized in England and on the European continent—except in France, where it is not permitted—as well as upon this continent; though here it is not considered as desirable as in the older countries.

While expected profits only are usually the subject of insurance, both in marine and fire practice, there are circumstances where *earned*, but not actually *realized* profits have been covered by insurances, particularly in England, where, in case of goods purchased and resold before the delivery by the assured, the difference between the purchase and sale prices may be insured by special agreement, but not otherwise. Mr. Bunyon (p. 114, 2 Ed) says further: "It was found that, in case of loss or any degree of damage to the merchandise thus awaiting delivery, these policies must always bring total losses, as a slight damage from water would render the goods unmerchantable, and prevent the transfer at the end of the prompt * * * In case of sale by *contract*, while lying, in default of payment, undelivered, the *contract price* would be taken as the valuation, without reference to the market value, and the profits upon the contract at the time of the sale would be the sum of the damage." This form of insurance is simply under the valued policy, where a certain sum is agreed upon before hand as the valuation, in the nature of liquidated damages, thereby precluding further proof of value than the face of the policy, or any pro rata proposition thereof, as the loss may be total or partial as to the subject on which the profits had accrued.

In this country the insurance of "profits" is not regarded as desirable, and is but little practised in the fire branch; it is more common, however, in the marine branch, where it has been long practised. The rule for the measure of damage in the event of loss is thus set forth by the California Insurance Code (see 2738): "Where profits are separately insured in a contract of marine insurance the insured is entitled to recover, in case of loss a proportion of such profits equivalent to the proposition which the property lost bears to the value of the whole," and, in sec. 2740: "When profits are 'valued' and insured by a marine policy, a loss of them is conclusively presumed from the loss of the property out of which they were expec ted to arise, and the valuation fixes their amount."