and it was, as said, earnestly advocated by a number of outside ore interests. But in face of these circumstances, the decision of the company was against an advance, showing that not even a temporary profit, however large, was what the organization was seeking; but a steady revenue and a fair return to the stockholders. The same spirit has since then always been exhibited as being in control of the corporation's affairs. In the matter of rails, a similar action was taken, although the Steel Corporation produced during 1902 within a trifle of two-thirds of the whole production of rails in the United States. It put the price down to $28, and kept it there, although the demand would have justified a material rise, and although the price for seven months in 1900—the year before the Steel Corporation was organized—was $35, and averaged during the whole of that year about $32.50.

The Oil Company's operations are next referred to in disproof of the charge that Trusts raise prices. "The Oil Company also, which the lawyer's report classes among the conspicuous oppressors, has secured and is securing for the public, a decreasing cost for light. Prices of its products have fluctuated according to the volume of the outflow of petroleum and other incidentals, but almost always have been tending downwards. A very timely and conclusive exhibit is the report of the Geological Survey of the crude petroleum production and price in 1902. It says the production in 1902 was greater than ever before, 80,894,590 barrels, against 69,359,194 barrels in 1901, but that the market value of the whole was only $69,610,384, or an average of 86 cents per barrel, against a market value in 1891 of $66,417,335, or 95 cents per barrel. The important fact disclosed is that these figures indicate that no monopoly exists. Indeed, it seems that only $3,193,013 was the gross increase of cash received from the large 1902 yield, although the output increased 16.5 per cent. In the face of such a decline in price at a time when commodity prices were advancing so rapidly, one becomes utterly dazed at the recklessness wth regard to facts exhibited by the members of this legal committee."

RECENT LEGAL PHASES OF ACCIDENT INSURANCE.

A Paper read by MR. J. C. ROSENBERGER, of the Kansas City, Mo., Bar, before the International Association of Accident Underwriters in Annual Convention, July, 1903, at Hotel Frontenac, Thousand Islands, N.Y.

PART II.

All over this broad land there is an army of editors at work on the policies drafted by you. This army is composed of the bench and bar of the nation, and they are pruning away here and whittling off there, and cutting off a little more somewhere else from the phraseology, which you and your counsel have so carefully, so thoughtfully prepared. The result is that many of the conditions and exceptions you have inserted in the policy are metaphorically and pugilistically speaking, "a little disfigured but still in the ring." This is not peculiarly true of accident insurance, but pertains to insurance of all kinds.

It is a strange and unfortunate fact that insurance companies do not always receive even handed justice in the courts. The prejudice and antagonism of the jurors, to whom under our system of laws all issues of fact are submitted in insurance as well as in all other cases, are facts so familiar that it has become a trite saying that all the juror cares to know is whether the man held a policy and had paid his premium, and the result is a verdict against the company.

I think I am safe in saying that no well-managed company nowadays will go to trial in a case involving solely an issue of fact for the determination of a jury because the result is a foregone conclusion. Really, the only cases in insurance which can be litigated with a reasonable hope for success on the part of the insurer, are those in which the facts are conceded or cannot be reasonably disputed, and the sole questions are those of law upon those facts.

All such issues of law are, of course, for the judges to decide, and are not within the province of the jury, and even in such cases the company may expect to encounter the antagonism of the judges. In some instances this is due to the unconcealed prejudice of the court against insurance companies in general, but in by far the greater number of cases this disposition of the judges is due to the very natural inclination to, if possible and consistent with reason, give such construction to a contract of insurance as will carry it into effect and not defeat it. It is to be remembered that the office of an insurance contract is to insure, and it is the duty of the courts, if possible, to give such construction to the contract as will carry out the contract and not defeat it. Forfeitures have ever been abhorred by the law, and courts will not enforce them unless they are compelled to do so by the plainest and most explicit language in the contract.

It is therefore necessary for underwriters, in drafting their policies, first of all to keep in mind that in every case which may arise, calling for judicial construction, the court will decide against the company if it can do so without violating any principle of law. This is only another way of saying what the courts so often say, namely, that where the language in a policy of insurance is susceptible of two constructions, that one will be adopted which is most favourable to the insured.

To illustrate the difficulties of so drafting a policy that it will stand the test in the courts, I will take as an example, the following clause familiar to all of you: "This policy does not cover death or injuries resulting from anything accidentally or otherwise taken, administered, absorbed or inhaled." It would seem that the words "accidentally or otherwise" would prevent a recovery under such a policy whether gas or poison were taken intentionally or unintentionally, consciously or unconsciously; yet, it was held in the Lowenstein case (97 Fed. 17), that where gas was inhaled while asleep and unconscious, the death was not within the exception. The court said the exception only applied when the gas or poison was taken intentionally, though with a mistaken notion as to its effects, and not when taken unintentionally or without the conscious volition of the insured. Since that decision was rendered, the Supreme Court of Missouri has been called upon to construe this clause in a case where it stood admitted that the insured had died from an overdose of morphine taken as medicine to relieve pain. It was admitted that the morphine was intentionally taken, but without the intention of causing death. The court, in a well-considered opinion, held the death was not within the exception, because, in its opinion, the exception above quoted was not broad enough or explicit enough to pre-