amount *not exceeding* the sum assured, and gives no promise whatever to pay the whole amount.

In the face of all this, how can any sane or impartial man say that the Mutual Reserve Fund's license should not be revoked, at least until it conforms to the requirements of the law?

REINSURANCE IN FIRE UNDERWRITING.

PART III.

We continue this subject from our October issue, p. 260 by discussing

THE PRO RATA CLAUSE.

The simple pro-rata restriction, embodied in what is known in the States as the National Board Form of Policy, which reads: "Reinsurance, in case of loss, to be settled in proportion as the sum reinsured shall bear to the whole sum covered by the re-insured company," is simply a legitimate application of the customary contribution clause to the reinsurance contract, which makes the parties co-insurers on all *partial* losses; but, like this latter clause, it becomes inoperative in all cases of *total* losses under the original insurance, leaving each co-insurer to bear his own loss. (See Sandf, N. Y., 137.)

But when the additional clause, viz.: "Subject to the same risks, valuations, conditions and adjustments as are or may be taken by the reinsured," is considered, we find nothing new, or obligatory therein upon the reinsured; on the contrary, it does but bind the reinsurer all the more firmly, if possible, and compels him, by his own clause, to accept the adjustment of the reinsured, how loosely soever it may have been made, as final in his own case, his only exceptions being where fraud and collusion can be proved.

In a decision of the Court of Appeal of the State of Maryland, (found in 3 Ins. Law Jour. 757) referring to this stipulation the Court say:

"This stipulation overrides the condition relating to preliminary proof, and renders the furnishing of such proof to the reinsurer *wholly unnecessary;* and it not only dispenses with such proof, but fastens the responsibility of the re-insurers to the settlement and adjustment made by the original insured as to the amount of the loss."

In the matter of the remaining portion of the clause, "Loss, if any, payable at the same time with the reinsured," it will only be needful to recite a decision of the New York Court of Appeals (56 N. Y. 104) to settle this question judicially, and at the same time satisfactorily. The Court there say:

"In regard to the latter clause, 'loss payable at the same time with the reinsured,' it is not possible to concede from it that actual payments by the reinsured is, in fact, to precede or accompany payment by the reinsurer. It looks to the time of payment and not to the fact of payment. It has its operation in fixing the same period for the duty of payment by the re-insurer as was fixed for payment by the reinsured. To give to it the construction contended for by the defendant would, in substance, subvert the whole contract of re-insurance as hitherto understood in this State. In the case before us each of the policies was payable sixty days after proof of loss, and there was, therefore, no necessity for the clause in question to regulate the rights of the parties."

Referring in this connection to the entire clause, this same learned Court say:

"The insuring company—under this clause as a whole—is to have the benefit of any deduction, by means of other insurance or salvage, that the original company would have; and also, to have the benefit of any time for delay or examination which the original company might claim, so that the liability of the insuring company shall be co-extensive only with the *liability* and not with the *ability*, so to speak, of the original company."

We find no Canadian rulings upon reinsurance, hence we have to fall back upon those of the highest American Courts, of which we cite the following among others, as supporting this question, viz.: In Re Republic Ins. Co., U. S C. C. Illinois, 25 Penn. Sta. 475; 3 Biss 504; 9 Phila. 202; 41 Md. 59; 1 Sand, N. Y., 139. The solitary and sole reported case to the contrary is that found in 59 Ills. 362 (Ills. Mut. F. I. Co. v. Andes Ins. Co.) The plaintiff was a victim of the Chicago fire, and on final settlement paid but 10 cents on the dollar of its indebtedness. Among its assets was a reinsurance claim against the Andes Company, which defended the case upon the plea that, inasmuch as plaintiff paid only 10 cents to the original policyholder, that was the extent of the liability of the Andes under its reinsuring policy. Strange as it may seem, the Court sustained the plea and gave judgment accordingly.

Holding this decision as correct, it follows, as a logical sequence, that if the Illinois Mutual had paid nothing, then the Andes, as reinsurer, would have nothing to pay—a proposition too absurd upon its face to be entertained for a moment. In the case, In Re Republic Ins. Co., above cited, the same plea was made in defence, Judge Blodgett, U. S. C. C., thus sat down upon it:

"The very object in making a policy of reinsurance was to place the Company in funds with which to make its policyholders whole, and that is defeated if this construction which is insisted upon by the assignee in this case, is a true one .....But I am of the opinion that the Republic is liable on these policies, to the extent of the adjusted losses, even if the Lorrillard had not paid a cent."

From what has been shown in the matter of these very sharp pro rata clauses, in use across the line, it is very evident that they benefit everybody in interest but their makers.

THE REINSURED: HIS STATUS.

Where a reinsured company becomes insolvent from any cause, and unable to pay its liabilities in full, the reinsurer, as we have just shown, is not thereby released, to any extent, but must, in the event of loss, under reinsurance, pay such loss within the amount of the policy to the representative, assignee or receiver, of the reinsured Company, in the same manner and to the same end as in mercantile transactions in cases of assignment, viz., that the assets of the bankrupt may be equably divided among the creditors of the estate. And for this purpose, upon presentation of the proper proofs of loss, he may collect from his reinsurers before he has made payment to the original insured. He is also entitled to recover not only what he may have already paid, but all that he ought to have paid, or may have been liable to pay; and his legal obligation to pay is not weakened by his inability to pay.

Referring to the practice of olden times we find that the reinsurer was holden bound to pay the entire amount of his reinsurance, without regard to the circumstance that the reinsured may have procured an abatement in settlement