"THE UNSOLVED PROBLEM."

In response to TYRO's criticism, contained in the last issue of INSURANCE SOCIETY, and to *his* suggestions as to the *proper* solution of the "unsolved problem," we would remark that his selection of a pseudonym over which to indulge in his lubrications is a very appropriate and peculiarly fitting one, for he has proved himself to be but a "tyro," and a juvenile one at that, in his knowledge of the fundamental principles of insurance, all of which he ignores with a "looseness" that is amusing to a trained underwriter.

In the first place he *forgets*, if he ever knew, that the insurance contract is one of *indemnity*, if he knows what that means; or, in other words, that the insured *must be paid the full amount of his loss within the amount of his policy or policies*, (see Clarke on Insurance,* pages 1,240, and the authorities:——

there cited; *Ibid.* p. 244, note c). "The result to be desired is that which will indemnify the assured in all cases. This may always be acted upon as a general principle" (*Stevens and Benecke*, 288). "The intention and the end of insurance is to indemnify the insured" (*Ibid.* 295). "The predominant intention of the parties in a contract of insurance is indemnity, and this intention is to be kept in view and favored in putting a construction on the policy" (1 *Phillips Ins.* 82). "The application of the proceeds of a policy will be made in the manner most beneficial to the assured" (*Ibid.* 230). * *. "This decision does not call in question the general principle that a loss under a policy against fire is to be paid without contribution" (by the insured) (6 Pick. 82). "*Any arrangement of clauses in policies shall not be used to the disadvantage of the insured;* he must be paid, and the dispute, if any, settled between the underwriters" (6 Cowen, N.Y., 635, *Godin* v. *Lond Assur. Co.*, 1 *Burro* 489). "The underwriter pays no loss, except with reference to the sum on which he is paid premium; the whole sum if the loss be total,—*some aliquot part of the sum if the* loss be partial." (1 *Arnould Ins.* 7, 7).

From the foregoing citations from recognised authorities there is no denying the fact that the law requires that the insured *shall be paid the full amount of his loss* within the insurance; and yet, in TYRO's method of solving this problem, he makes the insured a loser of $33.34 with unexhausted insurance of $50!! And, as a reason therefor, he quotes the "contribution clause," and says: "If the English language expresses any meaning then it, to my mind, means a contract with the insured that the Company cannot be called upon to pay, etc. * * * If this is the case, and it is (?) why wander off the track, as the article referred to does, and in the very primary apportionment, immediately after stating the problem, fix the liability of office C "in the ratio of the *loss* upon each of the respective buildings. Where in the contract will he find any authority to make a ratio of this nature? The ratio is one of *insurance* and not of *loss;* we come to the *loss* afterwards."

Here the TYRO protrudes again very strongly in *two errors*. In the first place the "contribution clause," IS NOT *a contract with the insured*—Tyro's assertion that "it is," to the contrary notwithstanding. This is the old and long discarded fallacy of the *Finn* and the *Albany* rules, and no one but a tyro would make such an assertion *now*.

Contribution *between reinsuring Companies* upon a general loss is co-existent with the origin of insurance, with which the insured—except under the operation of the average clause, when he also became a co-insurer—had nothing to do, and was in no way interested. Under this system the insured was accustomed to call upon any one of his co-insuring underwriters and collect his loss, the office thus paying having the right to call upon its co-insurers for their pro-rata shares of the amount thus paid. Under this method the paying Company became endorser for the others.

The contribution, or, as it is known in England, ratable proportion clause is of more modern date, coming into use about the close of the 18th century. Its object was the protection of co-insurers by limiting their liability upon any insurance to their ratable proportion of the ascertained general loss, and thus preventing the insured from calling for more, as had been the custom; but its operation was still confined to co-insuring offices,—the English rule in relation thereto being that "in no case can this clause be construed so as to throw loss upon the insured against which he would have been fully protected had his policy been free from this clause." And to this effect has been the rulings in the United States for years past, in cases of double insurance, where it is an axiom that "contribution assessed upon the insured is in the nature of general average in marine insurance, which *does not operate in fire insurance*" (2 *Phillips Ins.* 230). Hence it follows that, in the absence of the average clause, which, by the way, *is the insured's contribution clause*, he cannot be called upon to contribute to his own loss, and yet Tyro makes him contribute $33.34 as a deficiency where there was $50 of unexhausted insurance!!

In the second place, in the matter of "wandering off the track," etc., above quoted, the TYRO again comes conspicuously to the front. He says: "If this is the case, and it is (We have just shown that '*it isn't*')—why wander off the track * * * * and fix the liability of office C in the ratio of the *loss*, upon each of the respective buildings. * * * The ratio is one of *insurance* and not of *loss*." * * *

Poor TYRO! he has gotten things a little mixed; from which it is evident that he does not know or understand what he is trying to criticize. The "fixing" of the liability of the compound policy C upon *each* of its subjects, in the ratios of the respective losses thereon, was but reducing that insurance to the same (specific) denominations as the subjects of A and B, to the end that the *insurance* of Company C thus found might be in a shape to contribute with its co-insurances on an equality; and when thus ascertained, and not before, the apportionment of the several "insurances," under the contribution clause, could be made, from which could be found the several contributions (*i. e.*, payments) to make good the indemnity. Co-insurers contribute with each other in the ratios of their several *insurances*, as required by the contribution clause; they pay the insured in the ratio of their insurances to the several *losses*, as required by the policy.

We come now to the "blanket" policy, where Tyro's erudition, or want of it, again crops out, but this time it is only in one small word, but it makes a "heap" of difference in the outcome. He says: "Company C, having issued a 'blanket' policy, becomes, by virtue of its contract with the assured, liable to the *full amount of its policy on* BOTH *items thereof*—this is very clear." Not very true, however "clear"

* NOTE.—"A Treatise on the law of insurance, with Supplement, containing note of all decisions in the Dominion reported to March 1st, 1877. By S. R. Clarke, of Osgood Hall, Barrister-at-law. Toronto, 1877.