REINSURANCE PRO RATA CLAUSE.

The suit of the Home Insurance Company and the Phœnix Insurance Company (plaintiffs) vs. the Continental Insurance Company (defendant), involving a construction of the pro rata clause attached to a reinsurance policy, has attracted the attention of underwriters to such an extent that further details will be of interest. The following report appears in the New York "Commercial Bulletin:"

Plaintiffs issued a joint policy at San Francisco insuring the property of one Heilner at Baker City, Oregon, in the sum of $10,000. The defendant issued to the plaintiffs its policy for $5,000, reinsuring the plaintiffs on their interest or liability under their policy issued to Heilner. The defendant's policy contained the following clause:

"This policy is subject to the same risks, conditions, valuations, endorsements and assignments as are or may be assumed or adopted by the Home Insurance Company of New York, and the Phœnix Insurance Company of Hartford, Conn., and the loss, if any, payable pro rata at the same time and in the same manner as by said companies."

About three months prior to the fire the plaintiffs reduced their policy to $2,000, without the knowledge or consent of defendant, and, therefore, no change was made in the reinsurance policy. Subsequent to the reduction in plaintiffs' policy Heilner sustained a loss by fire of about $3,000 and the plaintiffs paid him $2,000, all that was left of their policy. Plaintiffs then made a claim on defendant for $2,000, the full amount paid Heilner, with $14 10 added for adjustment expenses, total claim, $2,014.10. Defendant contended that under the conditions of the pro rata clause attached to its reinsurance policy its liability was limited to one-half of plaintiffs' loss, and before the commencement of the action defendant duly tendered to plaintiffs the sum of $1,007.05, which tender was refused, and after the commencement of the action defendant served upon plaintiffs an offer to allow judgment against it for the sum of $1,007.05. The Court appointed a referee, and upon the above stated facts he rendered a decision holding the defendant liable for the sum of $2,014.10, the entire amount of loss and expenses paid by plaintiffs. The defendant excepted to the referee's decision and took an appeal to the Appellate Division of the Supreme Court, First Department.

The Appellate Court, by a unanimous decision, reversed the finding of the referee and ordered a new trial befor another referee, with costs to the appellant to abide the event (70 N. Y., Supp., 824). The syllabus is as follows:

"Where a policy of reinsurance was for half the amount of the original insurance, and provided that the loss, if any, should be 'payable pro rata at the same time and in the same manner' as by the original insurer, and the amount of the original insurance was reduced to less than the amount of the reinsurance policy, the reinsurer was not liable, on a loss occurring for the full amount of the reduced insurance, but for one-half thereof."

In accordance with the order of the Appellate Court a new trial was had before a new referee, who after stating the facts, says: "I find as a matter of law:

"I. That the defendant's liability 'pro rata' under the policy of reinsurance is as $5,000 is to $10,000, that is, one-half of plaintiffs' liability.

"The plaintiffs' liability being $2,014.10, the defendant's liability is $1,007.05.

"II. That plaintiffs' contention that the 'pro rata' clause became 'inoperative' when plaintiffs reduced their own liability without defendant's knowledge would mean that by this ex parte act a new contract was formed, which superseded the one in issue, by eliminating therefrom the clause which measured the defendant's liability.

"This contention is in direct violation of the terms of the contract in issue.

"III. That plaintiffs' further contention that by their act—as one party to a contract—in reducing their original liability four-fifths without notice to the defendant—the other party to the contract—they can thereby double defendant's liability, is clearly in violation of the express conditions of defendant's policy of reinsurance.

"IV. That plaintiffs have judgment for the sum of $1,007.05 without interest and without costs.

"V. That defendant be allowed the costs and the disbursements of this action."

MR. TARBELL'S MONTHLY CIRCULARS.

Mr. Tarbell, 2nd vice-president of the Equitable Life Assurance Society of the United States, issues a monthly circular for instructing and stimulating the officials of the Company as well as providing them with arguments and data which are useful for their work. One feature in these circulars is the exceptional ease with which they may be read, as the type used is very much larger than what is ordinarily seen in books or journals. To travellers on a railway train this is a great boon, and Mr. Tarbell's literature is, no doubt, read by them when other classes are avoided as too wearisome for the eyes. His last issue is an insurance homily on the two texts, "Awake thou that sleepest" and "Now is the accepted time."

The October circular contains several statements highly calculated to arouse the reader's attention and provoke his criticism, but Mr. Tarbell, no doubt, would much prefer a critical, even an antagonistic reader, to one who is apathetic. We are not sure that he is right in saying, "The United States are worth *fifteen thousand millions* more than Great Britain." The valuation of the real wealth of two countries is a task beyond any man's powers. All the data ever compiled as to the wealth of Great Britain and the United States were exceedingly imperfect, and largely made up of estimates that were little better than guesses. One may well be excused regarding the United States as so much wealthier than other nations, as is so commonly claimed by American writers, when we find the rate for money