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INDEMNITY UNDER THE FIRE INSURANCE CONTRACT.

The fact that in the recent voluminous discussion of Mr. Lye's problem by numbers of "experts"—no two of whom however, were expert enough to arrive at the same conclusions, though arguing from the same premises, and most of whom make the insured a loser, despite the fact that he held insurance—five-sixths of it under floating policies,—to the amount of $3,750, in excess of his loss, is a strong indication that the true purpose of an insurance contract,—indemnity to the insured to the full extent of such insurance—is not fully comprehended by these same "experts." Under these circumstances it may not be inopportune to discuss this fundamental doctrine of insurance of all kinds, and, so far as may be, place the subject in a proper light before our many readers. In the prosecution of this purpose the question arises:

WHAT IS INDEMNITY UNDER THE INSURANCE CONTRACT?

"*Indemnity:* That which is given to a person to prevent his suffering damage." (2 McCord, S. C. 279 U. S. A.)

"*Indemnify:* To make up for that which is lost; to make good; to reimburse," (Webster's unabridged).

"Insurance against fire is a contract of indemnity." (Wharton's Law Dicty. Flanders Ins.)

"Insurance then, is a contract by which the insurer undertakes, in consideration of a premium equivalent to the hazard run, to *indemnify* the person against certain perils or losses, or against some particular event." (Parke on Ins. 1789).

"The predominant intention of the contract (of insurance) is *indemnity;* and this intention must be kept in view in putting a construction upon the policy. (1 Philips Ins. 82).

"As a contract of indemnity, it (the policy) must be literally construed for the insured, *to give him the largest indemnity within its terms;* and these terms may sometimes be constrained and forced to preserve its validity; but never to render the insurance void, if the meaning is clear and consistent, any attempt to substitute a different one by subtle reasoning is not to interpret the contract, but to elude its performance." (1 Dues on Ins. 159, 165.)

"All writers who have treated on the contract of insurance agree that it is eminently a contract of good faith." (3 Kents' Com. 282).

"Good faith is to be given in the contract of insurance, and the subtleties of the law are to be made to yield to that equity which is the soul of commerce." (Emerigon 17.)

"The contract of insurance thus becomes one of *indemnity only;* such indemnity must, on the other hand, be adjusted upon the principle of replacing the insured, as nearly as may be, in the situation in which he was at the commencement of the fire; so that if the loss or damage be less than the amount of the insurance he will be entitled to recover all of such sum lost or damaged; and if there be a total destruction of the property up to the amount of the insurance he will be entitled to recover the full amount of such insurance." (Alauzet 72; May on Ins. 2; 1 Stewart L. C. 174, 4 Burnett's Cases 252.)

In the American case (6 Cowen 635,) the rule is properly laid down that "no arrangements of the clauses in the policy shall be used to the disadvantage of the insured; he must be paid, and the dispute, if any, be settled between the underwriters.

We have thus demonstrated by legal and other authority, that in the adjustment of all losses, the insured must be fully indemnified for all loss or damage from the peril insured against to the full amount of the insurance, if necessary.

How such loss shall be apportioned among co-insurers upon the same risk, either concurrently or non-concurrently will form the subject of another article upon contribution between offices.

The doctrine of indemnity in insurance has also another side which we briefly consider, as follows:—

The amount set forth in the policy is the maximum of liability in any contingency, and not the actual amount of indemnity to be paid in all cases. It is not a contract to pay that sum certain in the event of loss; nor a stipulation