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 I.

The history of insurance against bodily injuries, "sustained through external, violent and accidental means," is brief and extraordinary. It is a story, the past tense of which can be confined to the last half century. Although the growth of this branch of underwriting has not reached the stupendous proportions of life insurance, yet the millions of dollars which are received and delivered annually by the so-called accident companies are a sure indication of what an integral factor the accident policy has become in our everyday lives.

It must be obvious to every thinking man, that the compensation paid the insurer for assuming the liability imposed by such policies must of necessity, as in all other insurance, be based on the risk assumed, with a reasonable loading for expenses and a percentage of profit sufficient to adequately reward the insurer for transacting the business. It must also be obvious to all men that a policy of accident insurance must be what its name implies, limited to bodily injuries which are the result of external and accidental violence and to particular consequences of such injuries.

The merest child can see that no company or individual could safely assume the risk of indemnifying the insured against any and every loss, physical or financial, which might result from a bodily injury, however sustained.

Again the requirements of the business are such that policies must be uniform. They must be made for the just as well as the unjust, for the honest as well as the dishonest. Every prudent man who enters into a contract with another, whatever his confidence may be in the integrity of the other contracting party, acts on the assumption that such party may turn out to be dishonest or avaricious, and it therefore behooves both parties to, as closely as possible, fix and determine the measure of liability, each to the other. This instinct, common to every man, finds no exception in the accident underwriter and has given rise to the insertion in his contract with the insured of various exceptions, definitions and limitations, the aim and object of which are to place beyond the peradventure of a doubt that for which the insurer will pay and that for which he will not pay.

A natural concomitant of the earlier insurance contracts of this class was that of a caution, perhaps undue caution on the part of the insurer. The business was new and in the nature of an experiment, and the result was the introduction into the policy of many exceptions and provisos, which are not found in policies of the present day.

The process of elimination and liberalization of the contract has been due to two causes, namely, adverse construction by the courts and competition among the insurers themselves. These influences, however, have not served to eradicate the cheaper contracts, which are distinguished for an increase rather than a decrease of limitations and provisions as to liability. For example, thousands of policies are issued annually by some companies at wholesale to all who will buy them at an annual premium return netting the company in some instances but a few cents each. It is not to be expected that such policies will give much protection and in point of fact they are so hedged about with conditions and exceptions, that to use the language of one of the members of this Association, one to be entitled to indemnity under such a policy must, when injured, have been riding in a blue wagon drawn by a white horse in charge of a red-headed driver; provided, however, that the wagon be smashed to smithereens in the catastrophe. But then the holder of such a policy has at least this solace. He still has his key ring and if he should succumb to his wounds the little tag will tell the police where to send his body.

The underwriter drafting a policy of accident insurance is compelled to reckon with three essential elements,—(1) The Public, who is to buy it; (2) Competition; and (3) last, but by no means least, the Court or Judge, who is to construe it.

The first element, the public, is as yet of minor importance but is becoming more important every day. I say it is now of small importance because it is a regrettable fact that the average man does not read his accident policy until after he makes a claim, and then if he finds he has slept on his rights or has violated some essential and necessary condition of the policy he feels that his confidence has been misplaced and that he has been very much abused and deceived. It is singular that a man who, before taking a policy of life insurance will carefully compare the policies of half a dozen other companies and read statistics as to earnings and expenses and dividends until he is dizzy, will take a policy of accident insurance and without looking at it toss it away in some drawer or pigeonhole, there to remain in sweet oblivion until the unexpected happens and he has been injured. This may be due to the great disparity in the amount of the premiums in the two classes of insurance, but I might say that no man with a claim against an accident insurance company was ever heard to admit that his premium was low or small. But, however this may be a fact that competition in the business of insurance and the consequent activity of the solicitor are educating the public to a realization that an accident policy means something and men are beginning to read their policies.

The process of weeding out conditions and exceptions is going on at a rapid rate and the evolution of the accident insurance business is bound finally to bring forth a policy of accident insurance which for simplicity and directness will be in fact as well as in name "a plain promise to pay." Notable instances of this tendency may be found in recent policy forms already adopted by several companies members of this Association, and one in particular in the drafting of which I had the honour to participate. I do not mean by anything I say here to be understood as advocating that the doors be thrown open to fraud, danger and disaster. There are some safeguards that must ever be preserved if the business is to be safely done. An accident policy is limited at best, and there is a limit to which the underwriter can go in his ambition for business. There is a mark at which Prudence will stop him and say: "Thus far shalt thou go and no further." Of course, if he can get a premium large enough, there is probably no limit which the insurer cannot safely transcend, but we all know that the character of the business is such that there is a limit of price above which an accident policy cannot be sold except to a few specially favoured by fortune and circumstance. I am referring in this discussion more especially to the policy forms in general demand and use by the American public and sold for $30 or less per five thousand dollars of insurance. When this rate can be increased it will be time enough to consider the elimination of many policy conditions, which are absolutely necessary to a safe conduct of the business under present conditions.

It becomes the duty of the underwriter to draft a policy which will not only be safe and profitable to himself, but one which the public will be willing to buy, and it is here that the first two elements of underwriting mentioned by me, namely, the public and competition, come into the