

A life policy is not regarded as a mere contract of indemnity: *Id.*

The omission of a person whose life is insured to make any statement in respect to any particular habit, not called for by any general or specific question put to him, will not be such a concealment as to avoid the policy. It is sufficient if he answers truly all the questions put to him, without evasion or concealment: *Id.*

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### LEGAL MISCELLANY.

The recent decision, in the Exchequer Chamber, of the case of *Webb vs. Bird*, 8 Jur. N. S. 621, affirming the decision of the Court of Common Pleas, 10 C. B. N. S. 269, has presented one point in the law of easements in somewhat of a novel aspect. It appeared, in this case, that the plaintiff was the owner of a windmill, built in 1829, and that the owners of the mill had from that period, down to 1859, enjoyed, as of right, without interruption or molestation, the benefit of the current of air from the west for working his mill. In that year and 1860, the defendant built a school-house within twenty-five yards of the plaintiff's mill, and thereby obstructed the plaintiff's mill, by hindering the currents of air which would otherwise have come to it from the west, whereby the value and use of the mill had become materially deteriorated.

The early reports contain some dicta in regard to the right of the owner of a windmill to enjoy the free and unobstructed access of the air to his mill. In 16 Vin. Ab. *Nuisance*, G. pl. 19, WINCH, J., is reported to have said, "That where one erected a house so high that the wind was stopped from the windmill in Finsbury Fields, it was adjudged that the house should be broken down." The same principle is declared in 2 Roll. Ab. 704. See also *Goodman vs. Gore*, Godb. 189.

In the case of *Webb vs. Bird*, in the Common Bench, WILLES, J., took a distinction between mills where the lord of the manor may compel all the residents within the manor to grind at his mill, and ordinary mills, where no such prescriptive right exists, and argued

that the early cases in regard to windmills might be explainable on some such grounds. The Exchequer Chamber did not regard these old cases as being of much authority in regard to the question before them, being very briefly reported and amounting to little more than dicta.

That court held, that the time of prescriptive right not existing in the case, and no presumption of grant arising, inasmuch as such presumption could only arise from long-continued enjoyment, where the person against whom the claim is asserted might have interposed to prevent or hinder the exercise of the right claimed, which, it would be idle to pretend, could have been done in any case like the present, without resort to such expensive complications as to bring in question the entire sanity of the person resorting to any such expedients, for any such purpose, it could not be fairly said the plaintiffs had acquired any such interest in the currents of air, as to maintain an action for their obstruction. *Moore vs. Rawson*, 3 B. & Cr. 332, 339; *Chasemore vs. Richards*, 7 Ho. Lds. Cas. 349, 370.

The decision of the English courts, in regard to this novel question, is highly commended in a leading article in the London Jurist, August 9, 1862, for its consonance with good sense and sound judgment. We should certainly not feel disposed to dissent from this comment, and we will add that, in our judgment, the law of England, in regard to presumptive rights growing out of uninterrupted use, has been very imperfectly comprehended, and very poorly set forth in many of the decisions and much of the judicial and juridical commentary, produced upon this side of the Atlantic. As we have here no strictly prescriptive rights, and very little upon which to base any presumption of grant, in regard to merely incorporeal interests, it is not wonderful that we should meet some indefiniteness of application in regard to questions involved in such inquiries. We have, therefore, presented this brief outline of the decision of *Webb vs. Bird*, inasmuch as it tends very clearly to illustrate the true basis of all presumption of grant growing out of mere use, without obstruction or contradiction, viz., the acquiescence of the adversary in such use. I. F. R.