

**INDISPUTABILITY DISPUTED: A
REVIEW OF THE PROFESSIONS
AND PRACTICES OF CERTAIN
MODERN LIFE OFFICES**

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Indisputability disputed: a review of the professions and practices of certain modern life Offices
by Anonymous

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PROFESSIONS AND PRACTICES

OF CERTAIN

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BY

A TEMPLAR.

"Covis doth suffocate Right."—LORD COKE.

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INDISPUTABILITY DISPUTED.

THE attention of the public has been recently drawn to the question of what are termed indisputable policies of assurance; and many of the older societies, and some of the more recent, are anxiously debating among themselves, as to whether any, and, if any, what changes should be made in the principles on which they have hitherto granted assurances on lives, or in the terms they have employed, either in addressing the public, or in covenanting with their members; in the frame of the prospectus, or the form of the policy.

Now the subject is unquestionably one, not only of grave importance as affecting the interests of any single assurance institution, but of great moment to all such societies, and, in consequence, to the public at large. It seems desirable, therefore, in offering an opinion on the question in debate, not only to state it clearly, but to give, somewhat carefully and in detail, the reasons which have weighed with the writer in coming to the conclusion, that the novelty above alluded to is alike mischievous and absurd, and such as it behoves every honest man earnestly to denounce, and stedfastly to resist.

And in doing so, whilst the writer would not be suspected of any desire, unduly and with needless asperity, to decry the practices which he condemns, or hold up to public reprobation the offices which adopt them, yet, entertaining (as it appears to him on ample grounds, both of law and common sense) very strong opinions as to the impolicy and the impropriety of the course of proceeding in question, he feels that gentle circumlocutions and meek suavities of phrase would be utterly inadequate to the accomplishment of the purpose which he cherishes, and which he does not scruple frankly to avow, namely, so to put the public, and more especially the directors and actuaries of life-offices, in possession of his views and convictions, and the reasons on which they are based, as to secure for them attentive consideration; so that, in discharging for their several societies the onerous and anxious task that, in the present temper of the public mind, they may have imposed upon them, they may not improvidently recommend an alteration of their constitution, after models not worthy of imitation, nor be tempted to admire and envy some specious and showy recommendations of rival institutions, which, on closer scrutiny, fail to approve themselves to the judgment of a candid and conscientious mind. In discussing the question before us, I shall be unavoidably led to adopt a controversial tone and style, because the friends and advocates of offices to which allusion has been made above have with so much confidence justified and applauded their own principles and practice, and with so much acrimony have assailed those who differ with them (reserving, however,

their bitterest denunciations for such as follow their example continently and with reserve), that it would be impossible effectively to treat this grave matter coldly and in the abstract, when the living concrete is before us in an actual, existing, and (it is said) flourishing society. The mind, moreover, acts always with more energy and confidence when it grasps a warm reality, and deals with something substantial, than when it is occupied with frigid and lifeless abstractions; nor could I expect to secure attention and excite interest so completely by a rigorous analysis of dry law and dry principles, as by an examination of them embodied in an institution, and at work, by directors, actuaries, and agents. If in the course, or as the result of the investigation, the minds of any directors of institutions not yet afflicted with the modern mania, should be at all relieved from the pressure of an anxiety (to which they have perhaps been subject) lest they should lose some fair chances with the public, because they have been too niggardly in their professions and promises, and if (and this is of far greater moment) the public mind should be disabused, and the plague be stayed by the arguments urged in these pages, they will not have been written in vain. To have done, therefore, with preface, let us proceed to inquire, What is this almost fabulous monster, "*An Indisputable Policy*"? Now, I have just promised (alas! too hastily) to deal with realities; but I find the very subject of debate is an abstraction, a mere idea, a pure mental creation, a fiction of the imagination, a *sheer, literal impossibility*. It may be pictured to the fancy, painted,

and dressed, and decorated to please the public; paraded at annual meetings; advertised in neat pamphlets; puffed in periodicals; pampered and petted by its worshippers; and trumpeted to the world's end. But it has no existence, nevertheless. One single example of the species does not exist, never has existed, and (happily for mankind) never can exist. Men are said to have been tormented in times past with serpents of all shapes and sizes, and dragons of all dimensions and dyes; but with this greater plague of Indisputable policies they have never yet been, nor can they ever be, visited. They are as impalpable and evanescent, and unknown to human consciousness, as the famous Mrs. Harris. For how can any contract be beyond the reach of dispute, any more than an individual can be beyond the reach of attack or insult? For an instant (and only for an instant) let it be granted, that all policies of assurance might be constructed so as to be *indefeasible*—that is, absolutely exempt from the peril of being defeated or avoided, though made the subject of controversy and litigation; yet *indefeasibility* is not *indisputableness*, any more than certain victory in conflict is the same thing as certain exemption from conflict; and therefore the policies are not "*indisputable* policies," though to the end of time not one of them should ever be disputed *successfully*. In fact, a director of the "London Indisputable" might as well walk about the town, calling himself *invulnerable*, as hand a policy to a customer and call it "*indisputable*." If what he claimed for himself were true, he would be something else (less or more) than a man; if what he claims for his policy could be

true, the policy must be something else (less or more) than a contract. But do not be alarmed, gentle reader, as though I were about to reduce this discussion to a mere frivolous verbal criticism, or were minded to avoid a substantial grappling with the question before us. You shall soon be satisfied on that head. But the remarks just made are pertinent to the purpose we have in hand, though they show only, that to the ends of the earth and to the end of the world, all contracts must be open to controversy, and liable to cavil and dispute; and therefore the term "indisputable," though clearly admissible (as I shall show) when used with qualification, is, when used in an absolute and unexceptive manner, inappropriate, and, strictly speaking, untrue.

I go on now to a more momentous part of the inquiry, and without exception or reservation, hesitation or scruple, I boldly affirm that no contract can be framed, under any system of jurisprudence known to mankind, which shall, under all circumstances, by *mere force of its terms*, be rendered indisputable, unimpeachable, unchallengeable, or indefeasible. And both the truth and reason of this become apparent on a moment's reflection; for it is obvious, that the *substance* of a contract is in the mind and intention of the contracting parties, and the recitals, the provisions, and the covenants of the document in which it finds expression, are but so many evidences of that intention. Hence *bona fides* or *honest purpose* is the very foundation of all contracts, in the absence of which, on either side, there is no real contract, however various or minute the stipulations of the deed to which the parties

affix signature and seal, or however stringent and unexceptive its covenants. "Fraud," says one of the greatest of English judges,* "is an extrinsic, collateral act, which vitiates all transactions, even the most solemn proceedings of Courts of Justice;" and Lord Coke, putting the strongest conceivable case, says "it avoids all judicial acts, ecclesiastical or temporal." Surely, then, this subtle poison will vitiate a policy of assurance as well as any other contract. The point is too clear for argument. If one of the parties to an agreement enter into it with a wicked intention to over-reach, ensnare, and betray the other, and in order to attain this object should wilfully falsify or misrepresent, or should suppress, extenuate, or conceal, in reference to matters material to the contract, in every such case the object in view in the negotiation is defeated, and there is in reality *no contract*. It may look like one, be perfect in form and complete in all its parts and proportions; but the spirit of life has never entered into it, and so it never lived: in other words, it never really *was*, it only *seemed to be*. It has no sanction of law, for it was vicious in its inception, a mere abortion, an unclean thing which all jurisprudence frowns upon and condemns, and by her solemn fiat (her dearest technical rules being suspended for the purpose) pronounces null and void and of no force or effect whatever, so far as it purports to secure any interest to a party affected by a knowledge of the fraud, and, therefore, guilty of the fraud. Of course I must be understood now to use the word *fraud* in its moral sense. There is,

* Lord Chief Justice De Grey.