

## RECENT ENGLISH DECISIONS.

may be more beneficial to them than it would be to insist on their rights and enforce payment of the whole. . . . I had persuaded myself that there was no such long-continued action on this *dictum* as to render it improper in this House to reconsider the question. I had written my reasons for so thinking, but as they were not satisfactory to the other noble and learned Lords who heard the case, I do not now repeat them nor persist in them." Thus he appears to intimate that were it not for the opinion of the other Lords he would have over-ruled the *dictum* on which the doctrine in question originally rested. The opinion of the rest of the Lords seems expressed in a concluding sentence in Lord Fitzgerald's judgment, when he says: "We find the law to have been accepted, as stated, for a great length of time, and I apprehend it is not now within our province to overturn it."

## LIFE ASSURANCE—OF TEMPERATE HABITS.

The next case calling for special notice is *Thomson v. Weans*, p. 671, the judgments in which might be read with advantage, possibly, by some temperance lecturers, more remarkable for their zeal than for their breadth of view, as they comprise an endeavour to arrive at a more or less definite idea of what constitutes "temperance." An applicant for life insurance, in answer to the question, "Are you temperate in your habits?" replied, "Temperate;" and to the following question, "Have you always been strictly so?" replied, "Yes." Subjoined to the printed questions was a declaration which A. signed, to the effect that the foregoing statements were true, and that the assured agreed that this declaration should be the basis of the contract, and that if any untrue averment, etc., was made, the policy was to be absolutely void, and all moneys received as premiums forfeited. The policy recited

the above declaration as the basis of the contract. The House held, reversing the Court below, that the declaration of A., taken in connection with the policy, constituted an express warranty that the answers to the questions were true in fact; and as the evidence clearly proved A.'s averment as to his temperance untrue, the policy was absolutely null and void. Lord Watson's words, at p. 695, might be read out with advantage in other places than Courts of law: "I believe it to be useless to attempt a precise definition of what constitutes 'temperate habits,' or 'temperance,' in the sense in which these expressions are ordinarily employed. Men differ so much in their capacity for imbibing strong drinks that quantity affords no test; what one man might take without exceeding the bounds of moderation, another could not take without committing excess. In judging of a man's sobriety, his position in life, and the habits of the class to which he belongs must, in my opinion, always be taken into account; because it is the custom of men engaged in certain lines of business to take what is called refreshment, without any imputation of excess, at times when a similar indulgence on the part of men not so engaged would be, to say the least, suspicious. . . . In the present case the evidence clearly establishes that the assured was a most able and estimable man, but that circumstance is not of much weight, because able and estimable men are not necessarily exempt from social failings." The judgment of Lord Fitzgerald, which follows that of Lord Watson, is chiefly remarkable from the fact that it contains two poetical quotations in a single page.

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