which we are now referring, together with the fact that the judge died in 1844, three years after the expiration of the first term of the copyright. On this it is said, with some emphasis,* "that he had all this time acquiesced in the claim of the assignee." The decree was that the contract be reformed accordingly.

In the case now before us the construction contended for by the appellants was, for the first time, urged by letter of Mr. Paige, 13th January, 1858, addressed to the appellees, who replied on 3d February following, asserting their absolute right of ownership, with an unlimited license to publish and sell. The parties lived together after this in the same State until 31st March, 1868, when Paige died, a period of ten years, during which no further notice was ever taken of this subject, and no attempt by Paige, by act or protest, to interfere with the exercise of the right of the appellees to publish and sell. It is difficult to account for this long acquiescence upon any assumption that Paige, after the receipt of the reply to the publishers, had faith in the construction now urged. If this agreement needed any extraneous aid to indicate the intention of the parties, this acquiescence would certainly be persuasive of the view we have taken of it.

DECREE AFFIRMED.

INSURANCE COMPANY *v.* BAILEY.

Although equity have power to order the delivery up and cancellation of a policy of insurance obtained on fraudulent representations and suppressions of facts, yet it will not generally do so, when these representations and suppressions can be perfectly well used as a defence at law in a suit upon the policy. Hence a bill for such a delivery up and cancellation was held properly "dismissed, without prejudice," though the evidences of the fraud were considerable, there being no allegation that the holder of the policy meant to assign it; and suit on the policy having after the bill was filed been begun at law.

APPEAL from the Supreme Court of the District.

The Phœnix Mutual Life Insurance Company filed a bill

* 24 Howard's Practice Cases, 72.

Statement of the case.

against Mrs. Elizabeth Bailey, widow of Albert Bailey, to compel the cancellation of two policies of insurance issued by that company upon the life of the said Albert, on the 12th of June and 15th of July, 1867, respectively.

The grounds of the bill were that the policies had been procured by the defendant by fraudulent suppression of certain material facts, and the misrepresentation of other ones of the same class. The answer denied the allegations made.

Evidence was given tending to show that the defendant, then bearing the name of Mrs. Von Kammecher, after a husband from whom she had been divorced, went, on the 10th June, 1867, to the office of the insurance company to have Mr. Bailey's life insured; the insurance being in Bailey's own favor, he representing himself as unmarried. Bailey being required, in the usual form, to name an intimate friend who could answer as to his health, referred to Mrs. Von Kammecher, in whose house he was then boarding, and who accordingly signed a certificate that he was in good health and of temperate habits. A policy was accordingly made out to Bailey for $4000. Nine days afterwards, that is to say, on the 19th June, 1867, the same lady called at the office and requested that the policy should issue to *her* as the wife of Bailey and should be increased to $6000. The policy was thus made, and was dated as of the 12th June, 1867, the date intended for the other. An additional policy was made for $4000 on the 15th July, 1867. Bailey and Mrs. Von Kammecher were married June 22d, 1867, and Bailey died October 11th following, of phthisis pulmonalis. Evidence was also given tending to show that Bailey had been under treatment from February till May, 1867, was told that his lungs were diseased, and that he "must strenuously take care of himself;" and, moreover, that Mrs. Von Kammecher knew this, and had been told that Mr. Bailey "might live two years or not more than six months;" and that she had been herself principally if not solely instrumental in procuring the policies. Evidence was also given tending to show that Bailey's habits were not temperate.

On the other hand evidence was given tending to a contrary conclusion, but it did not perhaps establish it.

It was not alleged in the bill, nor was there evidence given to show that Mrs. Bailey had attempted to assign or that she was about to dispose of the policies. The averment of the bill was that Mrs. Bailey, insisting upon the obligation of the company under the policies, "demanded the $10,000, and threatened to bring an action at law to recover the same, and by such suit to harass and injure the company." But, on the other hand, it appeared that after the bill had been filed, suit was brought at law on the policies; so that the company could *now* set up the fraud alleged.

The court below dismissed the bill without prejudice.

Messrs. Carlisle, McPherson, and W. S. Cox, for the appellant:

The jurisdiction of courts of equity to compel the cancellation of agreements obtained through false and fraudulent representations is well established, and insurance cases are peculiarly within the jurisdiction. The facts show a clear case of fraud.

Messrs. W. D. Davidge and R. B. Washington, contra:

There is a complete defence at law in favor of the insurance company, if the allegations of the bill are true, and it is sued. If not sued no injury is done to it. The issues of fact raised in the cause are peculiarly suited for the determination of a jury; and even if a court of equity has *discretion* to entertain the case, which we do not deny, that discretion should not be exercised.

Mr. Justice CLIFFORD delivered the opinion of the court.

Policies of life insurance are governed, in some respects, by different rules of construction from those applied by the courts in case of policies against marine risks or policies against loss by fire.

Marine and fire policies are contracts of indemnity, by which the claim of the insured is commensurate with the damages he sustained by the loss of, or injury to, the prop-

erty insured. Such being the nature of the contract, it is clear that an absolute sale of the property insured, prior to the alleged disaster, is a good defence to an action on the policy, as the insured cannot justly claim indemnity for the loss of, or injury to, property in which he had no insurable interest at the time the loss or injury occurred.

Life insurances have sometimes been construed in the same way, but the better opinion is that the decided cases which proceed upon the ground that the insured must necessarily have some pecuniary interest in the life of the *cestui qui vie* are founded in an erroneous view of the nature of the contract, that the contract of life insurance is not necessarily one merely of indemnity for a pecuniary loss, as in marine and fire policies, that it is sufficient to show that the policy is not invalid as a wager policy, if it appear that the relation, whether of consanguinity or of affinity, was such, between the person whose life was insured and the beneficiary named in the policy, as warrants the conclusion that the beneficiary had an interest, whether pecuniary or arising from dependence or natural affection, in the life of the person insured.*

Insurers in such a policy contract to pay a certain sum, in the event therein specified, in consideration of the payment of the stipulated premium or premiums, and it is enough to entitle the insured to recover if it appear that the stipulated event has happened, and that the party effecting the policy had an insurable interest, such as is described, in the life of the person insured at the inception of the contract, as the contract is not merely for an indemnity, as in marine and fire policies.

Two policies for insurance upon the life of Albert Bailey, the husband of the appellee, were issued by the appellants, and made payable to the appellee in ninety days after due notice and proof of the death of the husband. He died on the eleventh of October following, and due notice of that

* Dalby *v.* The India and London Ins. Co., 15 C. B. 365; Loomis *v* Eagle Life and Health Ins. Co., 6 Gray, 396; Lord *v.* Dall, 12 Massachusetts, 118; Trenton Life and Fire Ins. Co. *v.* Johnson, 4 Zab. 576; Rawls *v.* American Life Ins. Co., 36 Barbour, 357; S. C., 27 N. Y. 282.

event was given to the appellants by the appellee, to whom the sums insured, amounting to ten thousand dollars, were payable, but they refused to pay the same, upon the ground that the policies were obtained by fraudulent misrepresentations and by the fraudulent suppression of material facts. They not only refused to pay the sums insured, but instituted the present suit in equity to enjoin the appellee from assigning or in any manner disposing of the policies, and also prayed that she might be compelled by the decree of the court to deliver up the policies to be cancelled, and for further relief. Process was issued and served and the respondent appeared and answered, denying all the charges set forth in the bill of complaint, and alleging that the complainants were bound to pay her the entire sums insured in the respective policies. Proofs were taken on both sides, and the cause having been duly transferred to the general term, the parties proceeded to final hearing, and the Supreme Court of the District entered a decree dismissing the bill of complaint with costs, but without prejudice, and the complainants appealed to this court.

Fraudulent misrepresentations and the frandulent suppression of material facts are the principal grounds alleged for the relief prayed in the bill of complaint, and it must be conceded that the proofs introduced by the complainants tend strongly to support the allegations which contain those charges. Those allegations in the bill of complaint are denied in the answer, and the respondent has introduced proofs in support of those denials, but it is not going too far to say that the weight of the evidence, as exhibited in the record, is adverse to the pretensions of the respondent, nor does it appear that any different views were entertained by the subordinate court. Grant all that, and still it does not follow that the decree in the court below is erroneous, as the bill of complaint may well have been dismissed upon grounds wholly disconnected from the merits of the controversy.

Suits in equity, the Judiciary Act provides, shall not be sustained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be

had at law, and the same rule is applicable where the suit is prosecuted in the Chancery Court of this District.*

Much consideration was given to the construction of that section of the Judiciary Act in the case first referred to, and also to the question whether a party seeking to enforce a legal right could resort to equity in the first instance in a controversy where his remedy at law is complete, and the court, without hesitation, came to the conclusion that he could not, if his remedy at law was as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity.

Most of the leading authorities were carefully examined on the occasion and the court came to the following conclusion, which appears to be correct: That whenever a court of law in such a case is competent to take cognizance of a right and has power to proceed to a judgment which affords a plain, adequate, and complete remedy, without the aid of a court of equity, the plaintiff must in general proceed at law, because the defendant, under such circumstances, has a right to a trial by jury.†

Exceptions undoubtedly exist to that rule, of which there are many to be found in the reports of judicial decisions, and in which preventive relief was administered by injunction. Such relief is granted to prevent irreparable injury or a multiplicity of suits, or where the injury is of such a nature that it cannot be adequately compensated by damages at law, or is such, as, from its continuance or permanent mischief, must occasion constantly recurring grievance, which cannot be removed or corrected otherwise than by such a preventive remedy.

Authorities to show that equity will interfere to restrain irreparable mischief, or to suppress oppressive and intermin-

* Hipp *v.* Babin, 19 Howard, 271; Parker *v.* Lake Co., 2 Black, 545; Boyce Executors *v.* Grundy, 3 Peters, 210; Graves *v.* Ins. Co., 2 Cranch, 444; 1 Stat. at Large, 82.

† Foley *v.* Hill, 1 Philips 399; S. C., 2 House of Lords Cases, 28; Fire Ins. Co. *v.* Delavan, 8 Paige's Chancery, 422; Alexander *v.* Muirhead, 2 Desaussure, 162; 5 American Law Register, 564.

able litigation, or to prevent multiplicity of suits, is unnecessary, as that proposition is universally admitted.

Jurisdiction may also be exercised by courts of equity to rescind written instruments in cases where they have been procured by false representations or by the fraudulent suppression of the truth, if it appear that the rescission of the same is essential to protect the opposite party from pecuniary injury. Equity will rescind or enjoin such instruments where they operate as a cloud upon the title of the opposite party, or where the instruments are of a character that the vice in the inception of the same would be unavailing as a defence by the injured party if the instruments were transferred for value into the hands of an innocent holder. Title-deeds fraudulently procured may, under such circumstances, be decreed to be cancelled or reformed, as the case may be, and bills of exchange or promissory notes may be enjoined and practically divested of their negotiable quality.

Such jurisdiction also extends to the protection of letters-patent against infringement, and is exercised in many cases to prevent waste, and for many other judicial purposes, but the rule in the Federal courts is universal, that if the defendant has a good defence at law, and the remedy at law is as perfect and complete as the remedy in equity, an injunction will not be granted.

Whether the remedy sought in this case would have been available if the suit had been instituted before the death of the person whose life was insured it is not necessary to determine, as no such question is involved in the record. Suffice it to say upon that topic that the complainant has not referred the court to any decided case which supports the affirmative even of that inquiry, but the difficulty in the way to such a conclusion in the case before the court is much greater, as by the death of the *cestui que vie* the obligation to pay, as expressed in the policies, became fixed and absolute, subject only to the condition to give notice and furnish proof of that event within ninety days. Notice having been given and the required proof furnished, the obligation to pay certainly became fixed by the terms of the policies and the

sums insured became a purely legal demand, and if so, it is difficult to see what remedy, more nearly perfect and complete, the appellants can have than is afforded them by their right to make defence at law, which secures to them the right of trial by jury.*

Where a party, if his theory of the controversy is correct, has a good defence at law to "a purely legal demand," he should be left to that means of defence, as he has no occasion to resort to a court of equity for relief, unless he is prepared to allege and prove some special circumstances to show that he may suffer irreparable injury if he is denied a preventive remedy. Nothing of the kind is to be apprehended in this case, as the contracts, embodied in the policies, are to pay certain definite sums of money, and the record shows that an action at law has been commenced by the insured to recover the amounts, and that the action is now pending in the court whose decree is under re-examination.

Courts of equity unquestionably have jurisdiction of fraud, misrepresentation, and fraudulent suppression of material facts in matters of contract, but where the cause of action is "a purely legal demand," and nothing appears to show that the defence at law may not be as perfect and complete as in equity, a suit in equity will not be sustained in a Federal court, as it is clear that the case, under such circumstances, is controlled by the sixteenth section of the Judiciary Act.

DECREE AFFIRMED.

UNITED STATES *v.* RUSSELL.

1. Where the government, in emergencies, takes private property into its use, a contract to reimburse the owner is implied.
2. The United States having, under a military emergency, during the rebellion, taken into its service certain already officered and manned steamers

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* Foley *v.* Hill, 2 House of Lords Cases, 45; Thrale *v.* Ross, 3 Brown's Chancery Cases, 56; Arundel *v.* Holmes, 4 Beavan, 325; Norris *v.* Day, 4 Young & Collyer, 475.