

RECENT ENGLISH DECISIONS.

which he would take it. The materiality of the fact depends upon whether or no a prudent underwriter would take the fact into consideration in estimating the premium, or in underwriting the policy. The rule has been laid down over and over again and is to be found in *Ionides v. Pender*, 9 Q. B. 531, and other cases."

PRINCIPAL AND AGENT—CUSTOM OF STOCK EXCHANGE
CONFLICTING WITH STATUTE.

The only remaining case to be noticed in the Queen's Bench Division is that of *Perry v. Barnett*, 15 Q. B. D. 388, a decision of the Court of Appeal. The action was brought by a broker to recover the price of certain bank shares purchased at the defendant's request. The plaintiffs were stock-brokers, living at Bristol, and the defendant had instructed them to purchase for him shares in the Oriental Bank, a joint stock banking company, on the London Stock Exchange. The plaintiffs gave directions accordingly to their London agents, brokers on the London Stock Exchange, who purchased the shares in the usual way, without having in the contract the distinguishing numbers of the shares specified, as required by the Impl. Stat. 30 & 31 Vict. c. 29, which invalidates contracts not complying with this provision, there being a custom on the London Stock Exchange to disregard the provisions of that Act; but of this custom the defendant was ignorant. By the rules of the Stock Exchange, the Stock Exchange does not recognize in its dealings any other persons than its own members, who are liable to be expelled if they do not carry out contracts, and no application to annul a contract can be entertained by the committee of the Stock Exchange—unless upon a specific allegation of fraud or wilful misrepresentation. Before the settling day the Oriental Bank closed its doors, and the defendant repudiated the contract; but the committee of the Stock Exchange refused to annul the contract and, therefore, the plaintiffs completed it, and paid the price of the shares. The defendant did not know that, by the usage of the Stock Exchange, the purchasing broker was bound to perform a contract for the purchase of bank shares though void at law. Under the above-mentioned Act, Bowen, L.J., at p. 397, says:—

"The question is narrowed to this. Is a man who employs a broker to deal in a particular market bound to know a usage there to make an

invalid, instead of a valid contract, and a usage, according to which, when he has ordered one thing he is expected to take another thing? It would not be reasonable, I think, to hold that a person is bound by such a usage, unless beforehand he was told or had knowledge of it. Such a usage, when applied not to brokers, but to strangers who are ignorant of it, is inconsistent with the contract of employment."

COVENANTS RUNNING WITH LAND—ROAD—DEDICATION.

Turning now to the cases in the Chancery Division we come to *Austerberry v. Oldham*, 29 Chy. D. 750, a decision of the Court of Appeal, which, although it turns to some extent on statutes of merely local operation, nevertheless also establishes a principle of sufficient general interest to warrant a notice of it in these columns. One A. by deed conveyed for value to trustees in fee a piece of land as part of the site of a road, intended to be made and maintained by the trustees, under the provisions of a contemporaneous trust deed (being a deed of settlement for the benefit of a joint stock company, established to raise the capital for making the road); and in the conveyance the trustees covenanted with A., his heirs and assigns, to make the road, and at all times keep it in repair, and allow the public to use it subject to the payment of tolls. But A. and his assigns were to have free use of the road. The piece of land so conveyed was bounded on both sides by other lands of A. The trustees made the road and afforded access to A.'s adjoining lands. A. afterwards sold his adjoining lands to the plaintiff, and the trustees sold the road to the defendants, a municipal corporation, both parties taking with notice of the covenant to repair. The defendants' corporation declared the road in question a public highway, and by virtue of an Act of Parliament the same thereby became "a highway repairable by the inhabitants at large," and the defendants claimed to assess the plaintiffs for sewerage, draining, and paving the road. The plaintiff brought the action against the corporation and trustees, claiming a declaration that they were not entitled to recover from the plaintiff any sum for keeping the road in good repair, and to restrain the defendant corporation from enforcing payment; or, in the alternative, a declaration that the trustees should indemnify the plaintiff out of the purchase money they had received against the charges for keeping