

## The Legal News.

Vol. V. OCTOBER 28, 1882. No. 43.

### THE INSURANCE CASES.

The case of *North British & Mercantile Fire and Life Ins. Co. v. Lambe*, (*ante*, p. 323) has been discontinued in consequence of an arrangement between the parties. The defendant moved before Mr. Justice Rainville to quash the injunction granted by Mr. Justice Jetté. During the argument upon the motion, an understanding was come to between counsel that the forty suits against insurance companies should be consolidated, and that one defence should serve for all. In this way, a single judgment will be obtained common to all. It is expected that the suits against other classes of corporations will be similarly united.

### THE COURT HOUSE.

The inconvenience likely to result from the location of the C. P. R. *dépot* near the Court House was a very serious question. Had the Champ de Mars been selected, or even the Gosford Street site, the Court House would soon necessarily have been abandoned, for the administration of justice would become a mockery if the words of the witnesses were inaudible owing to the noises of an extensive *dépot*. We remember Mr. Justice Aylwin sending a polite message to the commanding officer of a regiment drilling on the Champ de Mars, that an important trial then in progress could not proceed unless the parade was discontinued. Fortunately, the evil is likely to be obviated, or, at all events, greatly diminished, by the selection of a site further east.

### EFFECT OF MERCANTILE USAGE.

The question as to how far mercantile custom can control positive law was considered in a recent case in England, *Neilson v. James*, 46 L. T. Rep. N. S. 791. The plaintiff had employed the defendant, a Bristol stockbroker, to sell certain shares in the West of England Bank, and the latter had accordingly found a purchaser with whom he exchanged bought and sold notes. So far, the transaction appears at

first sight to be without a flaw. But in these notes no mention was made of the plaintiff's name; and by Leeman's Act (30 & 31 Vic. c. 29) all agreements for the sale of bank shares are made null and void, unless, under such circumstances as here occurred, the contract shall set forth the name of the registered proprietor. The bank having failed, the purchaser refused, as he was entitled to do, to accept the shares, on the ground of non-compliance with the Act, and the plaintiff found himself saddled with an unlimited liability, for which he now sought to recover damages. The defence was in effect that the broker had acted in accordance with the usages of the Bristol Stock Exchange in ignoring the provisions of Leeman's Act, and that he was therefore not liable. The main question for the Court came accordingly to little more than this: could the alleged custom be allowed to override the express enactment of the legislature? The Court acting upon the established principle that mercantile customs and usages cannot in any way alter or control the law, the question was answered without difficulty, in the negative. "Customs," said Lord Coleridge, "must be lawful in order to be binding; that is, they must be customs which can be incorporated into contracts without violating the law;" and here such a construction could clearly not be adopted. The most obvious lesson to be drawn from the case, says the *Law Times*, "is, perhaps, that the sooner the practice of the Bristol Stock Exchange is altered the better, both for the brokers and for their clients. The latter indeed are entitled to recover from the broker the net value of the shares comprised in the invalid contract, but, as to their liability for future calls on those shares, a further perusal of the case before us would seem to show that it is at least doubtful whether they can enforce any claim to indemnity."

### CODIFICATION.

The State of New York has long had before it the project of a Civil Code. There, as in England, codification is regarded with uneasiness and alarm, and has aroused vehement opposition. We, who have had fifteen years' experience of a Code, are well aware that it is not free from difficulty and embarrassment, but we also know that it has supplied a certain rule