even when a clause of forfeiture for non-payment at the day exists. The rejection of the offer by the court forms the first bill of exceptions and assignments of error to be considered in this case.

It might have been a difficult thing to prove such a custom, but that was not a good gound on which to refuse the offer. It was the plaintiff's right to prove it if she could, and we are to take it, for the purposes of this investigation, that she could have proved it. Would it have been effectual proof for any purpose, had it been admitted?

We think it would, although generally a contract is the law of the transaction in which it exist and is not to be affected by anything but its terms; that is to say, it cannot be abridged or enlarged in its scope by anything else; yet there are many cases in which its execution is materially controlled by usage or custom. A familiar instance are days of grace on commercial paper. By a custom grown into law, it is not due until the expiration of three days after it purports to be; or rather the remedy is suspended against the parties for that period. So in agriculture, although the lease may fix the duration of the term, and when it is to end, yet the tenant by custom has rights on the premises after it is ended, to harvest and carry away his share of what the custom calls the way going crop. 5 Bin. 295; 2 S. & B. 14; Doug. 201; 1 Smith's Lead. Cases, 6th ed. 470. This custom seems to do more than control the remedy; it in fact delays the contract. But no custom is more perfectiv established, or more completely stands on a solid foundation as law. There are customs which interpret marine contracts to the extent of apparent changes in them. In Peake's Nisi Prius 43, in the case *Charand* v. *Augersteen*, it was shown that by custom, a stipulation in a policy of insurance, that a vessel was to sail in October, meant that she was to sail between the 25th of the month and the 1st or 2nd of November.

While a custom as a general rule may not be heard to affect the terms of a statute, nor a contract, to the extent of delaying or abridging the force of it, it may interpret either. *Repp* v. *Palmer*, 3 W. 178.

The offer in this case was to control the generality of the clause of forfeiture in the policy in case of non-payment of premiums at the day, and to show that a forfeiture was not demandable at the day, nor at all, if paid within thirty days. If the plaintiff could have established this as a custom, her case would on this point have been clear of difficulty, for the testimony was that she had tendered the premium for the non-payment of which the forfeiture was claimed once and perhaps twice a month, after it was due by the terms of the policy. We do not know whether there is or is not such a custom. That is not our question at this time, the plaintiff offered to prove it, and the testimony should have been admitted in our opinion. This error is therefore sustained.

Besides this, we think there was evidence in the case for the jury on other aspects of it. If it was the practice of the company to notify the plaintiff of the times her premiums were due and payable, and they omitted it on the occasion of this default, or if they so dealt with her as to induce a belief that the clause of forfeiture would not be insisted on in her case in case of a dereliction of payment at the day, and it was declared that the only risk she ran in not paying at the precise time was death occurring in the interval of non-payment of over-due premiums, and thus put her off her guard, they ought not to be permitted to take advantage of a default which they may themselves have encouraged. That was an aspect of the case in proof, upon which the jury should have been allowed to pass. In transactions of this nature it is easy to mislead by a practice of liberality, if followed by one of entire strictness, and the only cure for this is the enquiry by the jury whether the party has been misled by the former. If so, it is a fraud upon her rights which ought to be condemned and redressed. The cases of *Buckley* v. *The United States Ins. Co.*, 18 Barb. 541, and *Reese* v. *Insurance Co.*, 26 Barb. 556, strongly sustain this view. In this manner a course of strictness may take place, and it is not to be doubted that the Company may waive a positive compliance with the rules of insurance. 9 Casey, 397; 2 Wr. 250; 4 Ib. 311; 5 Ib. 161; 7 Ib. 250; 8 Ib. 259; 10 Ib. 323. Forfeitures are odious in law, and are only where there is the clearest evidence that that was what was meant by the stipulations of the parties. There must be no case of management or trickery to estop the party into a forfeiture. If the strictness in this case was the result of a desire to wind up business, as we learn the company did, not long thereafter, and it was adopted to avoid a return of premiums, the least which could be said of it is, that it is a most discreditable transaction. We do not know how this was. At the same time it is singular that absolute strictness should be required in paying premiums, if the company had it in contemplation to cease insuring and to return the premiums to parties who had regularly paid them, as they would be obliged to do. There is undoubtedly a comity at least extended to all insurers in regard to the matter of paying premiums. No company would be worthy to receive the countenance of the public, which should establish a practice that would for every little dereliction forfeit the policies of the insured, even if it had the power.

We think the learned judges erred in awarding a non-suit, as well as in a rejecting the proffered testimony, and that the non-suit must be set aside and a *procedendo* awarded; which is done accordingly.—*U. S. Rep.*

Once Bishop Horsley met Lord Thurlow walking with the Prince of Wales. The Bishop said he was to preach a charity sermon next Sunday, and hoped to have the honor of seeing his Royal Highness present. The Prince intimated that he would be present. Turning to Thurlow, the Bishop said, "I hope I shall also see your lordship there," "I 'll be —— if you do; I hear you talk nonsense enough in the House of Lords; but there I can and do contradict you, and I'll be ——if I go to hear you where I can't."—*Bench and Bar.*

Lord Thurlow's appearance when presiding in the House of Lords was very grave and imposing, and Fox once remarked that it proved him dishonest, for no person could *be* so wise as Thurlow *looked.*—*Bench and Bar.*