

power to reserve his decision for a day or two and for experiment upon other cars of the defendants' make as seems to have been his first intention—but that decision must be upon the car as it was on that day.

The defendants by their conduct prevented him from giving such decision so as to be effective to enable the plaintiff to have the car upon which such decision should have been given—it is rendered impossible by their changing the engine for them to say that a car approved by Russell on October 30th or as October 30th is at the plaintiff's disposal. So that even if what was done by Russell on and as of October 30th is not a "pronouncing" by him in favour of the plaintiff (and I am inclined to think that it is), they have prevented a more formal "pronouncing" by their own conduct. They cannot set up as against this plaintiff as a condition precedent the want of an effective "pronouncing" which they have themselves prevented. *Thomas v. Fredericks* (1874), 10 A. & E. N. S. 775; *Hathan v. E. I. Co.* (1787), 1 T. R. 638; *Coombe v. Greene* (1843), 11 M. & W. 480; *Re Northumberland Av. H. Co.* (1887), 56 L. T. N. S. 833; and similar cases.

I am of opinion that the appeal must be dismissed with costs.

HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH, agreed.

HON. MR. JUSTICE BRITTON.

MAY 27TH, 1913.

CHAMBERS.

KENNEDY v. KENNEDY.

4 O. W. N. 1370.

*Lis Pendens—Order to Vacate—Terms—Payment of Proceeds into Court—Expedition of Trial.*

MASTER-IN-CHAMBERS made an order providing for the vacation, in part, of a certificate of *lis pendens* and for the sale of the lands covered thereby, provided the money were paid into Court to abide the result of the action.

BRITTON, J., affirmed above order.

An appeal by the defendant from an order of the MASTER-IN-CHAMBERS, 24 O. W. R. 627.