

been made in the latter part of May and beginning of June, and that no objection was taken by the defendant until the present action was brought in December, 1903.

*Held*, that considering the fluctuating nature of the stock in question, this was an unreasonable time to delay objecting, and that the defendant had disentitled himself from recovery, and must be treated as having adopted and ratified the sales.

*Held*, however, that as pledges the plaintiffs were not entitled to sell the shares without notice, as in fact they admitted, and the defendant would have been entitled to damages had it not been for his non-objection.

The contract of the plaintiffs with the defendant was one which did not oblige them to carry the stock to a particular day, nor did it oblige the defendant to pay for it at a particular day, although it did not permit the plaintiffs to sell without notice.

*Seem*, that the proper measure of damages in such a case is the price of the stock at the day of the wrongful sale or the price at the day of trial, at the option of the owner of the stock wrongfully sold; but that as damages are not assessed as a penalty upon a person who has improperly dealt with property of another, but only for the purpose of making good the loss which they have sustained by the improper action taken, and inasmuch as the defendant here admitted that if the stock had not been sold, he would have continued to hold it up to the time of the trial, and as the market value of the stock at the trial was less than it had been sold for by the plaintiffs, the defendant had clearly shewn that the plaintiffs' action had been a benefit to him instead of an injury, and that he was not entitled to recover damages.

*Thomson, K.C., and Tilley, for plaintiffs. Biggs, K.C., for defendant.*

Trial—Street, J.]

[Feb. 22.

LOUNT V. LONDON MUTUAL INSURANCE CO.

*Fire insurance—Variations to statutory conditions—Just and reasonable—Material to the risk.*

By way of variation of Statutory Condition 1 an insurance policy provided that any encumbrance by way of mortgage should be deemed material to be known to the company within the meaning of the Statutory Condition.

*Held*, that this variation was too wide to be treated as a just and reasonable one and the Court had to determine whether the nondisclosure of the mortgage was a material fact, the onus being upon the defendants who asserted its materiality.