

the defendant company, of which he is the principal and largest shareholder. Pitts and Schnauffer recognised their liability as trustees under the agreement of October, 1908, and have settled with all the parties to it except the plaintiffs. Pitts has been paid, and he has released to his co-trustee Schnauffer. Schnauffer refuses to pay the plaintiffs anything on account of the Nutter Brewery stock, which is the main question at issue in this action. The learned Judge finds, as a fact, that the plaintiffs did not pay the promised sum of \$500, or any sum, to the purchase fund. The only matter now in dispute is as to the liability of the defendants to pay the 75% of the par value of the Nutter stock, as to which the judgment declares that the plaintiffs are exactly in the same position as they were before the agreement of October, 1908. The only liability of the defendants is that created by the last mentioned agreement, a condition precedent to which was the payment of at least \$500 to the purchase fund, which has not been paid. The receipt given by Hartman, long after the purchase by the trustees, cannot create a liability on the part of the trustees, nor can the trustees be estopped by it from setting up the non-payment in fact of the money. Action dismissed with costs. R. A. Pringle, K.C., for the plaintiffs. G. A. Stiles, for the defendants.

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BANFIELD V. TORONTO RAILWAY CO.—TEETZEL, J.—JUNE 16.

*Sale of Goods—Fare Boxes Supplied by Plaintiffs—Alleged Faulty Construction—Repairs—Extras—Conflicting Evidence.*—Motion by way of appeal by the defendants from the report of the Master in Ordinary, and also motion by the plaintiffs for judgment in terms of the report. The action was brought to recover balance alleged to be due on pay-as-you-enter cabinets and cash-boxes supplied to the defendants, and was referred by Falconbridge, C.J.K.B., to the Master, who found the sum of \$1,432 due to the plaintiffs, together with costs. TEETZEL, J., said that while it was possible that if he had heard the witnesses he might have taken a different view in some of the matters reported upon, he was not able to say that the learned Master was clearly wrong in any of his holdings. The evidence is upon many of the matters conflicting, and the case is peculiarly one in which the findings of the Master, who saw all the witnesses, should not be disturbed in the absence of convincing proof that he has drawn wrong inferences from the evidence, or has not given proper consideration to undisputed facts, or has made a mistake in law.