

referee, arbitrator, on the particular car, as then submitted to him as "ready for inspection by the said Russell." I do not say that he might not then reserve his decision, but the decision was to be on the "car ready for inspection"—not the car as it might be some days after, when further repairs had been made.

The 30th October was, by the conduct of the parties, fixed as the day for inspection; and it was the car, as on that day, upon which the referee was to exercise his judgment and "pronounce." It may well be that Russell had the right and 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 the 30th October, or as of the 30th October, is at the plaintiff's disposal. So that, even if what was done by Russell on and as of the 30th October 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 all effective "pronouncing" which they have themselves prevented: *Thomas v. Fredericks* (1847), 10 Q.B. 775; *Hotham v. East India Co.* (1787), 1 T.R. 638; *Coombe v. Greene* (1843), 11 M. & W. 480; *Re Northumberland Avenue Hotel Co.* (1887), 56 L.T.R. 833; and similar cases.

*Appeal dismissed with costs.*

JUNE 26TH, 1913.

\*RE NICHOLLS, HALL v. WILDMAN.

*Executors and Trustees—Liability for Loss on Investment—Retention of Bank Stock Held by Testatrix—Acting "Honestly and Reasonably"—62 Vict. ch. 15, sec. 1—1 Geo. V. ch. 26, sec. 33—Limitation of Actions—Setting apart of Stock to Answer Legacy—Evidence—Onus—Executors not Excused for Breach of Trust—Measure of Liability—Payment of Call on Shares—Responsibility—Executors to Retain Stock on Giving Indemnity—Lien of Legatee—Accounts—Costs.*

Appeal by the defendant Mariana Wildman from the order of LATCHFORD, J., ante 930, upon appeal from the report of a Master

\*To be reported in the Ontario Law Reports.