

respect (except tires) to the satisfaction of Thomas Russell, Esquire, who is accepted by both parties as umpire or referee between them." The defendants waived payment of an outstanding note for part of the purchase price, and agreed to pay the costs of the action. The agreement also provided that "in event of the said Russell pronouncing the car in a satisfactory condition the same to be delivered by the defendants to the plaintiff in settlement of this case. If the said Russell pronounces the car unsatisfactory, then the defendants forthwith to pay the plaintiff back the sum heretofore paid by her to them. Defendants to have the car ready for inspection by the said Russell within one month from the delivery of same to them by the plaintiff."

The plaintiff delivered the car to the defendants immediately, and the defendants had the same ready for the inspection of Mr. Russell within the month. Mr. Russell was, however, not available at the time, being absent from the country on business; but immediately on his return, on the 17th August, he made an inspection. In the meantime there had been some negotiations between the parties, and the plaintiff had had an inspection of the car, but contended that it was not then in a satisfactory condition. So far as I can see, nothing turns upon this, as it was ultimately determined to leave the matter to Mr. Russell.

As the result of his inspection Mr. Russell reported in writing, on the 19th of August, "that the car was in a satisfactory condition, with the exception of certain items which are requested to be put into shape for a later inspection." These points were "the repainting or re-enameling of the engine head, repairing of the head lamps and supplying with new lenses, the proper repairing of the tail lamp, the fixing of the ignition so that the engine would start on the batteries, the adjustment of the brakes to take hold a little better, and the supplying of a robe-rail and foot-rest.

It is clear that it cannot be said that Mr. Russell pronounced "the car in a satisfactory condition." It is argued that Mr. Russell did "pronounce the car unsatisfactory;" and the plaintiff bases her claim, in the first place, upon this theory.

Mr. Russell apparently thought that he had not yet made any pronouncement and that he had a right to make a further inspection. So far as the plaintiff knew, nothing was done