

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

JUNE 25TH, 1913.

SAUERMAN v. E. M. F. CO.

4 O. W. N. 1510.

Action—Minutes of Settlement of—Construction of—Alleged Defective Motor Car—Submission to Referee within one Month—Time Essence of Contract—Tender—Refusal to Accept—Reference—Appeal.

MIDDLETON, J., *held* (24 O. W. R. 415; 4 O. W. N. 1137) in an action to enforce minutes of settlement of another action between the parties for the return of the purchase-price of a motor car alleged to be defective that a provision that defendants were to have the car ready for inspection within one month by a referee agreed upon, meant that the car at that time was to be pronounced satisfactory or unsatisfactory by the referee and defendants were not to be given an additional six months to make alterations from time to time suggested by the referee to make it satisfactory to him.

SUP. CT. ONT. (2nd App. Div.) *held*, that there had been a waiver by plaintiff of the period of one month fixed by the minutes of settlement but that upon the day fixed by the parties subsequently for the decision of the referee he had not been able to give a final decision owing to the conduct of defendants, and plaintiff was therefore within her rights in finally refusing to accept the car.

Appeal dismissed with costs.

Appeal from judgment of MIDDLETON, J. (24 O. W. R. 415; 4 O. W. R. 1137), in favour of plaintiff in an action brought to enforce certain minutes of settlement.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

W. A. Loggie, for defendants.

J. L. Counsell, contra.

HON MR. JUSTICE RIDDELL:—The plaintiff bought an automobile from the defendants: finding fault with it she, October 11th, 1911, brought an action against the company for damages, etc. The case came on for trial before Mr. Justice Latchford, June 13th, 1912, and after it had been partly tried a settlement was arrived at, which was reduced to writing, and is in the following terms:

“This case is settled on the following terms: the plaintiff is forthwith to deliver the car in question to the defend-