

HON. MR. JUSTICE MIDDLETON.

APRIL 14TH, 1913.

SAUERMANN v. E. M. F. COMPANY.

4 O. W. N. 1137.

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.

MIDDLETON, J., *held*, 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.

Action to enforce minutes of settlement of an action for return of the purchase price of a motor car purchased by plaintiff and claimed to be defective, tried at Hamilton on the 4th April, 1913.

G. Lynch Staunton, K.C., and J. L. Counsell, for the plaintiff.

M. K. Cowan, K.C., for the defendant.

HON. MR. JUSTICE MIDDLETON:—Mrs. Sauermann purchased an automobile from the defendant company. The automobile not giving her satisfaction, on the 11th October, 1911, she issued a writ claiming \$1,580 damages by reason of the inferiority of the machine, which she alleged was worthless.

On the 13th June, 1912, when the action came on for trial, after evidence had been given, the parties relieved the Court from the task of determining the issue thus raised, by entering into a settlement. The settlement was embodied in a written memorandum signed by the eminent counsel. The present action was brought on the 27th of January, 1913, for the purpose of enforcing the settlement; and whatever difficulty there is, lies in the interpretation of this memorandum in view of what subsequently happened.

The plaintiff, in whose custody the car then was, was to forthwith deliver it to the defendants, "who shall forthwith proceed to place the same in complete repair in every