

Mr. Muntz returned the memorandum of settlement, with the clause providing for the payment of costs deleted, and with the following clause added: "I herewith personally undertake and guarantee, on behalf of the Schacht Motor Car Company of Canada Limited and the National Credit Clearing Company Limited, to carry out the above settlement."

The solicitors insisted on payment of costs, and wired "Settlement off unless costs paid." Mr. Muntz replied that at a meeting of the Credit Clearing Company they agreed to the payment of costs. This letter was acknowledged, and new stock was asked for, both parties assuming that the litigation was then entirely at an end.

On the 14th February, Mr. Muntz wrote with reference to the stock, stating that the British Colonial Company was acting as transfer agents; that notices were being sent out to all shareholders; and that, as soon as the Monarch shares were issued, they would be made out in Mr. Tinsley's name and sent forward. A circular letter was sent forward about the same time, and, in response to this Mr. Tinsley, on the 17th February, signed the necessary documents to secure the transfer of the Motor Truck stock.

The costs were not actually paid until the 14th March, although some correspondence took place with reference to the stock, which does not appear to be of much importance until the letter of the 6th June, 1913, when Mr. Muntz informed the plaintiff's solicitors that, by reason of the Schacht company's shareholders failing to fall into line and to send in their shares for transfer, the situation had become difficult, as the Monarch people would not do anything until all the Schacht shares were ready to be transferred. He then offered to turn over to the plaintiff the whole \$7,000 Schacht shares. The plaintiff's solicitors declined to accept these as a settlement, and wrote in reply on the 11th June: "If the settlement cannot be carried out as guaranteed by you, our client wants his money." The writ in this action was then issued.

At the hearing, it appeared that the Monarch company was still-born. It has never issued any shares, has no assets, and the whole contemplated transaction between the Schacht company and the Monarch company is at an end. The plaintiff claims specific performance of the agreement, and, in the alternative, damages.

The companies deny that the settlement created any obligation upon them. They state their readiness to give the stock in