

the car on Wednesday, the 30th day of October, when Mr. Russell made his examination. . . . On receipt of the information we will be in a position to discuss the matter with our clients."

It does not appear what (if any) answer was made the next day. November 6th, leave was obtained from Mr. Justice Latchford to serve notice of motion but no judgment seems to have been given. The plaintiff brought this action for the money to which she claims to be entitled under the agreement, and on the trial before Mr. Justice Middleton, was successful, 24 O. W. R. 415. The defendants now appeal.

I think it clear that all that took place before October 30th may be left out of consideration and the case treated as though that day had been appointed by Mr. Russell and agreed to by all parties as the day upon which he was to "pronounce."

From an examination of the "consent minutes" I think the intention of all parties was that the defendants admitting that the car was not all it should be were given an opportunity to put the car in complete repair, that when they considered it was in such repair, Russell was to be called in as sole and final referee to decide whether they had succeeded—if in his judgment they had, the plaintiff took the car, and if not she was to get her money back. While there might not be any objection to Mr. Russell having been consulted by the defendants as to what would be required to be done in order that the car should be in perfect repair, either before the work was begun or when it was actually going on—on that I express no opinion—I think that the parties contemplated that when the defendants had done what they could "to put the car in complete repair in every respect. . . to the satisfaction of Russell," he was to be called upon to "pronounce." I do not think he could do anything else than "pronounce"—his duty was to act as judge, referee, arbitrator on the particular car as then submitted to him as "ready for inspection by the said Russell." I do not say 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 day for inspection was by the consent of the parties fixed for October 30th, 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