

Q. How did you find it? A. I considered it satisfactory, and so reported."

On November 1st, 1912, Mr. Russell wrote the counsel for the plaintiff: "In further reference to this matter I beg to report that I have further examined the E. M. F. car in question, have ridden it some considerable distance and have also ridden in other E. M. F. cars both new and used to satisfy myself as to the relative performance of this particular car. After so doing I am now in a position to report that the car in question is in complete repair to my satisfaction." This seems to have crossed a letter from the plaintiff's solicitors asking for a report of his "examination of the E. M. F. car here on Wednesday the 30th October. From information with you that afternoon continues the letter "we gathered that you were going to report at once . . . from a conversation the writer had with Mr. Logie (solicitor for the defendants) he got the impression that your report might be delayed in order to give the E. M. F. company an opportunity of putting a new engine in the car. We do not think it would be proper for you to delay the making of your report for such a purpose, and we think you should report at once and then the Court will be in a position to deal with the matter upon your report"—a copy of this letter was sent to the solicitors for the defendants.

Upon the receipt by the plaintiff's solicitors of Mr. Russell's report they, November 2nd, wrote him for a report of the condition of the car on his inspection on October 30th adding "we are informed that you came back here last night and made a further test. Neither our clients nor the independent expert were present nor do we know what repairs or changes have been made in the car since you examined it on Wednesday. We are prepared to prove and will endeavour to establish the fact that on Wednesday the engine in the car was defective and it was not in complete repair in every respect at that time even to your satisfaction . . . Your conversation with the writer in regard to the changing of the engine would establish that" Mr. Russell answered "As I understand it, my report of the 1st inst. . . . covers all that I am called upon to report with regard to the car in question." Thereupon the plaintiff's solicitors wrote the defendants' solicitors with a copy of this letter and said: "Our clients refuse to accept the car on his report, until we are supplied with the information as to whether the engine that is now in the car is the same engine that was in