

In *King v. Toronto R. W. Co.*, 7 O. W. R. 37, an order was made allowing plaintiff to inspect defendants' car, because the plaintiff might derive some assistance therefrom. For the same reason it seems better to allow defendants in this case to make a further examination and trial of their automobile, if they really wish to do so, and expect to be aided thereby.

In cases of this kind their business reputation is to some extent at stake. In view of the satisfaction expressed by plaintiff at first, and the subsequent history of the machine, I have finally decided that it is more in accordance with justice to grant the motion than to refuse it.

I have not been wholly free from doubt. I think, however, that each case must be determined solely on its own facts, and that here the order should be made.

The costs will be in the cause of the motion; those of the examination will be dealt with on taxation unless disposed of by the trial Judge.

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BRITTON, J.

APRIL 9TH, 1905

TRIAL.

JOSEPH v. ANDERSON.

*Specific Performance—Agreement for Lease—Rent to be Fixed by Percentage on Cost of Building to be Erected—Amount of Rent—Consent of Lessees to Extra Cost of Building—Architect—Burden of Proof.*

Action to compel specific performance by defendants of their part of an agreement made between the parties, dated 5th August, 1904.

I. F. Hellmuth, K.C., for plaintiffs.

H. H. Dewart, K.C., for defendants.

BRITTON, J.:—The plaintiffs, other than Elizabeth Joseph, are, as trustees under the will of the late H. A. Joseph, owners of premises No. 76 on the west side of Bay street in Toronto. Their building was destroyed in the great fire of 1904. Plaintiffs desired to rebuild, and, for