

sent minutes. There is no evidence that any such motion was made; and no judgment is produced.

The plaintiff now contends that even if she is not entitled to judgment based on the inspection made by Mr. Russell in August, she is entitled to recover because, if the defendants rely upon what was done between the 30th October and the 1st of November to form a foundation for Mr. Russell's report—as they must—then they did not comply with the settlement and “have the car ready for inspection by the said Russell within one month from delivery of the same to them by the plaintiff.”

The defendants answer this contention by stating that time was not of the essence of the contract, and that even if time is to be regarded as of the essence of the contract the failure to have the car ready for inspection by the stipulated time does not, on the terms of the settlement, entitle the plaintiff to recover the \$1,580, as this was only to be paid “if the said Russell pronounces the car unsatisfactory,” and that he has not done so.

It is further contended by the plaintiff that what took place on the 30th of October amounted to pronouncing the car unsatisfactory. As to this, Mr. Russell's attitude is that while he did not then regard the car as satisfactory, he again postponed his decision, for the purpose of enabling further alterations to be made, after which a further inspection was to be had.

I think the plaintiff must recover. When the settlement was made the intention was that within thirty days the defendants were to place the car in a condition which was satisfactory to Mr. Russell on his inspection. The car was found to be in an unsatisfactory condition, and the right to receive the money back then arose. Mr. Russell had not the right to allow further experiments to be made upon the car, nor was any such right given by the agreement. Thereafter the whole engine was changed and another substituted. This was not what was contemplated. The car that was purchased was the car referred to; that car was to be repaired; and the settlement cannot be read as warranting the substitution of another engine after six months' abortive attempts to bring the car into a condition in which it would work.