

JUNE 25TH, 1913.

SAUERMANN v. E.M.F. CO.

Settlement of Action—Interpretation of Written Memorandum—Enforcement—Repair of Vehicle Sold in Unsatisfactory Condition—Satisfaction of Referee—Time for Making Repairs—Return of Moneys Paid.

Appeal by the defendants from the judgment of MIDDLETON, J., ante 1137.

The appeal was heard by CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

W. A. Logie, for the defendants.

J. L. Counsell, for the plaintiff.

The judgment of the Court was delivered by RIDDELL, J. (after setting out the facts):—I think it clear that all that took place before the 30th October 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 that he could do anything else than "pronounce"—his duty was to act as judge,

*By the terms of settlement of a former action, the motor-car in question was to be put in order by the defendants to the satisfaction of Russell.