

after this; and on the 9th of September, after vacation, an appointment was sought from the trial Judge, with a view of obtaining a judgment, which the plaintiff thought she was entitled to, for payment of the \$1,580.

In reply to an intimation of the application for appointment, the defendant's solicitors wrote, saying, "The terms of the settlement have been lived up to by the defendants, and the automobile is now complete, ready for delivery, and has been since three days after the report by Mr. Russell. We now tender it to you, and will oppose any application."

The application was proceeded with, and failed; owing to the fact that the learned Judge was of opinion that the application could not be made in a summary way, no judgment having been taken based upon the settlement arrived at. It is said that the learned Judge expressed the opinion that no pronouncement had been made by Mr. Russell, and that the application was, therefore, premature. He tells me that he did not determine this question.

On the 30th of October Mr. Russell again inspected the car, and then found that while the specific defects mentioned in his letter of the 19th August had been remedied, the engine was not in a satisfactory condition. It was shewn that in the meantime two experts had been sent from the factory to Hamilton, and had spent several days in endeavouring to make the car satisfactory in operation, but in the result it was nothing better, it was rather worse. A new carburetter had been put in, without avail; a new magneto had been supplied; but the engine still lacked power.

Mr. Russell suggested that the engine be discarded entirely and a new engine substituted. This was accordingly done; and on the 1st of November, he again inspected, and reported, "that the car in question is in complete repair to my satisfaction."

The inspection of the 30th October was made in the presence of representatives of the plaintiff; the inspection of the 1st November was made without any notice to the plaintiff.

Thereafter the motion for judgment is said to have been renewed, and the trial Judge did not feel called upon to interpret the memorandum entered into, but merely directed that judgment be entered in accordance with the con-