

ants, who shall forthwith proceed to put the same in complete repair in every respect (except tires) to the satisfaction of Russell, Esquire, who is accepted by both parties as umpire, or referee, between them, defendants to forego payment of the remaining note for \$180 given by plaintiff in payment for the car. In event of the said Russell pronouncing the car in a satisfactory condition, the same to be delivered by defendants to the plaintiff in settlement of this case. If the said Russell pronounces the car unsatisfactory, then the defendants forthwith to pay the plaintiff back the sum heretofore paid by her to them; in either case the defendants to pay the plaintiff the sum of \$350 in full of costs. Defendants to have the car ready for inspection by the said Russell within one month from delivery of same to them by the plaintiff. Dated 13th June, 1912."

This document was signed by eminent counsel for both parties, the trial Judge was informed that the case was settled and he endorsed the record "said to be settled," and the case did not proceed further. Forthwith the plaintiff delivered the car to the defendants, who proceeded to repair it, taking it to their factory in Walkerton, and returned it to Hamilton (where the plaintiff resides) about July 13th.

Mr. Russell was absent from the country; but the defendants had performed that part of the contract which provided that they were to have the car ready for inspection by Mr. Russell within one month of the time from delivery of the car to them by the plaintiff. He returned about the middle of August, and on August 17th proceeded to make an inspection. In the meantime experts for both parties had been examining the car and had disagreed about its condition; the plaintiff insisted upon an inspection by Russell. Russell reported that he had examined the car August 17th: "I beg to report that the car was in a satisfactory condition, with the exception of certain items which I requested to be put into shape for later inspection." He mentions the items, and adds: "These items are not difficult to determine, and I would expect the parties themselves could decide that the items I mentioned had been taken care of. If they cannot, please advise me and I will go up again to deal with them and to finally pronounce on the car."

This inspection having taken place at the instance of the defendants upon notice to the plaintiff who sent an expert to be present at the inspection, I should have considered that