

account between the parties, and when the parties were present, ready to proceed with the trial, it was arranged that there should be a reference to two experts to go over the accounts. The experts did so, finding due from defendants to plaintiff the amount for which judgment was given. When the parties again went before the Master, a difference of opinion arose as to what result the examination by the experts was, under the arrangement, to have had. The plaintiff's counsel said it was to be finally binding: the defendants' that the reference was only to ascertain the amounts payable on each item, if correct, leaving defendants to assert that they were not liable for some or any of them. The arrangement had not, at the time, been reduced to writing by either counsel or by the Master, but the latter's recollection of it corresponded with that of plaintiff's counsel, and he entered judgment for the amount found due by the experts.

What the arrangement was, was the only question on the appeal. The appeal was heard by FALCONBRIDGE, C.J., and STREET, J.

G. F. Henderson, Ottawa, for the appellants.

Owen Ritchie, Ottawa, for the plaintiff.

STREET, J.:—The Court can not, under the circumstances, avoid accepting the statement of defendants' counsel that he never agreed to the arrangement which the Master found to have been the one stated to him by counsel. It must be concluded that the parties were not *ad idem*: that there was a misunderstanding. See *Wilding v. Sanderson*, [1897] 2 Ch. 534.

FALCONBRIDGE, C.J.:—I assent with great reluctance. The result is most unfortunate, but is inevitable, unless defendants' counsel is to be held guilty of bad faith.

Judgment set aside and matter referred to local Master for trial unfettered by finding of experts. No costs of appeal.