

The appeal was heard by RIDDELL and LATCHFORD, JJ., FERGUSON, J.A., and ROSE, J.

J. H. Rodd, for the appellant.

T. Mercer Morton and H. S. White, for the plaintiffs, respondents.

FERGUSON, J.A., read the judgment of the Court. After setting out the facts, he said that it was urged by counsel for the appellant that, because old accounts had been rendered on the basis of card-index rates, the payment thereof should not stand or be construed as a settlement or adjustment thereof, but the defendant was entitled as of right to have these accounts, although already paid, investigated and readjusted in the Master's office. Such a result did not follow, the learned Judge said, from the finding by the trial Judge that there was no agreement governing the rates of the plaintiffs' remuneration. Card-index rates might be the proper basis of an allowance for the work done; and the accounts rendered on that basis, and already paid by the defendant, must, in the absence of mistake or fraud, remain and be accepted as *prima facie* correct, and as settled.

This was the true intent and meaning of the judgment of reference, para. 2 of which read:—

"This Court doth order and adjudge that this action be referred to the Local Master of this Court at Sandwich to take an account and determine the state of the account between the plaintiffs and the defendant upon the basis of an open contract between the plaintiffs and the Dennison Pharmacal Company, and in taking such account the said Master is to have regard to any settled account, which is not to be opened unless the defendant shall first make a sufficient case for so doing."

*Appeal dismissed with costs.*