

(3) A document bearing date the 1st September 1906, but not signed till some time later, by which the client retained him in the contemplated litigation. This document, drawn by the solicitor, contains the clause "I agree to pay you a retainer of \$2,000."

(4) The solicitor then says that on the 20th October, 1908 (the litigation having been settled on the 2nd), he paid the client \$645 in full of all claims, and produces a copy of a cheque for \$645 marked "in full of all claims."

(5) The solicitor then says that, after the order in question had been served, he and his Toronto agent "protested that no bill of costs in the said action had been kept by me"—this forming one of a long list of matters said to have been "protested;" but the solicitor nowhere says that he is unable to prepare a bill of his costs against his client.

If the solicitor choose to adopt the course taken in *Re Griffith*, and to deliberately give up all claims and demands against the client either for remuneration for services rendered or moneys disbursed, in the event of his being unable . . . to maintain his claim to the \$2,000 "retainer," the client cannot well object. In that event the reference will proceed for the purpose of ascertaining the amount due the client, and in due course an order for payment over will, no doubt, follow,

The settlement on its face does not bear out the solicitor's statement—the \$2,600 is payable as one sum representing the dividends and costs. But, assuming that the defendant paid the plaintiff's costs, fixed at \$740, the plaintiff's solicitor received this sum as agent and trustee for the plaintiff. The agreement of settlement is, as indeed it purports to be, a settlement between the parties to the litigation—the solicitor was not a party to the agreement. The solicitor does not set up any tripartite agreement by which the defendant assumed the client's obligation to him, and the client assented to his receiving such sum as the defendant might be willing to pay. The solicitor did not so understand the situation, for, instead of resting content with the \$740, he retained \$1,955, if he own figures are accepted.

The letter of the 5th September affords no answer; the client's proposition was not accepted. If accepted, the agreement would have been champertous and void.

The promise to pay a "retainer" is void . . . *Re Solicitor*, 14 O. L. R. 464. . . . A retainer is a gift by the client to the solicitor, and, like all gifts, must be a voluntary act.

With reference to the settlement suggested by the copy of the cheque produced: there was no bill, and there can be no binding settlement without a bill: *Re Bayliss*, [1896] 2 Ch. 107. . . .