

certainly not champertous. Nor do I think it in any way comes within the prohibition against maintenance. Anson adopts the definition of maintenance given by Lord Abinger, C.B., in *Findon v. Parker*, 11 M. & W. at p. 682, viz., "Where a man improperly for the purpose of stirring up litigation and strife encourages others to bring actions or to make defences which they have no right to make."

This received the emphatic approval of Lord Blackburn in *Hutley v. Hutley*, L. R. 8 Q. B. 112, and of Lord Coleridge, C.J., in *Bradlaugh v. Newdigate*, 11 Q. B. D. at p. 12.

In *Cordery on Solicitors*, 2nd ed., p. 232, it is said: "It was never doubted that a solicitor might lay out his own moneys as disbursements on his client's account, and a solicitor can conduct a case gratuitously out of charity or friendship towards his client."

He gives as his authority for the latter part of this proposition what is said in *Viner's Abr. "Maintenance,"* M. 12: "An attorney may present his client's case without fees, and yet it is not maintenance."

This seems decisive of the right of a client to avail himself of such an agreement as is set up in the present case, if he can prove it.

Whether he can do so or not, is a matter to be disposed of elsewhere, and not on a motion under Rule 603.

The client, having been sued by his solicitor, is entitled as of right to have this issue investigated in the usual way by a Judge, who will try it with or without a jury as he may think best.

The proper order to make is to dismiss the motion for judgment, and consolidate the actions.

The defendant is to be at liberty to set up all questions as to the agreement, and also to counterclaim if so advised for a release of the \$1,000 mortgage.

In this way all matters in dispute between the client and his former solicitor will be before the Court and be disposed of in one action, as directed by the Judicature Act.

It seems probable that some settlement will yet be arrived at. It is for the parties to consider what is the wisest course for them to adopt.

If no settlement made, costs of these motions will be in the cause.