

of the Master in Chambers setting aside a præcipe order obtained by the solicitor for taxation of a bill of costs rendered by him to two persons.

The appeal was heard by FALCONBRIDGE, C.J.K.B., TEETZEL and RIDDELL, JJ.

W. N. Ferguson, K.C., for the solicitor.

R. S. Robertson, for the respondents.

The judgment of the Court was delivered by RIDDELL, J. (after setting out the facts):—I do not think that there is anything in the frame of the bill which would preclude a reference to taxation: but the retainer is denied, and all the circumstances of the case are unusual. Without expressing any opinion as to the merits, which must be tried in some forum, it seems to me that the question of retainer in this case is one which should be tried in the ordinary way rather than by a taxing officer. The Court before whom this question is tried may, as was done in a very recent case, assess the proper amount, or refer for taxation, as seems best.

Were I myself trying the case, I should follow the former practice and determine the amount, but we should not limit the discretion of the trial tribunal.

It is argued that this is a hardship upon the solicitor, but I cannot agree. No doubt it is disagreeable for a solicitor, as for any one else, or at least most persons else, to have any litigation. But this litigation might have been saved had the solicitor followed the well established practice of taking a written retainer from those he is now claiming as his clients: *Allen v. Bone* (1841), 4 Beav. 493. And, if he relied upon a "gentlemen's agreement," he cannot, I think, complain if he is required to prove his cause of action in the same way as the rest of humanity.

The appeal should be dismissed; but it is not a case for costs.

DIVISIONAL COURT.

OCTOBER 14TH, 1909.

TRUSTS AND GUARANTEE CO. v. MUNRO.

Company—Winding-up—Moneys Paid to Creditor after Service of Notice of Motion for Winding-up Order—Action by Liquidator to Recover—Dominion Winding-up Act, sec. 99—Trust Moneys—Breach of Trust—Commencement of Winding-up—Sections 20, 21, 31, of Act.

Appeal by the defendants from the judgment of BOYD, C, 13 O. W. R. 539, in favour of the plaintiffs in an action to recover