

The motion for discharge was then made, and heard by brother Sutherland. He refused to make the order sought. See 20 O. W. R. 524, 3 O. W. N. 313. An application for leave to appeal was heard by myself and dismissed: 20 O. W. R. 999, 3 O. W. N. 602. Mr. Arnoldi appeared for Demetrio on these two applications. What he charged is not stated.

Upon the material I would find against Demetrio's statement as to the filling in of the cheque. I must also find that he understood the document which he signed. But this does not conclude the matter. I must in the first place find that this document is an agreement in writing with the client respecting the "amount and manner of payment for the services of the solicitor in respect of the business done or to be done by him." On the solicitor's own statement it is not. The payment made was not to be remuneration for the services but was to be a retaining fee; and, as put in Mr. Arnoldi's affidavit, "the payment of a substantial retainer enables the professional man to exercise an option whether he will charge for his services or not;" and Mr. Arnoldi's first contention on behalf of Mr. Bull is that this money was received, as it is said, "as a retaining fee;" and Mr. Bull now elects to render his services gratuitously and has therefore no bill to deliver; an attitude which is quite consistent with the wording of the document, and justifies the holding that it cannot be relied upon as an agreement under the statute.

Nor can the solicitor retain this three hundred dollars without accounting for it, under the guise of a retaining fee. It has more than once been stated that a retainer is a gift by the client to the solicitor. It is something outside of and apart from his remuneration, and something which he is not bound to bring into account. Its true nature must be known to and understood by the client.

That is not the situation here. Mr. Bull's own account of the transaction justifies me in taking the view that the real situation was that he declined undertaking these proceedings unless and until his client placed him in funds to the extent of three hundred dollars, and that when the client paid this three hundred dollars it was not with the intention of being regarded as a gift but rather either as a security to the solicitor for his remuneration or as payment of the remuneration. In either case the solicitor is bound to deliver to the client a bill of his actual charges and to account for