

irregular, and it must be set aside: *Re Inderwick*, 25 Ch. D. 279; *In re Farnshawe*, [1905] W. N. 64; *O'Connor v. Gemwill*, 26 A. R. at p. 38.

In the present case, however, although the applicant swears positively that there was an agreement between himself and the solicitors for their remuneration at a fixed sum, covering the greater portion of the work included in the bill sought to be taxed, one of the solicitors makes affidavit that "no agreement or arrangement was made at any time between myself or my said firm and Mr. Fitzpatrick as to the amount of the expenses of obtaining a charter." Neither deponent has been cross-examined upon his affidavit. If the statement of the solicitor is correct, the solicitors are entitled to maintain their order.

I am not prepared, upon the material before me, to find either that there was or was not an agreement. This is a question which the taxing officer, who will be in a position to take evidence upon it, can determine. Upon the ordinary reference to taxation at the instance of a solicitor, the question of retainer or no retainer is for the determination of the taxing officer. I see no reason why he should not with equal propriety determine this question of agreement or no agreement. To set aside the present order would be in effect to give to the client the benefit of an alleged agreement which is not yet established. This I must decline to do.

The *ex parte* order for taxation should, however, be varied by inserting a provision that before proceeding to tax a solicitors' bill, the taxing officer shall inquire and determine whether or not there was an agreement binding upon the parties that the remuneration for the work in connection with the obtaining of a charter for the Nipissing Central Railway Company, and the organization of the company, including parliamentary fees, should not exceed \$1,100, and that in the event of its being found that such an agreement was made, the taxing officer shall not proceed further under the order, but shall report his finding upon such inquiry; but that in the event of his finding that there was no such agreement, he shall proceed under the order for taxation.

The present application will be dismissed. The costs, however, will be reserved to be disposed of by a Judge in Chambers, after the taxing officer shall have made his report or certificate upon the reference.