and you required more. But here a poor man in the country is sought to be charged £150 as a retainer. If he had been told beforehand by his lawyer, that his fees would amount to £150, he might have said that he thought he could settle the case for £75, and get rid of the trouble of litigation. I therefore put my judgment in this case upon this ground: distinctly recognizing the right of counsel in this country to bring an action for the recovery of their fees, I will not recognize the right of an attorney, after the case is over, to bring an action for extra services as counsel, without having notified his client that he would have to pay more, and without obtaining his assent to pay more. In this case, there is in my opinion, no evidence that De Chantal was notified that the usual attorney's fees would not satisfy his counsel, and it was only fair and necessary that he should be notified, as he might have been able to make a better settlement himself with his adversary.

DRUMMOND, J. Although agreeing in principle with, at least, two of the judges, I dissent from the application of that principle to the present case. The Chief Justice has mentioned two cases at Quebec where the Courts granted judgments for retainers. I remember two or three cases here, one by Mr. Devlin against Dr. Tumblety, in which the plaintiff recovered a sum for his retainer. I also remember a case some years ago, before Chief Justice Vallières, in which I obtained my fees as counsel for the defence in a case before the Criminal Court. I do not think that the opinion of the bench has been, that no person is entitled to an action against his client, unless there has been understanding between them. But even supposing this, have we no proof that there was such an agreement here? I think so. I cannot draw a distinction between ignorant men who cannot write, and those who can write. Besides, De Chantal was a man who had long practice before this Court; he knew well the meaning of a retainer. It is proved by the witness Elliott, that he knew and said he was paying more than the taxable costs. The rules followed in France and in England, apply to the profession as it exists there. In the United States, I believe the action is always allowed, and the profession is in a somewhat similar position here. I have, therefore, to dissent from the majority of the Court. I would not confirm the judgment as it stands, but I think that Mr. Burroughs should be allowed his taxed costs, exclusive of what he has already received for retainer. The *Enquête* was long and difficult, and it is proved that De Chantal was in the habit of getting his receipts for the money he paid during this time, read to him by a member of the family.

The *motifs* of the judgment are:—

Considering that the defendant had paid to the plaintiff, and advanced for charges made by the plaintiff, and not credited by him to the defendant previous to the institution of the action against the defendant, the sum of £144 2s. 11d., being £36 13 11 over and above the sum of £107 9, found to be due by the defendant, as mentioned in the judgment of the Court below, and considering that the plaintiff hath not established in law his demand for the sum of £150 by him claimed as retainer in the said professional matters in the said record set out: considering that the said sum of £107 hath been paid by the defendant to the plaintiff previous to the institution of this action, but without credit given therefor by him:—considering that in the judgment rendered by the Court below, there was error, &c. Judgment reversed, and action dismissed, Drummond, J., dissenting.

Leblanc, Cassidy & Leblanc, for the Appellant.

Cross & Lunn, for the Respondent.

HAROLD, (plaintiff in the Court below,) Appellant; and THE CORPORATION OF MONTREAL, (defendants in the Court below,) Respondents.

Negligence—Contractor—Damages.

Held, that a party is responsible for the negligence of his contractor, where he himself retains control over the contractor and over the mode of work. The relationship between them is then similar to that of master and servant.

This was an appeal from a judgment rendered in the Superior Court by *Monk*, J., on the 20th of September, 1865, dismissing the plaintiff's action.