

pany to observe their contract. . . . On the other hand, the plaintiff may be entitled to recover against the railway company in respect of matters quite apart from those indicated. In my view, the defendants do not lose their right to have their claim against the third parties determined in this action because the plaintiff, in addition to basing her claim to recover upon grounds as to which there is or may be a right of indemnity, also alleges that she can recover upon other grounds with which the third parties have no concern. The rights of the parties are not to be finally determined on the interlocutory motion for directions, except in the plainest cases; and it is enough that the plaintiff has made a claim against the defendants in respect of which there is a *prima facie* right to relief over. . . . Unless the third party proceeding can be made use of in a case like this, it has very largely failed in its object. The third parties are manifestly interested in the questions to be determined between the plaintiff and the defendants, and ought to be heard at the trial so as to see that this question is duly tried, and that the ground of liability is definitely ascertained. There ought only to be one trial of the question of the defendants' liability, and at that the facts ought to be so ascertained that the question between the defendants and the third parties will be in train for adjustment. This can be accomplished by questions being submitted to the jury.

Appeal is dismissed with costs to be paid by the third parties to the plaintiff and defendants in any event.

G. H. Kilmer, K.C., for third parties. *D. L. McCarthy*, K.C., for defendants. *S. G. Crowell*, for plaintiff.

Divisional Court, K.B.]

[Oct. 6.

RE SOLICITOR.

Solicitor—Retention of client's money—Order for delivery of bill of costs—Retainer.

Appeal by the solicitor from the order of MIDDLETON, J., 21 O.L.R. 255.

RIDDELL, J.:—Whatever the form, the substance of this application is to have a declaration that a solicitor obtaining money for his client is entitled to retain thereout an amount promised him—agreed in writing to be paid to him—by his client as a “retainer.” Its meaning is, a preliminary fee given to secure