

(editor's note: This paper was transcribed from a handwritten cursive copy with various difficulties. For a perfect rendition, the reader might wish to consult the original, itself a copy, in the volume entitled *Literary Club Papers*, May 30, 1891 to February 6, 1892)

Retainers A Confidential Communication

We lawyers especially delight in retainers, that is, money paid to us when we accept employment and before we render any actual services or do any work in it. Retainers are peculiar to our profession. The doctors and the ministers do not know anything about them. The ministers come the nearest to them in the allowance often made for moving expenses when they received a call to a new field of labor which is meant to be a loud call.

The retainer generally comes only in cases of great importance where there is sure to be much study and work.

Not long ago a legal friend told me of an incident in his career which I repeat as preliminary to one of my own, which, while it has always been something of a mystery to me, yet comes up to my memory now and then as a matter of very agreeable retrospect.

His story was of two traveling salesmen who had entered into a contract for a division of commissions. They lived in the East, but accidentally met at the Burnet House one bright morning in 1868. They compared accounts, and soon fell into a difference of opinion over their financial relations. Being sensible fellows, they concluded at once to refer the matter to the courts for settlement and decided upon a lawsuit, without apparently letting it disturb their friendly relations. They started out to retain lawyers, and found the Masonic Temple, only a square away, full of them. The proposed plaintiff entered the first open door, and gave explicit directions upon which was immediately prepared a brief petition. He made affidavit to it and paying, as he was a stranger, a modest retainer, ordered the petition to be filed forthwith and went his way rejoicing.

The other went a little further down the hall, found my friend's office door open, entered and announced his desire to file at once an answer in a suit to be brought that day. As soon as possible a copy of the petition was obtained, and an answer was drawn up covering less than a page. The visitor duly swore to it, directed its immediate filing, paid a modest retainer, and went his way rejoicing. Thus the lawsuit was duly launched and each lawyer, duly retained, look forward to sundry refreshers and reminders to follow, with probably a per diem charge for attendance and services at the trial. Each went his way rejoicing for many days in the strength of his retaining fee. This, I say, was in 1868. From that day, down to this in the year of our Lord one thousand and eight hundred and ninety one, now near its end, neither lawyer has heard a word from his client. The case still exists,

the retainers were long since spent. But what has become of the clients remains an unknown fact. The lawyer that brought the suit has moved elsewhere, passing over his business and with it this case, to his successors. My friend who was fond of mischief and being for the defendant, can safely risk setting the case for trial, once in a great while does so, simply for the fun of hearing the plaintiff's counsel beg for time in which to communicate with and hear from his client.

My story is this. One morning, very near the end of the War, I sat in my office, running over the newspaper. We lawyers did not have much to do then. The war seriously affected the law business. *Inter arma silent leges*. Once in a while, we had golden opportunities growing out of disputes over government contracts, quartermasters allowances or claims against the government, and the occasional criminal cases. My door opened, and in came two gentlemen entire strangers who, having been seated, proceeded to state the object of their visit.

A friend of theirs, whose name they must keep concealed for the present, was in a situation requiring him to arrange at once for the aid of counsel in order that he might be ready for an emergency near at hand. I had been suggested as one who should be secured.

I expressed some hesitation at pledging my services in behalf of some unknown person against some other equally unknown. The latter might turn out to be one of my clients. I must know more about it. Well, they said, they would let me know this much, and no more. The opposite party was to be the United States Government, and the controversy was criminal in this nature.

This solved the difficulty, for, like the Irishman, I was always ready to be "agin the Government". I accepted the employment.

They then said, that as the case was to be one of unusual magnitude and importance, they desired to associate with me additional counsel, and asked me to name some one. I suggested two or three names, but especially that of my friend Judge J-. They mentioned Mr. L- of whose pertinacity and bull-dog persistence they had heard good accounts. If he were agreeable to me, they desired me to associate him and Judge J- with myself. I assented, and was requested to see the two brethren and arrange for a meeting with them and my visitors at my office two hours later. We met at the appointed time. Our visitors repeated their story and the stipulation that until matters assumed a more definite shape, until, in fact the crisis should come, the name of our client and the nature of his case were to remain undisclosed.

Thereupon Mr. L-suggested, "this is rather an unusual matter. We are altogether in the dark, and hardly know to what we are pledged. It seems an appropriate case for a retainer."

“That is a very proper suggestion,” replied the principal spokesman of our visitors, “and it only remains for you to name the amount. What shall it be? Suppose you three gentlemen consult over the matter in the other room, and let us have your conclusion.”

We did so. I had previously given the matter of a retaining fee a little thought, with visions of a possible fifty-dollars. (I was younger then.)

“Tut, tut,” says Mr. L-, when I modestly made this suggestion, “There's something great, as well as mysterious, about this matter – so great – that I think we must not belittle ourselves by asking too small a sum. We had better name five hundred dollars a piece. If they demur to that, ample room is left for us to come down, or to insist upon fuller information.” So with some little hesitation we adopted his figure, and went back to our visitors. With some preliminary 'hems, clearing of the throat, and suggestions rather tentative in their nature, the five hundred dollars apiece was named.

The visitor immediately said, “all right,” wheeled around to the table, took out a pocket check book, asked for pen and ink, rapidly filled out a check on a New York bank for the fifteen hundred dollars, and handed it to us.

Why hadn't we ask for more..

“There, gentlemen, I trust that is perfectly satisfactory. You shall have due notice when your services are needed.” Thus saying, they bade us good morning.

We deposited the check. It was duly paid and its proceeds divided, and enjoyed.

We resumed the ordinary course of the profession, read the War news, wandered around the deserted courts, and talked, as we met occasionally, of our mysterious case. I, perhaps, took a little more interest in the study of questions in criminal cases brought by the United States Government. We longed for the time when we should engage in the important litigation our visitors feared. But that time never came. We never heard a word of them, after their departure from my office. Mr. L- lived some twenty-five years, and peacefully passed to his silent rest. Judge J- moved to a distant city. Possibly our visitors were missionaries of some new order for the relief of worthy but poor members of an honored and struggling profession.

Possibly their alleged friend was one of themselves, an official engaged in schemes of fraud against the Government and feared that he had been detected and that arrest was at hand. Perhaps he was arrested and spirited off to Fort Delaware or Fort McHenry or to Washington City for trial and acquitted or convicted there without our assistance. Perhaps some powerful influence was

brought to secure immunity for him.

Perhaps he was mistaken, and had not been detected. Perhaps he was innocent. Whatever was the fact, it is now too late, entirely too late, for him to hope to get back one cent of that fifteen hundred dollars retainer.

T. M. Hinkle

Literary Club

Hon Joseph Cox Editor.

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