tween the parties, which could not be deviated from without an express agreement, and as such agreement did not exist the tariff was law.

BADGLEY, J. This is more a professional question than anything else. It is one of those questions which are of interest to the bar, and which require a little examination. The facts of the case are these: Mr. Burroughs, an attorney and advocate of this Court, was substituted in a case brought against an old man named DeChantal. He took the case through a long and tedious *enquête*, and obtained judgment. The case was taken to the Court of Appeals, and there the judgment was against Mr. Burroughs' client. While this case was pending, another action was instituted against DeChantal for a smaller amount, and Mr. Burroughs again appeared. An attachment was issued against the defendant, and upon that attachment Mr. Burroughs appeared also, and acted for DeChantal. Execution issued against the defendant's goods, and Mr. Burroughs filed an opposition. Costs were incurred in these various cases and proceedings, amounting to £107. The taxed bills have been filed, and there is no difficulty on this point. While Mr. Burroughs was thus employed as attorney, he was receiving sums of money from his client from time to time, amounting in all to £144. No credit has been given by the plaintiff for these amounts, but they have been established by receipts which the defendant has produced before the Court, and these amounts are represented in the receipts as having been paid on account of retainer. His client not being willing probably to pay any further sums, an action has been instituted against him by his attorney. The action was brought for £250 *i.e.* £107, as the amount of the bills of costs, and £150 for retaining fee for extra services. Now the action is brought simply, in the common assumpsit form, for work and labor amounting to £150, &c., with conclusions for £250. The defendant pleaded that he was not liable for anything beyond what the tariff allowed as taxable costs; that the retainer was not recognized by law, and that he was not liable to pay a retainer. The argument before this Court turned solely upon this charge for a retainer. In addition, there are some small items charged as paid by Mr. Burroughs, but which are shown by the defendant to have been paid by him.

The question then is, has an advocate an action against an unwilling client for the recovery of a retainer? This is the whole question. The question does not turn upon the right of the advocate to receive his taxed costs which are regulated by the Tariff. The question, as I stated before, is almost entirely a professional one, and although it has already been adjudged upon, it may be well to go into it a little in detail.

The question of the right of an advocate to recover fees was originally settled by the Roman law, and that law forbade advocates to make any bargain with their clients for their fees, and also interdicted them from an action for their recovery. In England, the law distinguishes between advocates and barristers; the fees of the latter are strictly honorary. Blackstone says, it is established that a counsel cannot maintain any action for his fees, and it has been so held on the ground of public policy, from the great influence of the advocate over his client, who is compelled to become dependent on his skill and professional experience.

[His Honour also referred to the jurisprudence of France as against the right of action of the advocate.]

Under these circumstances, I would be inclined to dismiss this action without saying a word more. But apart from all this, the case is susceptible of other considerations which appear to have influenced the Court below in rendering judgment. These deserve consideration, because the position of practitioners at the provincial bar is somewhat anomalous. A lawyer unites here both professional offices; he is an attorney, and at the same time he fills the office of the English counsel or advocate. The two offices as they exist in France and England are not clearly distinguishable here. In this union of offices, the Lower Canadian lawyer may be assimilated to professional men in the United States, where the advocate may demand compensation. There the offices of attorney and counsel are frequently blended in one, and actions