

his petition sufficient grounds to entitle him to intervene. A step further is taken, and it is said that although Mr. Ferres may have shown good reason to intervene, yet the other party may have a good answer. But we cannot go beyond the fact that the respondent has shown a *prima facie* right to intervene. The other question can only be settled after an *enquête*. It may be added that the right to make a demand in a Court of justice is a civil right which can only be restricted by legislation. But it is objected that this may have the effect of protracting the suit. So may an unjust demand. Courts of justice cannot control the justice of demands as regards the right to make them; they can only control the disposal of them. We think, then, the respondent has a right to intervene, and beyond that the Court does not go. The judgment of the Court below is confirmed.

DRUMMOND, and MONDELET, JJ., concurred.

Judgment confirmed, DUVAL, C. J., dissenting.

H. Stuart, Q. C., and Cross & Lunn, for the Appellants.

A. & W. Robertson, for the Respondents.

GRIMARD (Defendant *par reprise d'instance* in the Court below) APPELLANT, and BURROUGHS (Plaintiff in the Court below) RESPONDENT.

*Retaining fee—Action for services rendered as advocate.*

*Held*, that an advocate has a right of action for a retainer, but he cannot recover from his client more than the fees fixed by the Tariff, unless he can prove an agreement with his client that more than the taxable fees should be paid.

*Held*, (per BADGLEY, J.,) that there is no right of action in Lower Canada for a retainer.

This was an appeal from a judgment rendered by Monk, J., in the Superior Court, on the 2nd of March, 1864. The action was instituted by the plaintiff against Louis DeChantal, for the sum of £250, being for value of services rendered him by the plaintiff as advocate, counsel and attorney, and amount of disbursements made in certain cases specified. The declaration contained, besides the count of *quantum meruit*, two special counts, one

for £107 9s. 4d., amount of fees and disbursements taxable against the opposite party; the other for £150, amount of retaining fee for extra services.

Pleas: 1st, that Louis DeChantal had been voluntarily interdicted, and could not be impleaded without the assistance of his wife who was his counsel; 2nd, that Louis DeChantal had never agreed to pay a retaining fee, and that he had paid all the taxed costs and disbursements. It was on the second plea that the case turned.

The plaintiff produced bills of costs for fees and disbursements amounting to £107 9s. 4d. He also produced a register of proceedings in the case of *DeChantal v. DeChantal*, one of the cases he had conducted for the defendant, and at *enquête* examined a number of professional men respecting the total value of the services rendered. The defendant produced at *enquête* a number of receipts given by the plaintiff to Louis DeChantal for different sums, amounting in all to £130 10s. 7d. The dates of these receipts extended over a period of two and a half years, and most of them were in these words, "Received for retaining fee."

The question was as to the right of the plaintiff to the retaining fee of £150. The Superior Court held that it was proved by the receipts that DeChantal agreed to pay the plaintiff a retaining fee over and above his taxed costs, and that £150 was a reasonable amount. The defendant was accordingly condemned to pay £116 19s. 1d., viz. £19 5s. 5d., balance due upon the retaining fee, and £97 9s. 8d., due upon the taxed costs.

From this judgment, the defendant appealed on the following grounds: 1st, an omission by the judgment to credit the defendant with about £10 charged by the plaintiff, but not actually disbursed by him. 2nd, Because the judgment should have declared the plaintiff entitled only to the £107 of taxable costs, and should have declared this amount paid. 3rd, The Superior Court should not have received proof of a *quantum meruit* to establish a retaining fee, apart from the tariff. The plaintiff not having alleged an agreement with DeChantal as to the payment of a retainer, could not get such retainer by a *quantum meruit*. The tariff of fees established a contract be-