time, the plaintiffs cannot get damages from defendants; though the draft, placed with them for collection, was unpaid, and had, by negligence, not been duly presented for payment, after acceptance. But the draft was *not* placed with defendants for collection, and the plaintiffs are *not* suing for damages. The plaintiffs are not suing the defendants for any omissions, or negligences. They are suing simply to get back money paid under protest, and said not to have been due when paid. The plaintiffs contend that they were once discharged, and that it was not competent to the acceptor, Bunbury, and the bank to put responsibilities upon them by altering the original acceptance. I agree that after the bill had once fallen due, according to the first acceptance, the Standard Bank, defendants' agent, had no right to arrange with Bunbury, as it did, for the alteration of his acceptance for the purpose of imposing a liability upon plaintiffs. The law involved in this case is not that of principal and agent, nor of master and servant, but the law of bills and say that of principal and surety. A creditor cannot make alteration of contract with principal debtor without consent of the surety, varying materially the first perfected contract. By the law of bills the plaintiffs were discharged from liability before the altered acceptation was invented; no liability was upon them when the defendants insisted upon their paying this money now sought to be recovered back. Our Civil Code 2295 prohibits such alteration of acceptance as has been made here. Yet the defendants have made the plaintiffs pay the costs of the protest of this altered acceptance! The draft on Bunbury was against funds. Bunbury was in debt to plaintiffs. This is proved by witnesses, and may be presumed from his accepting; so the plaintiffs' draft was against effects, it may be said. Bunbury had money in the Standard Bank up to the third of April. Judgment for plaintiffs.

Kerr, Carter & McGibbon, for plaintiff.
Davidson & Cross, for defendant.

SUPREME COURT OF CANADA.

Counsel fees, Right of action for.—The suppliant, a barrister of the Province of Quebec, was retained by the Government of Canada in the interest of Great Britain, before the Commission which sat at Halifax, under the Treaty of Washington, to arbitrate upon the differences between Great Britain and the United States, in connection with the fisheries. The suppliant, by his petition, alleged that he was retained by a letter from the department of Justice at Ottawa, and there was contradictory evidence of an agreement entered into at Ottawa between the suppliant and the Minister of Marine and Fisheries as to the amount to be paid to the suppliant for his services. The judge who tried the case found that the terms of the agreement were as follows: "That each of the counsel engaged would receive a refresher, equal to the first retainer of $1,000; that they could draw on a bank at Halifax $1,000 a month while the sittings of the Commission lasted; that the expenses of the suppliant and his family would be paid, and that the final amount of fees or remuneration to be paid to counsel would remain unsettled until after the award of the Commissioners." The suppliant received $8,000, and claimed an additional $10,000 under his agreement.

Held, (per Fournier, Henry & Taschereau, JJ.), that by the law of the Province of Quebec an action will lie at the suit of an advocate or counsel against his client for professional services rendered by the former to the latter, under a contract in that behalf; and when such a contract is entered into between a counsel of the Province of Quebec and the Crown, as in this case, that a petition of right will lie to recover upon said contract, and as the suppliant had proved that there was an agreement to pay a reasonable amount, to be determined at the conclusion of the business, in addition to the amount paid, that the amount of $8,000 which had been awarded to suppliant by the judge at the trial, was a reasonable *quantum meruit* and supported by the evidence in the case.

Chief Justice Ritchie, who dissented, was of opinion that the agreement between the suppliant and the Minister of Marine and Fisheries was made at Ottawa in reference to services to be performed by Mr. Doutre at Halifax, and therefore the law of Quebec did not apply. That the right of a barrister to maintain an action for counsel fees is the same in Ontario as in Nova Scotia; that in neither Province could a counsel maintain an action for counsel fees, and therefore the suppliant was not entitled to recover.

Mr. Justice Gwynne, who also dissented, was of opinion that as in England a counsel could not enforce a claim by Petition of Right for counsel fees upon an express contract, or upon a *quantum meruit*, and by the Petition of Right Act, sec. 19, clause 3, the subject is denied any remedy against the Crown in any case in which he would not have been entitled to such remedy in England under similar circumstances by the laws in force there prior to the passing of the Imperial Statute 23 & 24 Vict. c. 34, a Canadian counsel in the case of a contract with the Crown for his advocacy, cannot enforce such contract by Petition of Right, and therefore the appeal should be allowed.

Mr. Justice Strong considered that the alleged contract to pay an additional amount of fees to the suppliant was not proved; but there was evidence that the Crown had contracted to pay the suppliant's expenses in addition to the fees paid, and for such expenses the suppliant was entitled to recover.

Justices Fournier and Henry expressed the opinion that counsel in the Dominion of Canada are entitled to sue for counsel fees.—*R. v. Doutre.*