

to be illegal, which it is not. Again if you may fix the costs of an administration or partition action at a percentage on the amount realized, why should it not be equally lawful to fix the costs of other actions on the same or a like basis. Clients, of course, should be fully protected against unreasonable bargains, but surely solicitors are also entitled to some protection.

When solicitors are allowed (as they are) to make bargains regarding their remuneration for non-contentious business, and the only test of their validity is their reasonableness, it is difficult to see why they should not have a similar power in regard to matters of litigation. It may be said that the client and solicitor are not always on equal terms in discussing remuneration, for instance, in actions of tort, as the lawyer is much more likely to know the probable result of the suit than the client. But, on the other hand, it is notorious that in such cases clients seldom tell all the facts or correctly state them to their lawyer, and when the case is tried the evidence is often entirely different from the statement given to the solicitor, and consequently, the case is lost.

In *Ford v. Mason*, 16 P.R. 25, it was held by Ferguson, J. that R.S.O. c. 174, s. 54, only applies to non-contentious business, and that, therefore, the statute only authorises agreements as to costs for business of that character, but in view of the recent decision of the Court of Appeal in *Clark v. Joseph* (1907) 12 K.B. 369, noted ante, p. 651, it would seem that, altogether apart from the statute, there is nothing illegal in a solicitor making a bargain with his client as to his remuneration even in matters of litigation.

We are not convinced that *Ford v. Mason* is a correct interpretation of these ill-drawn sections.

The English statute from which R.S.O. c. 174, ss. 52-54 is derived explicitly applies to all kinds of business, and we see no sufficient reason why the Ontario Act should not be amended to correspond with it. If so extended, the statute would afford every necessary safeguard, to the client, when it provides that such agreement must be reasonable and must be in writing.