

are to be paid out of the fruits of the litigation. If there is any other reason for illegality it is not suggested in the judgment referred to.

We think it would not be for the benefit of litigants, nor would it be fair to solicitors, to lay down too strict a rule regarding the right of a solicitor to bargain with his client for something more than taxable fees. Such bargains, it is needless to say, are made by reputable solicitors every day with well-to-do clients, as every judge knows from his own professional practice.

Ought there be any different rule where the client is a poor man and unable to supply his lawyer with any funds to prosecute his case? He asks the solicitor to meet all the disbursements of what may be a protracted litigation, and to go to great trouble and expense in preparing the case for trial, for which trouble taxable costs would be a ridiculously inadequate return under the present low tariff. Means should, in some way, be given to enforce any legal right. It surely cannot be the law that because a man is poor and unable to pay a lawyer the necessary fees, his rights should be lost or his wrongs remain unvindicated. But if the above judgment be sound he may practically be helpless, inasmuch as a solicitor may not, without incurring the possible censure of the Court, stipulate for any remuneration whatever over and above his taxable costs, and must run the risk, not only of getting nothing, but also of being out of pocket, and few reputable lawyers would take such risks for merely tariff fees.

If the client is a man of means the solicitor may require to be paid a retainer in cash, and if it is paid, and the nature of the demand properly explained to the client, the Court will not require the solicitor to refund it; but why this should be an unimpeachable transaction, and a bargain to pay at a future time wrong and unenforceable, is one of those anomalies which tend to make one question the reasonableness of the rule now laid down. If the latter transaction be illegal, the demand and payment of a retainer over and above taxable costs ought also