

mark, even admitting this theory of public policy to be unquestionable, which they think it is not, it could hardly apply in Ontario and Nova Scotia where barristers are at the same time solicitors, and liable to be sued. If colonial counsel have not the immunities of English barristers, why should the disabilities be imposed on them?

As to the broad question whether there is anything in the nature of the services of barristers which precludes the idea of an action, "R." on consideration, must admit that he has written too hastily. Barristers had an action in Rome, at any rate, for the fees promised, and the right of action in France is beyond question. It is the purest confusion to speak of the remedy being practically refused, because a barrister suing for his fees may be liable to suspension as guilty of unprofessional conduct. The Councils of the Bar in France are not unanimous as to this supposed breach of *étiquette*. Mr. Doutré, at any rate, runs no great risk of this kind. The liability to suspension certainly does not touch the question whether professional services give a legal title to remuneration, or whether the amount admits of determination where the parties have not determined it themselves.

The high authority of Judge Day and his very able and striking observations in *Devlin & Tumblety* have unduly influenced the profession in Lower Canada, in my opinion. While he recognized fully the right of the Bar to make contract and to sue, he considered that in the absence of an express contract it was implied that the Tariff should govern. Where, however, the Tariff did not apply, he distinguished between services which were akin to those of a solicitor and which could be valued at least approximatively, and the purely intellectual services of a barrister which could not.

But, after all, intellectual services admit of being valued and are valued every day in practice, those of English barristers and physicians included. It is only a question as to how they can be most properly valued.

In France, the Tariff does not govern between counsel and client, it only determines what the losing party can be forced to pay. Between *avocat* and client the *avocat* taxes

his own bill, subject to the sole revision of the Council of the Bar. In England, the powers of taxing officers are very large, and meet the requirements probably of all but very special cases. The amounts charged by barristers in particular, are those which will be allowed to the solicitor who pays them or agrees to pay them, when the bill comes to taxed. Of all modes of valuation, it seems to me, however, that the worst is that which necessitates a regular *enquête* in the ordinary way. In France, all questions of the value of services and work done were left to the determination of regular permanent officials, or, in special cases, of *experts*. The parties should be encouraged to make special contracts in extraordinary cases, and for the usual run of services they should be subject to taxation in the usual way.

One feature of Mr. Doutré's case which is likely to give rise to considerable discussion in the future is this: the contract, as understood by Mr. Doutré, seems to have been that if the award were a good one he was to be liberally treated; but he would consider the fixed sum paid him as final, if the result were unfavourable to the Government. Judge Strong, not without some very good reasons, thought that this meant that Mr. Doutré would, in the contingency supposed, trust to the generosity of the Government. But this view has been over-ruled in England, for it can hardly be supposed that it escaped notice. This would seem to indicate that their Lordships do not view with any particular horror agreements for contingent fees. In fact it looks as if a contract, based to some extent at least on the amount to be recovered, might not be considered invalid under certain circumstances.

E. B.

Montreal, 30th August, 1884.

#### GENERAL NOTES.

In an article on the late Mr. Justice Williams the *Law Journal* (London) says: "In his mode of trying prisoners he was exceedingly fair to the accused, and once, when asked whether those whom he tried appeared to have any general characteristics, he replied: 'They are just like other people; In fact, I often think that, but for different opportunities and other accidents, the prisoner and I might very well be in one another's places.'"