

words: "It is the duty of all courts of justice to keep their eye steadily upon the interests of the public, even in the administration of commutative justice." In other words, the judge is to have one eye on the rights of the parties and one eye on the public—strabismus, of course, inevitable.

Greenwood on Public Policy, states the doctrine thus: Rule II. "But if such contract bind the maker to do something opposed to the public policy of the state or nation, or conflicts with the wants, interests or prevailing sentiment of the people, or our obligations to the world is repugnant to the morals of the times, it is void, however solemnly the same be made." This would seem to be a broad charter. The most dangerous working of this principle, however, has not been where it has been openly invoked, but where it has been the silent inspiration of the court's action.

Eminent jurists have looked with disfavour upon the doctrine of public policy, and have suggested limitations that would practically substitute for it a few definite rules. Some of them have treated it as not so much a rule of legal action as a chance for the judge to indulge his individual bent, one of them making the inquiry: "Public Policy? Whose?" Baron Alderson says, in the case of *Hipplewhite v. McMorine*, 5 M. & W. 467: "I disclaim deciding on the ground of public policy. The policy of one man is not the policy of another, and such a consideration only tends to introduce uncertainty into law." Baron Parke, in the case of *Egerton v. Earl of Brownlow*, 4 H. of L. Cases 123, says: "It is a vague and unsatisfactory term, and calculated to lead to uncertainty and error when applied to the decision of legal rights. It is capable of being understood in different senses; it may, and does in its ordinary sense mean 'political expedience' or that which is best for the common good of the community."

I have used the expression "Public Policy" to denote a persistent tendency in the popular mind, and in the judicial mind, in other words, in the human mind, to regard the judicial function as ancillary to the legislative and executive working out any result desirable or greatly desired at the time. This feeling is