

evidence as to the law of California, it is lawful there for an attorney to undertake to institute and carry on proceedings for the recovery of property and to stipulate with his client for a contingent fee, as it is called, which may be a part of the property or a part of the value of it; and that, where the business is undertaken after the relationship of attorney and client has been established, the onus rests upon the attorney of proving that the bargain was a fair one; but, if the business is undertaken before that relation is established, the validity of the agreement is to be determined according to the law applicable to contracts between parties who do not stand in that relation to one another, and that the law applicable in the latter case does not differ from the law of England.

It was argued that the validity of the agreement and the rights of the parties under it are to be determined according to the law of Ontario, and that by that law the agreement is champertous and void. It is unnecessary, in the view I take, to decide whether or not this contention is well-founded; for, even if the agreement is not champertous, the respondent MacMahon is entitled to have it set aside, for the reasons I shall afterwards mention.

I may say, however, that I do not share the views expressed by Lord Chancellor Cottenham in *Strange v. Brennan* (1846), 2 Coop. temp. Cott. 1. . . . I prefer the view expressed by Sir Montague E. Smith in delivering the judgment of the Privy Council in *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (1876), 2 App. Cas. 186, 209, 210. . . .

The trend of modern opinion is against the view expressed by Lord Cottenham and in accord with that expressed by Sir Montague E. Smith; and in many of the States of the neighbouring Republic an attorney and his client may lawfully agree that the attorney's compensation for services rendered on recovering property for his client shall be a part of the property or a proportion of its value, and that such an agreement is valid and binding upon the client, subject always to the condition that the compensation is not extortionate and unconscionable so as to be inequitable against the client; and, although such agreements are not valid according to the law of Ontario, there are many who think that no harm would be done if a similar latitude were by legislation allowed to solicitors in this Province.

A bare statement of the effect of the agreement in question in this case is enough to shew that it was an extortionate and unconscionable agreement. It is true that the contingent interest