

We should, it seems to me, avoid creating an artificial conscience. It is well known that a statute against a particular course of conduct will inevitably bring about a state of public opinion that such conduct is morally wrong, however innocent it may be in fact. A familiar instance is the feeling now widespread that it is wrong for a tradesman to prefer one creditor to another. To anyone who takes the trouble to think over the matter, it will be plain that sometimes it is consistent with the highest morality to do that very thing—yet in our Ontario law it is allowable only if money is paid. As though there were in morals a difference between giving money and money's worth!

Again, all common law courts are adamant against what has been branded with the horrid name of champerty—no lawyer can acquire an interest in the subject matter of an action. A young mining engineer without much business finds that there is a "mining proposition"—the location is owned by a man too poor or too indifferent to develop it and ascertain its value—the engineer looks over the ground and sees a good prospect of making the mine pay, and he enters into a contract with the owner that he will at his own expense develop the mine for half the profits. That is good business, good morals, and is for the advantage in common of both parties; and the law approves, and will enforce such a contract.

The brother of the engineer, a young solicitor, finds out that a man has a claim to valuable property but is too poor or too indifferent to enforce his claim—the solicitor examines into the title, etc., and sees a good prospect of recovering the property, and he makes a contract that he will at his own expense bring an action and recover the land for half the profit. No Court would approve or enforce such a contract—it may be good business and for the advantage in common of both parties, but the Court says it is bad morals. Wherein does the difference between the two cases consist?

We have in the latter case an artificial conscience.

I know it will be answered *interest reipublicae ut sit finis litium*. But that does not mean that it would be for the advantage of people at large, that there should be no law suits—so long as injustice prevails a lawsuit to end an injustice is infinitely better—and, I add, infinitely more in harmony with the genius of our people—than passive submission to the injustice. The maxim means that it is for the interest of the people that a lawsuit when started should be carried to a conclusion with all due expedition—and if it means anything more it, is that it will be a good thing for the people when wrong shall cease, and there will be no further need for litigation.

The real difference is that one contract is forbidden by law and the other is not.⁹