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TAKING CASES ON SPECULATION.

We print elsewhere an extract from *The Nation*, summarizing a controversy between Judge Countryman and a United States contemporary on the subject of contingent fees. We may remark that the law in the Province of Quebec appears to be more rigorous than amongst our neighbors, for it has been positively ruled by our highest provincial tribunal, that a lawyer is not allowed to bargain that he shall have a share of the proceeds of the suits which he carries on (*Dorion & Brown*, 2 Legal News, p. 214). Mr. Justice Ramsay remarked in that case: "Such a bargain has never been maintained in England, and cannot be here."

If the rule were otherwise, it may be remarked that the attorney who had stipulated for a share of the winnings would be virtually a party to the suit, and the consequence would be that under our Code of Civil Procedure, art. 176, the judge might be recused if related or allied to the attorney "within the degree of cousin-german inclusively."

We append the opinions of two well known jurists, Messrs. Dillon and Cooley:—

Judge Dillon writes: "A delicate sense of propriety hardly consists with taking a case 'on speculation,' as I understand the phrase. I have never taken such a case nor a case upon an *expressed* contingent fee. Most professional charges, however, are *sub modo* contingent, that is, a lawyer charges more for the same skill and labor where they lead to a successful result than where they do not. Exceptional cases may justify a contingent fee; but the tendency of the practice and the abuses resulting from it are such that it ought not to be favorably regarded."

Judge Cooley writes: "1. A member of the bar is a minister of justice. He is licensed to assist the court in the administration of the law; and in the performance of his special functions he puts legal claims and defences in due form for an orderly determination, assists in eliciting the truth upon legal issues, aids the

court by his investigations and arguments to right conclusions upon the law, and attends to the execution of the judgments which are awarded. As experience is thought to demonstrate that a just result is most likely to be reached when each party to a controversy has his special counsel to examine, prepare and present his side, the lawyers called in must assume antagonistic positions, but each is supposed to have his attention directed to the final attainment of a right conclusion, and the profession itself has no justification for its existence except as it fulfills its mission as above indicated.

"2. In the performance of professional functions, the lawyer owes duties to his client, to the court, and to the State. To his client he owes fidelity and unreserved confidence; to the court he owes respect, obedience, frank and truthful advice, and generous support, and to the State he owes the duty of making his office, like that of the judge, conducive to the general good by means of a just administration of law.

"3. Clothed with such functions, and charged with such important duties, a lawyer is permitted to charge a reasonable compensation for his services, which is sometimes regulated in advance by the law, and sometimes left to negotiations or the testimony of witnesses after the services are performed. In many cases lawyers have not been content with this reasonable compensation, but have entered into arrangements with their employers for contingent fees, on the no cure no pay plan of medical charlatans, or have stipulated, when suing for the recovery of property or damages, that they shall receive in case of success a certain proportion of the recovery in lieu of fees. As such arrangements are most often made with persons of limited means, who can ill afford the expense of unsuccessful litigation, they are made to wear a benevolent aspect, as arrangements whereby injured poverty may be enabled to obtain its due. But that they are corrupting, and affect injuriously all the relations which the lawyer enters into is believed to be unquestionable.

"4. The first injurious consequence of such a practice is that it tempts lawyers to deal deceitfully with those who go to them for advice; to express doubts of results when they feel none, to suggest difficulties which they do not really anticipate, to magnify the probable