

indefinite as to constitute a violation of the Sixth Amendment. Those attacking this section of the Lever Act laid great stress on the case of *International Harvester Co. v. Kentucky*.⁸ But that was a case under a state statute making "any combination lawful unless for the purpose or with the effect of fixing a price that was greater or less than the real value of the article." And this "real value" was to be its market value "under fair competition and under normal market conditions." The court held that this was compelling the corporation to guess what prices would be in an imaginary world and under penalty of an indictment, and held the law void. The opinion in the Harvester Co. case distinguishes the Nash case by saying, "that deals with the actual, not with an imaginary condition other than the facts." "The statute may be construed to forbid, in time of war, any departure from the usual and established scale of charges and prices in time of peace, which is not justified by some special circumstance of the commodity or dealer."⁹ Thus interpreted, it would seem that the Lever Act cannot be successfully attacked on the ground of indefiniteness.

Section 4 of the Lever Act has, however, been held unconstitutional as a violation of the Fifth Amendment, because it exempts from its operation farmers and others. In the case of *United States v. Armstrong*¹⁰ Judge Anderson of Indiana held that the "due process of law" clause was violated because of the arbitrary and unreasonable classification in exempting farmers and stockmen. These persons were favored in comparison with the producers of fuel, for example, whose product was of similar nature and quite as necessary to the conduct of the war. This presents an interesting problem on which we may shortly expect to see further litigation.¹¹

SOCIAL WELFARE

A field in which reliable social welfare statistics as to the effect of legal principles in actual operation would be of inestimable value in deciding what the law ought to be, is that of attorney's contingent fee contracts. The argument from necessity for such contracts is obvious: that otherwise poor suitors with deserving cases would find it impossible to get their cases into court. Hence the validity of such contracts

⁸ (1914) 234 U. S. 216, 34 Sup. Ct. 853.

⁹ *United States v. Oglesby Grocery Co.*, *supra*, note 6, at p. 695.

¹⁰ (1920, D. Ind.) 265 Fed. 683.

¹¹ The payment of a fine imposed in a criminal case, even if the judgment of conviction was void, is not a bar to a suit to recover the money. *United States v. Rothenstein* (1911, C. C. A. 7th) 187 Fed. 268. Under this rule a fine which had been paid to the government following a conviction under the original section was recovered in *Mossew v. United States*, *supra*, note 2.

is usually upheld in this country.¹ Just as obvious is the fact that there is now afforded unworthy members of the profession an opportunity availed of all too often for making extortionate and unconscionable agreements and for speculating in weak cases, accompanied, as such practice usually must be, by the worst forms of solicitation and touting of business.² Statistics, if available, as to the number of meritorious cases saved by contingent fee contracts, the number of cases decided for defendants instituted under such agreements and the like would throw much light upon the desirability of the present legal viewpoint.³ The proper result may well be that it is more desirable to provide for the needs of poor litigants in other ways, such as the legal aid society and similar agencies.⁴ At any rate courts may well refuse to uphold such contracts when the necessity for them does not exist or is outweighed by other considerations. Thus the law's well-known abhorrence of divorce leads to a refusal to enforce contingent fee contracts to procure divorces.⁵ In *Baca v. Padilla* (1920, N. M.) 190 Pac. 730, the same principle was applied to an attorney's contract to assist in the prosecution of a criminal case for a fee contingent upon the conviction of the accused. There has been considerable question as to the wisdom of allowing private counsel to assist in public prosecution at all; whether the interest of state and accused are not better served by having the prosecution entirely in the hands of a disinterested public official. Most courts have thought such assistance permissible, however, so long as the actual control of the prosecution remains with the public prosecutor.⁶ But a contingent fee contract under such circumstances must rest upon not one but two principles of doubtful societal value and the court properly refused to enforce it.⁷

¹ Cases are collected in 2 Thornton, *Attorneys* (1914) sec. 421; 1 Ann. Cas. 299, note. As to the limitations on such agreements in some jurisdictions see *Hadlock v. Brooks* (1901) 178 Mass. 425, 59 N. E. 1009, and Thornton, *op. cit.*, sec. 388.

² See discussion by J. H. Cohen, *The Law, Business or Profession* (1915) 205 ff., especially 209: "Its general practice is to-day at the root of much of all the evils in the practice of the law, and sooner or later will be controlled either by rules of court or by legislation."

³ See C. E. Grinnell, *Notes* (1882) 16 AM. L. REV. 240, 242; "the actual effect of an habitual practice for contingent fees . . . seems to us to be the turning point of the discussion, so far as its value to the profession is concerned."

⁴ See R. H. Smith, *Justice and the Poor* (1919) for review of agencies devised to secure better justice for poor litigants.

⁵ *Newman v. Freitas* (1900) 129 Cal. 283, 61 Pac. 907; *Barngrover v. Pettigrew* (1905) 128 Iowa 533, 104 N. W. 904, 2 L. R. A. (N. S.) 260, note; 33 L. R. A. (N. S.) 1074, note.

⁶ *State v. Kent* (1895) 4 N. D. 597, 62 N. W. 531. But see *Rock v. Ekern* (1916) 162 Wis. 291, 156 N. W. 197. Cases are collected in Ann. Cas. 1912 B, 659, note.

⁷ There is little authority. See *Rock v. Ekern*, *supra*, with L. R. A. 1916 D, 459, note; *Price v. Caperton* (1864, Ky.) 1 Duv. 207.

Lobbying contracts are not always illegal; but contracts for the use of "personal influence" with legislators or executive officers are illegal and void.¹ This is the more certain if payment for such service is contingent either wholly or in the amount payable, upon success in the undertaking. In *Eads v. Stifel* (1920, Mo. App.) 222 S. W. 482, the appellate court of Missouri held that the same principle applies in the case of contracts for personal service in political campaigns, primary and final. The plaintiff's testimony showed that he was promised \$100 per week "to use his influence to secure delegates to a national convention favorable to the candidate supported by the defendant." The court held this contract to be illegal, both by virtue of a particular statute defining the crime of bribery, and on grounds of general public policy.

One has a glowing mental picture of that "innocent female" of the old melodrama, that sweet heroine of incredible gullibility relentlessly pursued by a tort-feasing villain of criminal intent. But the Supreme Court of Iowa² produces an "unmarried" (in the sense of de-married)³ Juliet of forty-four, twice led to the altar and twice divorced, and heroically sustains a charge of seduction against the villain. He had promised to marry her—they always do—and now, in five-reel style, enters a plea of "vampire" as a defense. Chivalrous but unromantic, the law perhaps can not consider the knowledge and experience of those whom it undertakes to protect.³ So that aside from its failure as a scenario, the decision seems sound.⁴

¹ *Trist v. Child* (1874, U. S.) 21 Wall. 441; *Providence Tool Co. v. Norris* (1864, U. S.) 2 Wall. 45; *Crocker v. United States* (1915) 240 U. S. 74, 79, 36 Sup. Ct. 245.

² *Wiley v. Fleck* (1920, Iowa) 178 N. W. 410.

³ *State v. Eddy* (1918) 40 S. D. 390, 167 N. W. 392.

³ *State v. Wallace* (1916) 79 Ore. 129, 154 Pac. 430.

⁴ *People v. Weinstock* (1912, City Magistrate's Court, N. Y.) 140 N. Y. Supp. 453, where the subject is ably reviewed. *Contra, Jennings v. Commonwealth* (1909) 109 Va. 821, 63 S. E. 1080.