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remark that upon an examination of the statute of Missouri on that subject, and looking to the policy which dictated it, it does not seem probable that it was intended to give this kind of relief to an unsuccessful defendant in ejectment, while he was still contesting the title of the plaintiff. As to this point, we incline to rule that the bill shall be dismissed without prejudice.

GRIER, J., expressed his concurrence, adding as another reason why the bill should have been dismissed, that even if the mortgage given to Carswell and McClellan had been fraudulent,—which his Honor, after examining the testimony, said it was not,—the complainant, who was not a creditor, had no equity to found his bill.

DECREE REVERSED, with costs; case remanded to the court below, with directions that there the bill be dismissed with costs; the dismissal, however, to be without prejudice to any remedy of the complainant for compensation for improvements on the land made in good faith.

TOOL COMPANY *v.* NORRIS.

1. An agreement for compensation for procuring a contract from the Government to furnish its supplies is against public policy, and cannot be enforced by the courts.
2. Where the special and general counts of a declaration set forth the same contract, and an instruction directed to the legality of the contract, is refused with reference to the special counts, it is unnecessary, in order to bring up to this court for consideration the writing thereon, to ask the instruction with reference to the general counts to which it is equally applicable, although upon the special counts the verdict passed for the plaintiff in error.

IN July, 1861, the Providence Tool Company, a corporation created under the laws of Rhode Island, entered into a

contract with the Government, through the Secretary of War, to deliver to officers of the United States, within certain stated periods, twenty-five thousand muskets, of a specified pattern, at the rate of twenty dollars a musket. *This contract was procured through the exertions of Norris, the plaintiff in the court below, and the defendant in error in this court, upon a previous agreement with the corporation, through its managing agent, that in case he obtained a contract of this kind he should receive compensation for his services proportionate to its extent.*

Norris himself, it appeared,—though not having any imputation on his moral character,—was a person who had led a somewhat miscellaneous sort of a life, in Europe and America. Soon after the rebellion broke out, he found himself in Washington. He was there without any special purpose, but, as he stated, with a view of "*making* business—anything generally;" "soliciting acquaintances;" "getting letters;" "getting an office," &c. Finding that the Government was in need of arms to suppress the rebellion, which had now become organized, he applied to the Providence Tool Company, already mentioned, to see if they wanted a job, and made the contingent sort of contract with them just referred to. He then set himself to work at what he called, "concentrating influence at the War Department;" that is to say, to getting letters from people who might be supposed to have influence with Mr. Cameron, at that time Secretary of War, recommending him and his objects. Among other means, he applied to the Rhode Island Senators, Messrs. Anthony and Simmons, with whom he had got acquainted, to go with him to the War Office. Mr. Anthony declined to go; stating that since he had been Senator he had been applied to some hundred times, in like manner, and had *invariably* declined; thinking it discreditable to any Senator to intermeddle with the business of the departments. "You will certainly not decline to go with me, and introduce me to the Secretary, and to state that the Providence Tool Company is a responsible corporation." "I will give you *a note*," said Mr. Anthony. "I do not want *a note*," was the reply; "I want the weight of your *presence* with me. *I want the*

influence of a Senator." "Well," said Mr. Anthony, "*go to Simmons.*" By one means and another, Norris got influential introduction to Mr. Secretary Cameron, and got the contract, a very profitable one; the Secretary, whom on leaving he warmly thanked, "hoping that he would make a great deal of money out of it."

But a dispute now arose between Norris and the Tool Company, as to the amount of compensation to be paid. Norris insisted that by the agreement with him he was to receive $75,000; the difference between the contract price and seventeen dollars a musket; whilst the corporation, on the other hand, contended, that it had only promised "a liberal compensation" in case of success. Some negotiation on the subject was had between them; but it failed to produce a settlement, and Norris instituted the present action to recover the full amount claimed by him.

The declaration contained several counts; the first and second ones, special; the third, fourth, and fifth, general. The special ones set forth specifically a contract, that if he, Norris, procured the Government to give the order to the company, the company would pay to him, Norris, "for his services, in obtaining, or causing and procuring to be obtained, such order, all that the Government might, by the terms of their arrangement with the company, agree to pay above $17 for each musket." The general counts were in the usual form of *quantum meruit*, &c.; but in these counts, as in the special ones, a contract was set forth on the basis of a compensation, *contingent* upon Norris's procuring an order from the Government for muskets for the Tool Company; *reliance on this contingent sort of contract running through all the counts of the declaration.* There was no pretence that the plaintiff had rendered any other service than that which resulted in the contract for the muskets.

On the trial in the Circuit Court for the Rhode Island District, the counsel of the Tool Company requested the court to instruct the jury, that a contract like that declared on in the first and second counts was against public policy, and void; which instruction the court refused to give. The

same counsel requested the court to charge, "that upon the *quantum meruit* count the plaintiff was not entitled in law to recover any other sum of money, for services rendered to the Tool Company in procuring a contract for making arms, than a fair and reasonable compensation for the time, speech, labor performed, and expenses incurred in performing such services, to be computed at a price for *which similar services could have been obtained from others.*" The court gave this instruction, with the exception of the last nine words in italics. The jury found *for the defendant on the first and second*—that is to say, upon the special—*counts*, and for the plaintiff on the others, and judgment was entered on $13,500 for the plaintiff. The case came, by writ of error, here.

Messrs. Payne and Thurston for the Tool Company, plaintiff in error: The general principle that "many contracts which are not against morality are still void as being against sound policy," is one that was distinctly announced so long ago, at least, as Lord Mansfield's day,* and one which will not be denied. Thus, no recovery can be had upon a contract for the payment of a part of the profits of an office to the former incumbent, in consideration of his resignation of such office;† and the principle has been extended to the case of a contract stipulating merely for the *resignation of an office*, without any agreement to exert any influence toward the appointment of a successor, and this, too, where the sum agreed to be paid for such resignation was only an equitable return of a portion of a sum of money previously paid by the retiring officer upon a like contract to his successor, who had also been his predecessor in the same office.‡ In consistency with the doctrine that benefits from the Government ought not to be the result of any corrupting influence, but should be awarded on the principle of *dctur digniori*, it has been held that an agreement on the part of one person to pay a sum of money to another person, as an inducement

* Jones *v.* Randall, Cowper, 39.

† Parsons *v.* Thompson, 1 Henry Blackstone, 322.

‡ Eddy *v.* Capron, 4 Rhode Island, 394.

for the latter *not to propose to carry the mail* upon a certain post-route in opposition to the former, is against public policy and void, although no act whatever was done by the party, to whom the promise was made, to influence the success of the other party's application, and the applicant was a suitable and responsible man to perform the service.* Similar principles governed the court in the Vermont case of *Pingry* v. *Washburn*,† where it refused to sustain an agreement to pay a sum of money for withdrawing opposition to the passage of an act affecting the interest of a corporation. The Supreme Court of Massachusetts, in *Boynton* v. *Hubbard*,‡ remark, in reference to the class of illustrations now being considered: "It is upon this same principle that bargains to procure offices are rescinded, *not on account of fraud in either of the parties, but for the sake of the public, because they tend to introduce unsuitable persons into public offices.*"

Another, and a large class of cases to which the principle has been applied, relate to agreements for compensation for procuring legislation. All such have, without an exception, been held to be void. In *Marshall* v. *Baltimore and Ohio Railroad Co.*,§ this court stated that it was an undoubted principle of the common law that it will not lend its aid to enforce a contract "which *tends to corrupt* or contaminate, by improper influences, the integrity of our social or political institutions." And again: "Bribes in the shape of high contingent compensation must necessarily lead to the use of improper means and the exercise of undue influence. Their necessary consequence is the demoralization of the agent who covenants for them."

That it is not necessary for the element of sinister or personal influence to be contemplated by the agreement, or to be, in fact, resorted to by the agent, in order to render such agreement for service obnoxious to the law, is directly asserted in other cases. The plaintiff in *Harris* v. *Roofs*‖ sought to recover in *indebitatus assumpsit*, and on a *quantum*

* Gulick et al. *v.* Bailey, 5 Halstead, 87.
† 1 Aiken, 264.
‡ 7 Massachusetts, 112.
§ 16 Howard, 314.
‖ 10 Barbour, 489.

meruit, for his services and expenses in prosecuting before the legislature of New York a claim, in behalf of the defendant, to a certain tract of land derived under an Indian grant. It does not appear from the case that the plaintiff was to observe any secrecy, or that his true representative character was not fully understood. Neither was it suggested that he was expected to employ, or did in fact make use of, any sinister or improper influence with the members of the legislature. It was shown that he appeared at hearings of the committee to whom the same was referred, and that the value of his services to the plaintiff, and the expenses by him incurred during his stay in Albany, were equal to the amount charged, which was not a large sum, he having failed of establishing the defendant's title. Some question was made whether his compensation was not to be contingent, as was proved to have been the agreement with a former agent of the defendant in the same business. The court, however, use the following language: "Even without any agreement to share in the avails of the claim, we think the claim invalid as against public policy and sound legislation. It certainly would imply a most unjustifiable dereliction of duty to hold that the employment of individuals to visit and importune the members is necessary to obtain justice. Such practices would have a tendency to prevent the free, honorable, and correct deliberation and action of this most important branch of sovereignty. We cannot think it good public policy to require our courts to enforce such contracts. It can neither be necessary or proper for the legislature to be surrounded by swarms of hired retainers of the claimants upon public bounty or justice. To *legalize* such a system would, to say the least, be a reflection upon the ability and industry of our legislators."

The Louisiana case of *Gill* v. *Williams & Davis*,* and another in Massachusetts, *Fuller* v. *Dame*,† are in point. The principle to be deduced from the cases is, in its fullest force, applicable to the one at bar. The evil tendencies of

* 12 Louisiana Annual, 219.

† 18 Pickering, 472.

an agreement to procure a favor from one of the departments of the Government for a compensation contingent upon the success of the undertaking, are as great as in the case of an agreement to procure legislation upon a similar consideration. The heads of the several departments exercise by delegation the high duties which, by law, have been intrusted to them, and are only the executive ministers appointed to carry out the will of the law-making power. The authority to make contracts for arms was derived from the legislature. It would have been competent for Congress to have authorized the making of such contracts through one of its own committees, or by the concurrent action of the two houses of which it is composed, to have settled upon and agreed to the terms of each contract. It follows, therefore, that if the agreement set up by the defendant in error would be condemned if it related to the procurement of legislation beneficial to the plaintiff in error, it must, for the same reasons, fail of support if it relates to the procurement of the same benefit from the Secretary of War, to whom the power of conferring it had been delegated.

If any one ever doubted of the wisdom of such principles as the cases which we have cited a little way back decide, will he doubt it after reading the statement of this case? With a sense of decorum, the reporter will probably suppress some of its salient features,—the *tacenda* of the case. Its general character he will not dare, even for decorum's sake, to falsify. "Wounds cannot be cured without searching." This case has been probed, and requires to be laid open.

The transaction is creditable to no one concerned but to Mr. Anthony. Such principles as the court below declared in regard to the contract are wholly untenable. And the effect is seen in the fact that, for service which any clerk in the employ of the company might have rendered in a single day, and at a trifling expense, the jury awarded a compensation nearly double what is allowed to one of your Honors for the service of a year upon this bench.

May it please this court, a profound thinker of our own

country has observed that nothing so base as American politics had become, before the breaking out of our rebellion, had been seen in human history since the Roman Empire was put up at auction. Our politics, it may be hoped, have grown no worse during the honorable contest which our country has been waging. But may it not be feared that what are called the morals of business have been descending to the level of politics rapidly? No one expects absolute purity in politics or business, especially in time of war. Contractors followed the armies of Wellington as they follow those of Grant. The Treasury was plundered when William Pitt was Chancellor of the Exchequer; and we may doubt, Mr. CHIEF JUSTICE, whether, when YOU held a corresponding office, you were able to keep the hands of all your subordinates as clean as you ever kept YOUR OWN. These are the necessary consequences of the disordered condition in which we now temporarily are. But they are not to be encouraged; least of all are they to have judicial sanction. This court will pronounce, we feel assured, that this agreement for contingent compensation, as the reward of procuring contracts with the Executive Department of the Government, is *contra bonos mores*, and wholly void.

Mr. Blake, contra.

1. It is not easy to conceive of a more ungracious defence. Confessedly, the contract was procured through the exertions of Norris alone. Of course, he gave his time, spent his money, invoked the aid of acquaintances, solicited influence, waited about the ante-rooms, and went through such operations as persons seeking contracts at Washington generally go through; operations distasteful in the extreme to any man of independence; impossible, indeed, for such a man to undergo. There is no imputation upon the generally fair character of Mr. Norris, nor allegation that Mr. Cameron acted corruptly. Having got the contract through Norris's labors, having made an immense sum by it, the company now turn round, and plead the illegality of their agree-

ments! Is not this base? More than this, is it not a case for the maxim, "*Nemo allegans turpitudinem suam audiatur?*"

The cases cited do not apply. Not one is a case like this. There is no case which says that a corporation may not employ an agent to negotiate with the War Department, for a contract to manufacture arms; or that, if the agent is openly acting as such, the terms of his compensation may not lawfully be whatever the corporation and himself agree on.

2. The refusal of the court to charge that such a contract was unlawful, was expressly directed to the contract between Norris and the Tool Company, as specifically set forth in the first and second counts; that is to say, as set forth in the *special* counts. In *them*, Norris set up a specific agreement to give him all above seventeen dollars a musket. But on these two counts the jury found for the Tool Company. Of course, the instruction asked for by the company on these counts, and refused, is not open to consideration here.

Mr. Justice FIELD delivered the opinion of the court.

Several grounds were taken, in the court below, in defence of this action; and, among others, the corporation relied upon the proposition of law, that an agreement of the character stated,—that is, an agreement for compensation to procure a contract from the Government to furnish its supplies,—is against public policy, and void. This proposition is the question for the consideration of the court. It arises upon the refusal of the court below to give one of the instructions asked.

A suggestion was made on the argument, though not much pressed, that the instruction involving the proposition cannot properly be regarded, inasmuch as it was directed in terms to the agreement set forth in the special counts of the declaration, upon which the jury found for the defendants. There would be much force in this suggestion, if the general counts, upon which the verdict passed for the plaintiff, did not also aver that his services were rendered in procuring the same contract from the Government. The instruction was directed especially to the legality of a contract of that

kind, which having been once refused with reference to some of the counts, it was not necessary for counsel to renew with reference to the other counts to which it was equally applicable. The subsequent instructions were, therefore, directed to other matters.

It was not claimed, on the trial, that the plaintiff had rendered any other services than those which resulted in the procurement of the contract for the muskets. We are of opinion, therefore, that the proposition of law is fairly presented by the record, and is before us for consideration.

The question, then, is this: Can an agreement for compensation to procure a contract from the Government to furnish its supplies be enforced by the courts? We have no hesitation in answering the question in the negative. All contracts for supplies should be made with those, and with those only, who will execute them most faithfully, and at the least expense to the Government. Considerations as to the most efficient and economical mode of meeting the public wants should alone control, in this respect, the action of every department of the Government. No other consideration can lawfully enter into the transaction, so far as the Government is concerned. Such is the rule of public policy; and whatever tends to introduce any other elements into the transaction, is against public policy. That agreements, like the one under consideration, have this tendency, is manifest. They tend to introduce personal solicitation, and personal influence, as elements in the procurement of contracts; and thus directly lead to inefficiency in the public service, and to unnecessary expenditures of the public funds.

The principle which determines the invalidity of the agreement in question has been asserted in a great variety of cases. It has been asserted in cases relating to agreements for compensation to procure legislation. These have been uniformly declared invalid, and the decisions have not turned upon the question, whether improper influences were contemplated or used, but upon the corrupting tendency of the agreements. Legislation should be prompted solely

from considerations of the public good, and the best means of advancing it. Whatever tends to divert the attention of legislators from their high duties, to mislead their judgments, or to substitute other motives for their conduct than the advancement of the public interests, must necessarily and directly tend to impair the integrity of our political institutions. Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception.

There is no real difference in principle between agreements to procure favors from legislative bodies, and agreements to procure favors in the shape of contracts from the heads of departments. The introduction of improper elements to control the action of both, is the direct and inevitable result of all such arrangements.*

The same principle has also been applied, in numerous instances, to agreements for compensation to procure appointments to public offices. These offices are trusts, held solely for the public good, and should be conferred from considerations of the ability, integrity, fidelity, and fitness for the position of the appointee. No other considerations can properly be regarded by the appointing power. Whatever introduces other elements to control this power, must necessarily lower the character of the appointments, to the great detriment of the public. Agreements for compensation to procure these appointments tend directly and necessarily to introduce such elements. The law, therefore, from this tendency alone, adjudges these agreements inconsistent with sound morals and public policy.†

Other agreements of an analogous character might be mentioned, which the courts, for the same or similar reasons, refuse to uphold. It is unnecessary to state them particularly;

* Marshall *v.* Baltimore and Ohio Railroad Company, 16 Howard, 314; Harris *v.* Roof's Executors, 10 Barbour, 489; Fuller *v.* Dame, 18 Pickering, 472.

† Gray *v.* Hook, 4 Comstock, 449.

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it is sufficient to observe, generally, that all agreements for pecuniary considerations to control the business operations of the Government, or the regular administration of justice, or the appointments to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question, whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements; and it closes the door to temptation, by refusing them recognition in any of the courts of the country.

It follows that the judgment of the court below must be reversed, and the cause remanded for a new trial; and it is

SO ORDERED.

GREGG *v.* FORSYTH.

Error does not lie to a refusal of the Circuit Court to award a writ of restitution in ejectment.

FORSYTH had brought ejectment against Gregg in the Circuit Court for Illinois, and obtained judgment for the land sued for. On writ of error taken by Gregg, this court reversed that judgment and remitted the case with directions to issue a *venire de novo*. Between the time, however, that the Circuit Court gave its judgment of recovery, and that when this court gave *its* of reversal, Forsyth had been put in possession of the premises by a *habere facias*, and had collected, moreover, the costs of the suit.

As soon as the mandate of this court reversing the judgment was sent down to the court below, but before it had been filed or a rule entered in pursuance of its directions, Gregg moved the court for a writ of restitution. This motion the court refused to grant. Whereupon, a writ of error—the present writ—was brought.

Mr. Justice NELSON delivered the opinion of the court.

Upon the facts of this case, it will be seen that at the time the motion was made in the court below, the cause was not then pending in the court. Although the mandate had been