

Tool Company Vs. Norris

Tool Company Vs. Norris

SooperKanoon Citation : sooperkanoon.com/81220

Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 45

Appellant : Tool Company

Respondent : Norris

Judgement :

Tool Company v. Norris - 69 U.S. 45 (1864)

U.S. Supreme Court Tool Company v. Norris, 69 U.S. 2 Wall. 45 45 (1864)

Tool Company v. Norris

69 U.S. (2 Wall.) 45

ERROR TO THE CIRCUIT

COURT OF RHODE ISLAND

SYLLABUS

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

Page 69 U. S. 46

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*

Page 69 U. S. 47

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' 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 pretense 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

Page 69 U. S. 48

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.

Page 69 U. S. 53

MR. JUSTICE FIELD delivered the opinion of the Court.

Several grounds were taken, in the court below, in defense 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

Page 69 U. S. 54

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

Page 69 U. S. 55

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. [

[Footnote 1](#)]

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. [[Footnote 2](#)]

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;

Page 69 U. S. 56

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.

[[Footnote 1](#)]

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

[[Footnote 2](#)]

Gray v. Hook, 4 Comstock 449.