

**Trist Vs. Child**

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**Court :** US Supreme Court

**Decided On :** 1874

**Appeal No. :** 88 U.S. 441

**Appellant :** Trist

**Respondent :** Child

**Judgement :**

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**Trist v. Child**

**88 U.S. (21 Wall.) 441**

*APPEAL FROM THE SUPREME COURT*

*OF THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

1. A mere personal agreement by one setting up a claim on the government, with another person to pay to such person a percentage of whatever sum Congress, through the instrumentality of such person, may appropriate in payment of the

claim does not constitute any lien on the fund to be appropriated, there being no order on the government to pay the percentage out of the fund so appropriated nor any assignment to the party of such percentage.

2. If such agreement amounted to such an order or assignment as in the case of a debt due by an ordinary person would constitute a lien on the fund, the agreement, in the case of a claim on the government, would, under the Act of February 26, 1853, not do so, for that act declares that all transfers of any part of any claim against the United States,

"or of any interest therein, whether absolute or conditional, shall be absolutely null and void unless executed in the presence of at least two attesting witnesses after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant therefor."

3. A contract to take charge of a claim before Congress and prosecute it as an agent and attorney for the claimant (the same amounting to a contract to procure by "lobby services" -- that is to say, by personal solicitation by the agent and others supposed to have personal influence in any way with members of Congress -- the passage of a bill providing for the payment of the claim), is void.

4. Such a contract is distinguishable from one for purely professional services, within which category are included drafting a petition which sets forth the claim, attending to the taping of testimony, collecting facts, preparing arguments, and submitting them either orally or in writing to a committee or other proper authority, with other services of like character intended to reach only the understanding of the persons sought to be influenced.

5. Though compensation can be recovered for these when they stand by themselves, yet when they are blended and confused with those which are forbidden, the whole is a unit and indivisible, and that which is bad destroys the good. Compensation can be recovered for no part.

N. P. Trist having a claim against the United States for his services, rendered in 1848, touching the Treaty of Guadalupe Hidalgo -- a claim which the government

had not recognized -- resolved, in 1866-1867 to submit it to Congress and to ask payment of it. And he made an agreement with

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Linus Child, of Boston, that Child should take charge of the claim and prosecute it before Congress as his agent and attorney. As a compensation for his services, it was agreed that Child should receive 25 percent of whatever sum Congress might allow in payment of the claim. If nothing was allowed, Child was to receive nothing. His compensation depended wholly upon the contingency of success. Child prepared a petition and presented the claim to Congress. Before final action was taken upon it by that body, Child died. His son and personal representative, L. M. Child, who was his partner when the agreement between him and Trist was entered into and down to the time of his death, continued the prosecution of the claim. By an act of the 20th of April, 1871, Congress appropriated the sum of \$14,559 to pay it. The son thereupon applied to Trist for payment of the 25 percent stipulated for in the agreement between Trist and his father. Trist declined to pay. Hereupon Child applied to the Treasury Department to suspend the payment of the money to Trist. Payment was suspended accordingly, and the money was still in the Treasury.

Child, the son, now filed his bill against Trist praying that Trist might be enjoined from withdrawing the \$14,559 from the Treasury until he had complied with his agreement about the compensation, and that a decree might pass commanding him to pay to the complainant \$5,000, and for general relief.

The defendant answered the bill, asserting, with other defenses going to the merits, that all the services as set forth in their bill were "of such a nature as to give no cause of action in any court either of common law or equity."

The case was heard upon the pleadings and much evidence. A part of the evidence consisted of correspondence between the parties. It tended to prove that the Childs, father and son, had been to see various members of Congress, soliciting their influence in behalf of a bill introduced for the benefit of Mr. Trist, and

in several instances obtaining a promise of it. There was no attempt to prove that any kind of bribe had been offered or ever contemplated,

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but the following letter, one in the correspondence put in evidence, was referred to as showing the effects of contracts such as the one in this case:

" *FROM CHILD, JR., TO TRIST*"

"HOUSE OF REPRESENTATIVES"

"WASHINGTON, D.C., Feb. 20, 1871"

"MR. TRIST: Everything looks very favorable. I found that my father has spoken to C\_\_\_\_\_ and B\_\_\_\_\_, and other members of the House. Mr. B\_\_\_\_\_ says he will try hard to get it before the House. He has two more chances, or rather 'morning hours,' before Congress adjourns. A\_\_\_\_\_ will go in for it. D\_\_\_\_\_ promises to go for it. I have sent your letter and report to Mr. W\_\_\_\_\_, of Pennsylvania. It may not be reached till next week. Please write to your friends to write immediately to any member of Congress. Every vote tells, and a simple request to a member may secure his vote, he not caring anything about it. Set every man you know at work, even if he knows a page, for a page often gets a vote. The most I fear is indifference."

"Yours &c.;"

"L. M. CHILD"

The court below decreed,

1st. That Trist should pay to the complainant \$3,639, with interest from April 20, 1871.

2d. That until he did so, he should be enjoined from receiving at the Treasury "any of the moneys appropriated to him" by the above act of Congress, of April 20, 1871.

From this decree, the case was brought here.

The good character of the Messrs. Child, father and son, was not denied.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

The court below decreed to the appellee the amount of his claim, and enjoined Trist from receiving from the Treasury "any of the money appropriated to him" by Congress, until he should have paid the demand of the appellee.

This decree, as regards that portion of the fund not claimed by the appellee, is an anomaly. Why the claim should affect that part of the fund to which it had no relation, is not easy to be imagined. This feature of the decree was doubtless the result of oversight and inadvertence. The bill proceeds

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upon the grounds of the validity of the original contract, and a consequent lien in favor of the complainant upon the fund appropriated. We shall examine the latter ground first. Was there, in any view of the case, a lien?

It is well settled that an order to pay a debt out of a particular fund belonging to the debtor gives to the creditor a specific equitable lien upon the fund, and binds it in the hands of the drawee. [ [Footnote 1](#) ] A part of the particular fund may be assigned by an order, and the payee may enforce payment of the amount against the drawee. [ [Footnote 2](#) ] But a mere agreement to pay out of such fund is not sufficient. Something more is necessary. There must be an appropriation of the fund *pro tanto*, either by giving an order or by transferring it otherwise in such a manner that the holder is authorized to pay the amount directly to the creditor without the further intervention of the debtor. [ [Footnote 3](#) ]

Viewing the subject in the light of these authorities, we are brought to the conclusion that the appellee had no lien upon the fund here in question. The

understanding between the elder Child and Trist was a personal agreement. It could in nowise produce the effect insisted upon. For a breach of the agreement, the remedy was at law, not in equity, and the defendant had a constitutional right to a trial by jury. [ [Footnote 4](#) ] If there was no lien, there was no jurisdiction in equity.

There is another consideration fatally adverse to the claim of a lien. The first section of the Act of Congress of February 26, 1853, declares that all transfers of any part of any claim against the United States,

"or of any interest therein, whether absolute or conditional, shall be absolutely null and void unless executed in the presence of at least two attesting witnesses after the allowance of such claim,

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the ascertainment of the amount due, and the issuing of a warrant therefor."

That the claim set up in the bill to a specific part of the money appropriated is within this statute is too clear to admit of doubt. It would be a waste of time to discuss the subject.

But there is an objection of still greater gravity to the appellee's case.

Was the contract a valid one? It was, on the part of Child, to procure by lobby service, if possible, the passage of a bill providing for the payment of the claim. The aid asked by the younger Child of Trist, which indicated what he considered needful, and doubtless proposed to do and did do himself, is thus vividly pictured in his letter to Trist of the 20th February, 1871. After giving the names of several members of Congress from whom he had received favorable assurances, he proceeds:

"Please write to your friends to write to any member of Congress. Every vote tells, and a simple request may secure a vote, he not caring anything about it. Set every man you know at work. Even if he knows a page, for a page often gets a vote."

In the Roman law, it was declared that "a promise made to effect a base purpose, as to commit homicide or sacrilege, is not binding." [ [Footnote 5](#) ] In our jurisprudence, a contract may be illegal and void because it is contrary to a constitution or statute or inconsistent with sound policy and good morals. Lord Mansfield said: [ [Footnote 6](#) ] "Many contracts which are not against morality are still void as being against the maxims of sound policy."

It is a rule of the common law of universal application that where a contract express or implied is tainted with either of the vices last named, as to the consideration or the thing to be done, no alleged right founded upon it can be enforced in a court of justice.

Before considering the contract here in question, it may be well, by way of illustration, to advert to some of the

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cases presenting the subject in other phases, in which the principle has been adversely applied.

Within the condemned category are:

An agreement -- to pay for supporting for election a candidate for sheriff; [ [Footnote 7](#) ] to pay for resigning a public position to make room for another; [ [Footnote 8](#) ] to pay for not bidding at a sheriff's sale of real property; [ [Footnote 9](#) ] to pay for not bidding for articles to be sold by the government at auction; [ [Footnote 10](#) ] to pay for not bidding for a contract to carry the mail on a specified route; [ [Footnote 11](#) ] to pay a person for his aid and influence in procuring an office, and for not being a candidate himself; [ [Footnote 12](#) ] to pay for procuring a contract from the government; [ [Footnote 13](#) ] to pay for procuring signatures to a petition to the governor for a pardon; [ [Footnote 14](#) ] to sell land to a particular person when the surrogate's order to sell should have been obtained; [ [Footnote 15](#) ] to pay for suppressing evidence and compounding a felony; [ [Footnote 16](#) ] to convey and assign a part of what should come from an ancestor by descent, devise, or distribution; [ [Footnote 17](#) ] to pay for promoting a marriage; [ [Footnote](#)

[18](#) ] to influence the disposition of property by will in a particular way. [ [Footnote 19](#) ]

The question now before us has been decided in four American cases. They were all ably considered, and in all of them the contract was held to be against public policy,

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and void. [ [Footnote 20](#) ] We entertain no doubt that in such cases, as under all other circumstances, an agreement express or implied for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable. But such services are separated by a broad line of demarcation from personal solicitation, and the other means and appliances which the correspondence shows were resorted to in this case. There is no reason to believe that they involved anything corrupt or different from what is usually practiced by all paid lobbyists in the prosecution of their business.

The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed, the fabric must fall. Such is the voice of universal history. [ [Footnote 21](#) ] The theory of our government is that all public stations are trusts, and that those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. They are never to descend to a lower plane. But there is a correlative duty resting upon the citizen. In his intercourse with those in authority, whether executive or legislative, touching the performance of their functions, he is bound to exhibit truth, frankness, and integrity. Any departure from the line of rectitude in such cases is not only bad in morals, but involves a public wrong. No people can have any higher public

interest, except the preservation of their liberties,

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than integrity in the administration of their government in all its departments.

The agreement in the present case was for the sale of the influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy. No one has a right in such circumstances to put himself in a position of temptation to do what is regarded as so pernicious in its character. The law forbids the inchoate step, and puts the seal of its reprobation upon the undertaking.

If any of the great corporations of the country were to hire adventurers who make market of themselves in this way, to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and employed as steeped in corruption and the employment as infamous.

If the instances were numerous, open, and tolerated, they would be regarded as measuring the decay of the public morals and the degeneracy of the times. No prophetic spirit would be needed to foretell the consequences near at hand. The same thing in lesser legislation, if not so prolific of alarming evils, is not less vicious in itself nor less to be condemned. The vital principle of both is the same. The evils of the latter are of sufficient magnitude to invite the most serious consideration. The prohibition of the law rests upon a solid foundation. A private bill is apt to attract little attention. It involves no great public interest, and usually fails to excite much discussion. Not unfrequently the facts are whispered to those whose duty it is to investigate, vouched for by them, and the passage of the measure is thus secured. If the agent is truthful and conceals nothing, all is well. If he uses nefarious means with success, the springhead and the stream of legislation are polluted. To legalize the traffic of such service would open

a door at which fraud and falsehood would not fail to enter and make themselves felt at every accessible point. It would invite their presence and offer them a premium. If the tempted agent be corrupt himself and disposed to corrupt others, the transition requires but a single step. He has the means in his hands, with every facility and a strong incentive to use them. The widespread suspicion which prevails, and charges openly made and hardly denied, lead to the conclusion that such events are not of rare occurrence. Where the avarice of the agent is inflamed by the hope of a reward contingent upon success, and to be graduated by a percentage upon the amount appropriated, the danger of tampering in its worst form is greatly increased.

It is by reason of these things that the law is as it is upon the subject. It will not allow either party to be led into temptation where the thing to be guarded against is so deleterious to private morals and so injurious to the public welfare. In expressing these views, we follow the lead of reason and authority.

We are aware of no case in English or American jurisprudence like the one here under consideration where the agreement has not been adjudged to be illegal and void.

We have said that for professional services in this connection, a just compensation may be recovered. But where they are blended and confused with those which are forbidden, the whole is a unit and indivisible. That which is bad destroys that which is good, and they perish together. Services of the latter character, gratuitously rendered, are not unlawful. The absence of motive to wrong is the foundation of the sanction. The tendency to mischief, if not wanting, is greatly lessened. The taint lies in the stipulation for pay. Where that exists, it affects fatally, in all its parts, the entire body of the contract. In all such cases, *potior conditio defendentis*. Where there is turpitude, the law will help neither party.

The elder agent in this case is represented to have been a lawyer of ability and high character. The appellee is said to be equally worthy. This can make no

difference as to

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the legal principles we have considered nor in their application to the case in hand. The law is no respecter of persons.

*Decree reversed and the case remanded, with directions to dismiss the bill.*

[ [Footnote 1](#) ]

*Yeates v. Groves*, 1 Vesey Jr. 280; *Lett v. Morris*, 4 Simons 607; *Bradley v. Root*, 5 Paige 632; 2 Story's Equity 1047.

[ [Footnote 2](#) ]

*Field v. The Mayor*, 2 Selden 179.

[ [Footnote 3](#) ]

*Wright v. Ellison*, 1 Wall. 16; *Hoyt v. Story*, 3 Barbour's Supreme Court 264; *Malcolm v. Scott*, 3 Hare 39; *Rogers v. Hosack*, 18 Wendell 319

[ [Footnote 4](#) ]

*Wright v. Ellison*, 1 Wall. 16.

[ [Footnote 5](#) ]

Institutes of Justinian, lib. 3, tit. 19, par. 24.

[ [Footnote 6](#) ]

*Jones v. Randall*, 1 Cowper 39.

[ [Footnote 7](#) ]

*Swayze v. Hull*, 3 Halsted 54.

[ [Footnote 8](#) ]

*Eddy v. Capron*, 4 R.I. 395; *Parsons v. Thompson*, 1 H. Blackstone 322.

[ [Footnote 9](#) ]

*Jones v. Caswell*, 3 Johnson's Cases 29.

[ [Footnote 10](#) ]

*Doolin v. Ward*, 6 Johnson 194.

[ [Footnote 11](#) ]

*Gulick v. Bailey*, 5 Halstead 87

[ [Footnote 12](#) ]

*Gray v. Hook*, 4 Comstock 449.

[ [Footnote 13](#) ]

[\*Tool Company v. Norris\*](#), 2 Wall. 45.

[ [Footnote 14](#) ]

*Hatzfield v. Gulden*, 7 Watts 152.

[ [Footnote 15](#) ]

*Overseers of Bridgewater v. Overseers of Brookfield*, 3 Cowen 299.

[ [Footnote 16](#) ]

*Collins v. Blantern*, 2 Wilson 347.

[ [Footnote 17](#) ]

*Boynton v. Hubbard*, 7 Mass. 112.

[ [Footnote 18](#) ]

*Scribblehill v. Brett*, 4 Brown's Parliamentary Cases 144; *Arundel v. Trevillian*, 1 Chancery Reports 47.

[ [Footnote 19](#) ]

*Debenham v. Ox*, 1 Vesey 276; see also Addison on Contracts 91, 1 Story's Equity ch. 7; *Collins v. Blantern*, 1 Smith's Leading Cases 676, American note.

[ [Footnote 20](#) ]

*Clippinger v. Hepbaugh*, 5 Watts & Sergeant 315; *Harris v. Roof's Executor*, 10 Barbour's Supreme Court 489; *Rose & Hawley v. Truax*, 21 *id.* 361; [Marshall v. Baltimore & Ohio Railroad Company](#), 16 How. 314.

[ [Footnote 21](#) ]

1 Montesquieu, Spirit of Laws 17.

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