labor to sell, if they should stand together they would be often able to command better prices for their labor than when dealing singly with rich employers, because the necessities of a single employé might compel him to accept any terms offered him. In illustration the court said that if, when the receiver made a reduction of 10 per cent. in the wages of his employés, Phelan had come to Cincinnati, and urged and succeeded in maintaining a peaceable strike, he would not have been liable to contempt, even if the strike seriously impeded the operation of the road under the order of the court, and that his action in giving advice or issuing an order based on unsatisfactory terms of employment would have been entirely lawful, but that his coming to Cincinnati, and his advice to the employés to quit work, had nothing to do with their terms of employment. They were not dissatisfied with their service or their pay. His coming was to carry out the purpose of a combination of men, and as a part of that combination to incite the employés of all Cincinnati roads to quit work. The plan of this combination was to inflict pecuniary injury on Pullman by compelling the railway companies to give up using his cars, and in the event of their refusal so to do to inflict pecuniary injury on them by inciting their employés to quit their service and thus paralyze their business. That combination, the court held, was for an unlawful purpose, and was conspiracy; citing Angle v. Railway Co., 151 U. S. 1, 14 Sup. Ct. 240. The court also held that the combination was unlawful without respect to the contract feature, because it was a boycott. The court recognized that the employés had the right to quit their employment, but declared that they had no right to combine to quit, in order thereby to compel their employer to withdraw from a profitable relation with a third person for the purpose of injuring him, when that relation had no effect whatever on the character or reward of their service. Phelan was held guilty of contempt, and sentenced to imprisonment.

The supreme court of the United States, in the Debs Case, 158 U. S. 564, 15 Sup. Ct. 900, held that the jurisdiction in equity to apply the remedy by injunction when any obstruction was put upon highways, natural or artificial, to impede interstate commerce or the carrying of mails, was not ousted by the fact that the obstructions were accompanied by or consisted of acts in themselves violations of the criminal law, or by the fact that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt, inasmuch as the penalty for a violation of such injunction is no substitute for and no defense to a prosecution for criminal offenses committed in the course of such violation. This authority, which is conclusive in this court, disposes of the objection, made in this case, that if the defendants had committed the acts charged against them they were amenable to the criminal laws and should be put upon trial.

The remedy by injunction was not first applied in the United States, either by state courts or by the federal courts. Mr. Stimson, in his handbook on the Labor Law of the United States, at page 315, says that it is traced back to the leading case of Spinning Co. v. Riley, L. R. 6 Eq. 551, decided in 1868, which was prior to any of the American cases. He adds that that case did not announce any new doc-

trine, but rather the revival of a very old one, referring to the exercise of the chancellor's authority in the reign of Richard II. to repress disorderly obstructions to the course of law. Spinning Co. v. Riley was overruled by the court of chancery appeals in Assurance Co. v. Knott, 10 Ch. App. 142, in 1874; Lord Chancellor Cairns deciding (and Sir W. M. James, L. J., and Sir G. Mellish, L. J., concurring) that the court in chancery has no jurisdiction to restrain the publication of a libel, as such, even if it is injurious to property. The court, in Spinning Co. v. Riley, enjoined the issuing of placards and advertisements intending and having the effect to intimidate and prevent workmen from hiring themselves to the plaintiffs; that being the only act complained of, and the court finding that the plaintiffs were thereby prevented from continuing their business and that the value of their property was thereby seriously injured. Vice Chancellor Malin's opinion is a strong presentation of the doctrine recognized by him, but no American court, state or federal, has gone to the length of that case, nor beyond the doctrine stated by the supreme court of the United States in the Debs Case.

It conclusively appears, from the authorities above referred to, that the English courts, the American state courts, and the federal courts are in perfect harmony, and that, while they recognize the right of employés of whatever rank or degree to combine for the purpose of resisting any measures of oppression or coercion by their employers, and even for the purpose of instituting strikes and adopting other measures for their own protection or for the bettering of their condition, they are agreed that they must not interfere with the rights of employers to manage their own business in their own way, so long as they do not trespass upon the rights of others.

Counsel for defendants in this case insisted that his clients had the right as individuals to solicit and persuade employés of complainant to give up their situations, insisting, also, that the employés were under no contracts to labor for any specified period. Counsel then advanced the proposition that, if defendants had the right singly to persuade complainant's employés to quit work, they had the right to do so in companies or in mass, and that they had the right to congregate for that purpose in the public streets, and that therefore the congregating in the vicinity of complainant's mill and plant was lawful, and should not be restrained by the court. That complainant's employés were under no term contracts is, I think, established by the evidence. But the conclusion deduced by counsel, although ingenious, is altogether unsound. It is negatived by Casey v. Typographical Union, by U. S. v. Kane, by Pettibone v. U. S., by Thomas v. Railway Co., and by the Debs Case. That the defendants might, as counsel put it, peaceably and quietly persuade complainant's employés to quit work, is not, and cannot be, successfully denied. But persuasion, with the hootings of a mob and deeds of violence as auxiliaries, is not peaceable persuasion. As to the proposition that defendants were only exercising their constitutional rights, the court commends to their perusal the recent case of Garrett v. T. H. Garrett & Co., 24 C. C. A. 173, 78 Fed. 472, decided December 8, 1896. The appellants were manufacturers of snuff, known to the trade as "Gar-

rett's Snuff," and sued to restrain defendant company from using the name "Garrett" on packages and cans of snuff manufactured by it and placed upon the market for sale. It was contended for the defendant that every man has the right to the use of his own name in business, and, as to the order of injunction below restraining defendant from using white paper for its labels, that every person has a constitutional right to use white paper. The court said:

"These propositions, in the abstract, are undeniably true; but counsel for the time overlooked the fact that, wherever there is an organic law, wherever a constitution is to be found as the basis of the rights of the people, and as the foundation and limit of the legislation and jurisprudence of a government, there the mutual rights of individuals are held in highest regard, and are most jealously protected. Always, in law, a greater right is closely related to a greater obligation. While it is true that every man has a right to use his own name in his own business, it is also true that he has no right to use it for the purpose of stealing the good will of his neighbor's business, nor to commit a fraud upon his neighbor, nor a trespass upon his neighbor's rights or property; and, while it is true that every man has a right to use white paper, it is also true that he has no right to use it for making counterfeit money nor to commit a forgery. It might as well be set up, in defense of a highwayman, that, because the constitution secures to every man the right to bear arms, he has a constitutional right to rob his victim at the muzzle of a rifle or revolver."

Counsel for defendants closed his argument with a somewhat impassioned appeal to the court, coupled with the expression of his hope and confidence that the decision would not be calculated to drive his clients to become anarchists. So long as labor organizations keep themselves within the limits of law, they will not be interfered with by courts, and they will have the sympathy and good will of a vast majority of well-disposed citizens. When they exceed those limits, they will be restrained by the courts, and dealt with, whatever the consequences may be, and they will lose the sympathy and good will of the public. The extraordinary character of the appeal made to the court justifies me in adding that the courts will be ready for the emergency whenever and wherever the spirit of anarchy may manifest itself, whether within or without the lodges, and the American people, if need be, will rise in their majesty and their might, and crush it as a trip-hammer would crush an eggshell.

Upon the facts of this case, and upon the law as stated in the authorities cited, the complainant's motion for a temporary injunction will be granted. A bond of $2,000 will be required.

STATE OF TENNESSEE et al. v. QUINTARD et al.

(Circuit Court of Appeals, Sixth Circuit. May 4, 1897.)

No. 468.

1. RAILROAD FORECLOSURES—MASTERS' SALES—RIGHTS OF PURCHASER.

A bid for property at a special master's sale is only an offer to take it at that price, and the acceptance or rejection of the offer is within the sound legal discretion of the court, to be exercised with due regard to the special circumstance of the case. The acceptance of the offer is only manifested by an order confirming the sale, and, until this is done, the purchaser does not stand in the position of an innocent purchaser.

2. SAME—PURCHASER AS PARTY.
A purchaser at a master's sale becomes a quasi party to the suit, and is affected with notice of every step subsequently taken in the case relating to the purchase and the title acquired thereby.

3. SAME—RIGHTS AND LIABILITIES OF PURCHASERS.
Where, after a master's sale of a railroad, but before confirmation thereof, a third party intervened, asserting a right to have the railroad in the hands of the purchasers bound by a traffic agreement made with the receivers before the sale, and the purchaser did not then ask to be relieved from his bid, but submitted to a decree confirming the sale, and reserving the rights of the intervener for future determination, *held*, that this amounted to an election by the purchaser to take the property burdened with the contract, if the same should be upheld by the court.

4. SAME—INTERVENTIONS.
A land company incorporated for the building of towns, etc., and the "establishment and encouragement of industries," purchased large tracts of coal lands in Tennessee, and, to make them accessible, organized the H. Railroad Company to build a road connecting them with the Cincinnati Southern Railroad. Afterwards the land company contracted to sell to the state a portion of the coal lands for mining by convict labor, but with a proviso that the sale was not to take effect until the state had arranged with the Cincinnati road and the H. Company as to rates of transportation from these coal fields. Before the sale was completed, the land company, the Cincinnati road, and the H. road were all placed in the hands of receivers in foreclosure proceedings. Thereafter the receiver of the Cincinnati road made a contract with the H. Company giving the former the exclusive right to fix through rates on traffic originating on the H. road, with provisos, however, that the contract was not to take effect until the state should complete its purchase of the coal lands, and that the state should be entitled to any benefits accruing to it from the contract. The state, however, was not a party to this contract. The state subsequently made a contract with the company controlling the Cincinnati road, fixing rates of transportation for the products of the state mines on the purchased lands. The H. road having not yet been completed, the court authorized the issuance of receiver's certificates to finish the road, and at the same time empowered the receiver to execute the contract giving the Cincinnati road (or the company controlling it) a right to fix rates. This was done, and thereupon both contracts became effective, and the state proceeded to make large expenditures in developing the purchased lands. In this condition of affairs, the H. road was sold by a master in the foreclosure proceedings, and bought in for a reorganization committee. The foreclosure decree contained no provision protecting the rights of the state under these contracts, but, before confirmation of the sale, the state intervened, asking that such rights be defined and secured by the court. The purchasers did not then withdraw their bid, but merely filed an answer denying the state's right to relief, and, without invoking any action of the court upon the state's petition, suffered the entry of a decree confirming the sale, and reserving the question of the state's rights for future determination. *Held*, that in view of all the circumstances, and especially of the fact that all parties, including the purchasers, knew that these contracts were made to induce the state to complete its purchase of the coal lands, the state was entitled to intervene in its own name for the protection of its rights thereunder, though it was not a formal party to the contract between the H. Company and the receiver of the Cincinnati road; and that the purchasers of the H. road took it subject to the obligation of these traffic contracts.

Appeal from the Circuit Court of the United States for the Eastern District of Tennessee.

Geo. W. Pickle, for appellants.
W. P. Washburn, for appellees.

Before TAFT and LURTON, Circuit Judges, and CLARK, District Judge.

CLARK, District Judge. This particular litigation had its inception in a petition filed by the state of Tennessee in the consolidated causes of the Central Trust Company of New York against the Harriman Coal & Iron Railroad Company, and J. H. Whitemore et al. against the Harriman Coal & Iron Railroad Company. Prior to August, 1893, the East Tennessee Land Company, a real-estate association, had been organized as a corporation under the general incorporation law of the state of Tennessee, with power and for the purpose of "locating, establishing, and building of towns and cities, the purchase, improvement, development, and sale of property, and the establishment and encouragement of industries." It was a chief aim and ambition with the original promoters and shareholders in this great company to establish in Roane county, Tenn., a prohibition city, and thereby furnish to the country an object lesson in prohibition and the good which would result therefrom. This was an undertaking which at once secured the interest and co-operation of a class of people of great intelligence and culture. Accordingly, large bodies of mineral lands were purchased and conveyed to the great company, and the city of Harriman founded at the junction of the Harriman Coal & Iron Railroad with the C. S. Railroad, a line extending from Cincinnati to Chattanooga, Tenn., and then under lease for a term of years to the C., N. O. & T. P. Railroad Co. The development of these large bodies of mineral lands, as well as the establishment of the city of Harriman, required the use and exercise of corporate franchises and powers beyond such as could, under the statutes of the state of Tennessee, be vested in one corporation. Accordingly, subsidiary corporations were organized, with powers suitable to carry forward to successful results the large scheme of the principal corporation. Most important among such subsidiary corporations was the Harriman Coal & Iron Railroad Company, organized for the purpose of building a railroad to connect the coal fields of the Big Brushy Mountain with the East Tennessee, Virginia & Georgia, and the Cincinnati Southern Railroads and with the city of Harriman, in order thereby to furnish means of transportation for "coal, coke, stone, timber, tan bark, and other mineral and substances found in abundance in the said Big Brushy Mountain district." This contemplated railroad was to extend from its junction with the Cincinnati Southern, at the city of Harriman, to the junction of Stogdills Creek with Crooked Fork, in Morgan county, Tenn., near which last point the state of Tennessee finally purchased about 9,000 acres of mineral lands, for the purpose of erecting thereon its mining penitentiary, in order that the state convicts might be employed in developing and operating coal mines; the state of Tennessee having abandoned the previously existing lease system of dealing with its convicts, and determined, by proper legislation, to work the penitentiary convicts through a penitentiary commission in opening up and operating some of the undeveloped coal fields in the state. The penitentiary commission, under legislative authority,

and in execution of the new scheme, advertised for mineral lands, being authorized to expend a sum not exceeding $80,000 for the purchase of lands of this character on which to establish its mining penitentiary. Among other properties offered to the commission, the East Tennessee Land Company proposed to sell the Big Brushy Mountain coal fields, before referred to, and the negotiations which followed resulted in the execution of a memorandum contract between the state of Tennessee, acting through its committee, and the East Tennessee Land Company. This contract is dated August 1, 1893. The quantity of land to be conveyed was 9,000 acres, at the price of $80,000. The contract provided expressly that it was not to go into effect or be binding upon the state of Tennessee until certain conditions were performed. The conditions which more immediately affect the matter now under consideration are as follows:

First. "Nor is the same to go into effect unless, within twenty (20) days from this date, a bond is executed to the state in the penal sum of one hundred and sixty thousand dollars, conditioned that the Harriman Coal & Iron Railroad shall be completed from its present terminus to a point to be selected, at or near the junction of Stogdills creek with the Crooked Fork, by the committee or any engineer selected by it, as the place where the sidings for coal mines to be opened by the state are to be located; said road to be completed to that point within six (6) months from this date, and satisfactory arrangements made as to equipping said road for operation."

Second. "This contract is not to go into effect until the committee on behalf of the state have arranged and agreed with the companies owning and controlling the Cincinnati Southern Railroad and the Harriman Coal & Iron Railroad, as to rates for transporting coal, coke, and the other products of said mines to be located on said lands, as well as the charges for carriage of persons and property to and from said mines over their said lines of railway."

In this condition of affairs, and before the sale from the East Tennessee Land Company to the state of Tennessee was consummated, the East Tennessee Land Company, the Cincinnati Southern Railroad, under lease as before stated, and the Harriman Coal & Iron Railroad Company, were placed in the hands of receivers under foreclosure bills filed in the United States courts against these companies respectively. In June, 1894, a contract was executed between the Cincinnati, New Orleans & Texas Pacific Railway Company, through Mr. Felton, its president and receiver, and the Harriman Coal & Iron Railroad Company, being a traffic contract in regard to shipments to come over the Harriman Coal & Iron Railroad. Among other provisions in the contract were the following:

"Now, therefore, it is agreed, between the parties hereto that, in case the said state of Tennessee shall purchase the said lands hereinbefore referred to, then and in such event the contract herein contained shall be binding upon both parties hereto upon the terms and conditions hereinafter mentioned, and which are as follows: (1) This agreement covers and applies to all freight or passenger traffic having its point of origin or point of ultimate destination on the line of the Harriman Coal & Iron Railroad Company, northwardly from and beyond De Armond Junction, Tennessee, which passes through Harriman, Tennessee, having also its destination or origin beyond Harriman." "(3) It is agreed by and between the parties hereto that the party of the first part shall have the sole and exclusive right to fix all rates upon the traffic hereby provided for, provided, however, that such party shall assume and pay all expense incident to preparing and publishing such rates." "This contract shall remain in force until the expiration or other determination of the present lease from the city of Cincinnati to the Cincinnati, New Orleans & Texas Pacific Railway Com-

pany, of the railway operated by said company. The state of Tennessee shall be entitled to any benefit or advantage that may accrue to it from the operation of this contract, but shall not be liable thereon."

And in August, 1894, a contract was executed between the Cincinnati, New Orleans & Texas Pacific Railway Company and the state of Tennessee, by which freight rates on the product of the state mines to be opened and operated were fixed. Among other provisions materially affecting the matter now under consideration, the following may be set out:

"It being recognized that the primary and principal object and purpose of this contract is to provide that the party of the second part shall at no time be under any unjust disadvantage, as compared with any other mine located on the lines of the party of the first part, in regard to reaching competitive markets, and disposing of its coal in such markets, the party of the first part hereby contracts that, during the tenure of this contract, it will at all times, so far as it may have the right to do, or so far as it may be within the scope of its influence with connecting and other carriers and transportation lines, to provide and maintain such lawful tariffs and rates on coal, and other products of said mines, distances and other conditions considered, as will enable the party of the second part to meet all fair and legitimate competition in the sale of such products, at all points that can be reached by the lines of the party of the first part and its connections, so far as the rates of transportation bear an influence on the meeting of such competition; it being the purpose of this agreement that the party of the first part shall, in all legitimate ways, in the fixing and maintenance of rates for transportation, aid and assist the party of the second part in marketing the product of its mines."

It will be observed that the previous contract between these two railroad companies expressly conferred upon the Cincinnati, New Orleans & Texas Pacific Railway Company the power to fix a through freight rate for shipments coming over the line of the Harriman Coal & Iron Railroad Company, and it was pursuant to the authority given that company in said contract that it entered into this contract with the state of Tennessee. It will also be noticed that the reason why the state officials were anxious to secure a contract for freight rates which would continue during the lease of the Cincinnati Southern Railroad was to avoid being put at a disadvantage by unfavorable rates in reaching competitive markets, for otherwise the state would have been left completely at the mercy of the Harriman Coal & Iron Railroad Company as to local rates over its line, there being no competitive line or other means of transportation for the products of the Big Brushy Mountain coal fields.

November 21, 1893, Whitemore's bill was filed against the Harriman Coal & Iron Railroad Company, being a general creditor, and insolvent bill to wind up the affairs of the company. Thereafter, May 7, 1894, the Central Trust Company of New York, trustee, in a mortgage executed by that company to secure certain outstanding bonds, filed its foreclosure bill in the Northern division of the Eastern district of Tennessee; and the two causes, being in the same court, were subsequently consolidated, and such steps were had that a foreclosure decree was pronounced, the property put up at a special master's sale, and bid off by E. A. Quintard, as trustee. This bid was subsequently assigned by Quintard to William Neisel, and by Neisel to Isaac K. Funk and others, they being members of a reorganiza-

tion committee, which will be noticed further on. At the time the Harriman Coal & Iron Railroad Company went into the hands of a receiver, its line of railroad was in process of construction, but not yet completed. It became evident that, unless it could be in some way fully constructed, the amount that had already been invested would become a total loss, and without means of transportation it was certain the state could not go forward with its mining enterprise. It was also manifest that the principal transportation business which would be furnished to this line of railway, and by which it could be made successful, would be the product of the state mines. In this situation of affairs, and while the suits against the company were pending, the receivers appointed under those suits made application to the court by petition filed June 12, 1894, for authority to issue receivers' certificates necessary to complete the line of railway, and also for authority, as receivers, to execute the traffic contract which had previously been entered into between the company of which they were receivers and the Cincinnati, New Orleans & Texas Pacific Railway Company, before referred to. In that petition the receivers state:

"Your orators further show that the said contract between the state of Tennessee and the East Tennessee Land Company has been so far perfected that the same is in full force and effect, to be carried out, however, only upon condition that the said railroad shall be completed to the said coal fields from its present terminus. Your orators further show that it is the purpose of the state of Tennessee to erect its penitentiary mines upon said tract of land near the junction of Stogdills and Crooked Fork creeks, in said Morgan county, and to mine therefrom coal, quarry stone, and make coke, and sell said coal, stone, and coke upon the general market, and that all the product of said mines and quarries will be transported over the line of the Harriman Coal & Iron Railroad to its junction either with the East Tennessee, Virginia & Georgia Railroad, or the Cincinnati Southern at Harriman, Tennessee, if destined to points beyond Harriman, and that said traffic will be large, and will afford good earnings upon all the investments that have been made or will be required to be made to complete said road, and to put the same in operation, for the purpose of carrying the traffic to and from the said state mines so to be erected as aforesaid."

A copy of the contract between the two railroad companies executed in June, 1894, was made an exhibit to this petition, containing, as we have seen, a provision that the state of Tennessee should be entitled to any "benefit or advantage that may accrue to it from the operation of this contract." The question whether it was advisable and desirable, in the interest of the Harriman Coal & Iron Railroad Company and others, that the authority asked by the petition should be granted, was referred to a special master in chancery, and, upon his favorable report, full authority was granted to the receivers to issue the construction certificates desired, and to execute the traffic agreement. It is to be borne in mind that this contract had been previously executed between the two corporations, and nothing further was necessary or desirable to make it binding and effective on those companies. The receivers, pursuant to the authority thus conferred, duly executed the contract as receivers; and the state of Tennessee proceeded with the prosecution of its work, and has expended large sums of money in improvements

and developments on the lands purchased, and is now engaged in coal mining as originally contemplated. In the decree directing a sale of the railroad, no provision or reservation was made in regard to the rights of the state of Tennessee under the two contracts before referred to. After the property was bid off by Quintard at the special master's sale, but before confirmation of the sale or any action by the court, the state of Tennessee intervened by this petition in the consolidated causes, and sought to have the rights of the state under said contract defined and set up by proper decree, and to have such rights declared obligatory upon the purchasers of the railroad. The purchaser, Quintard, waived process, entered his appearance, and answered, denying the state's right to any relief, and denying in a somewhat general and evasive way the charges of the petition. The opinion of the circuit judge shows that he entertained the view that the state intervened too late, because its petition was not filed before the decree directing the sale of the property, and that upon this ground, without going into the merits of the question, the petition was dismissed, with costs. From that decree the state has prosecuted this appeal, and assigned errors. No other method has been suggested by which the state could have asserted or secured an adjudication of its rights. It is certain that if the state had rested until a confirmation of the sale, and payment of the purchase price, and certainly after the property might have passed into the hands of innocent holders, great difficulty would have been found in maintaining its rights, if any, under these contracts. We are clear that the petition was properly and seasonably filed. The cases, both federal and state, fully establish the rule that Quintard's bid for the property at the special master's sale was only an offer to take the property at that price, and that acceptance or rejection of that offer was within the sound legal discretion of the court, to be exercised with due regard to the special circumstances of the case. The acceptance of his offer could only have been manifested by an order confirming the sale, and, until that was done, he acquired no title, and there was in his position at the time this petition was filed no element of an innocent purchaser. Camden v. Mayhew, 129 U. S. 73, 9 Sup. Ct. 246; Blossom v. Railroad Co., 3 Wall. 196; Mayhew v. Land Co., 24 Fed. 205; Reese v. Copeland, 6 Lea, 190.

It is also settled that the purchaser, by his bid, becomes a quasi party to the suit, and is affected with notice of every step subsequently taken in the case relating to the purchase and the title acquired thereby. Davis v. Trust Co., 152 U. S. 594, 14 Sup. Ct. 693; Kneeland v. Trust Co., 136 U. S. 89, 10 Sup. Ct. 950; Stuart v. Gay, 127 U. S. 518, 8 Sup. Ct. 1279; Blossom v. Railroad Co., 1 Wall. 655; Muse v. Donelson, 2 Humph. 169; Allen v. East, 4 Baxt. 308; Reese v. Copeland, 6 Lea, 193. And this rule holds good even as to the sureties of the purchaser, executing with him notes for deferred payments on the purchase price. Deaderick v. Smith, 6 Humph. 139; Munson v. Payne, 9 Heisk. 672. Such part of the purchase price as may have been paid in cash at the time of sale was still in the registry of the court, and, like the purchaser's bid, completely under the control of the court. In this state of affairs, the state's petition,

as we have seen, was filed, and the purchaser, Quintard, given full and distinct notice of the rights asserted by the state. The sale not yet having been confirmed, it was competent for him, upon said petition being filed, to have sought to be relieved from his purchase, if unwilling to take the property subject to the state's rights, if any. He did nothing of this kind. On the contrary, pending this litigation with the state, the sale was confirmed by order of the court, the decree of confirmation reciting that such action was had after due notice to all parties to the cause of the application to confirm. The decree contained the following express reservation:

"But this decree of confirmation is made subject to whatever rights the state of Tennessee or the penitentiary commissioners may have upon the hearing of their petition herein already filed."

The purchaser, without invoking any action of the court whatever in view of the state's petition, has gone forward, and completed the sale, by the payment of the purchase price; and the purchase price, except a comparatively small balance, has been disbursed in the payment of the construction certificates and other claims having priority. In view of this situation, we have no hesitation in holding that the purchaser, with full knowledge, has elected to take the property bid off, subject to the obligations of these traffic agreements, provided there exists any obligation in favor of the state. And we are thus brought to the question of whether or not these contracts confer, and were intended to confer, upon the state, a right to their enforcement against this railroad, and whether the property passed to the purchaser by the sale subject to such right; and upon this point we entertain no doubt. It will conduce to a better understanding of the case and the question if we keep in view the main facts hereinbefore recited, which led up to making these contracts, and the relation of all parties to the same, and their interest therein. It would be entirely without the support of reason to suppose that the state's officials would have manifested the precaution which they did to secure a contract for reasonable freight rates extending over a period of some years, binding only on companies which had become insolvent, and were being wound up, or that these officials would have been content with the execution of such contract by the receivers of the court, with the understanding that it might at any time, however short, be ended with the termination of the receivership. The proposition that the parties interested in the state prosecuting its plan to a successful result understood that the obligations of the contract entered into by the receivers under authority of the court should last no longer than the receivership is equally unwarranted. The only just interpretation which can be placed upon the procedure which was had is that it was intended to subject this railroad, in the hands of a receiver, to the obligations of the traffic agreement in which the state was interested. Nothing short of this would have been an adequate inducement to the state to carry into effect its mining plan, and to make the large expenditures which would be necessary for that purpose. And the large freight traffic that would be thereby supplied to this line of railway, perhaps far exceeding all other sources of business combined, was fully sufficient

to justify those interested in the railroad property in desiring the state to have the full benefit of the long time contract which it demanded. We have not the slightest doubt that it was so understood on all hands. That this view is a just one is made manifest when we consider another aspect of this case. It is disclosed by this record that the East Tennessee Land Company, the vendor of the state, owned a large majority of the stock in the railroad company, and controlled and directed it. It further appears from the record that there has been put on foot a plan of reorganization, by which it is intended to bid in at foreclosure sales the large properties of the East Tennessee Land Company, as well as the line of railway in question, and in that way save all or a part of the original investment in the capital stock of these companies, by the shareholders and security holders. We have no doubt that the interests which were represented in the sale of the coal lands to the state, and in making the traffic agreement between the two railroads, and causing its execution by the receivers under authority of the court, are substantially the same interests now represented by this reorganization committee, in taking and holding title to the railroad. Among other parts of the record from which this appears, we may mention a circular announcement of this fact, made exhibit to the deposition of H. L. Corey. It is insisted by counsel for the defendants that this exhibit, with its contents, is incompetent; but no ruling upon the objection was had in the court below, and we cannot do otherwise than treat it as part of the record. Dr. I. K. Funk, a gentleman of high character and large influence, is chairman of this reorganization committee, and, as such, he officially issued and sent abroad the circular referred to. Among other parts of this announcement are the following:

"Important News.

"To Investors of the East Tennessee Land Company:

"The Railroad Purchased—Money Wholly Subscribed.

"A most important part of the work of reorganization has now been accomplished. The railroad has been purchased, the money fully subscribed, and all of the stock (amounting to $600,000) now belongs absolutely to the reorganization committee. This is settled in the ownership of this stock. The reorganization committee has assets of solid value amounting to some hundreds of thousands of dollars. No candid person fully acquainted with the facts will question this statement.

"A Monopoly.

"The railroad has the absolute monopoly for railroad transportation for the enormous coal fields of the Brushy Mountain region. These deposits of coal are of extraordinary proportions and value. As the purchase of the railroad is now an accomplished fact, the money to pay for it being arranged for, we trust that we run no risk of being accused of 'booming' if we tell you of the great value of this railroad. Now, no harm can come to you even though we should overjudge the value of this unique railroad property."

The document then goes on to state that a foreclosure sale of the land company (meaning thereby the East Tennessee Land Company) properties has been ordered, and warning the original investors of the East Tennessee Land Company of the importance of being ready to bid in that property also. The following statement is found:

"If we are not prepared to buy the lands at the foreclosure sale, they will be sacrificed, and the investors in the old company will lose practically all of the million dollars that have been invested in these lands. A creditors' syndicate is being talked of to buy in these lands for its own benefit, it being assumed that the reorganization committee will not be ready to purchase. If the syndicate buys or outsiders buy, all the money invested by the stock and security holders of the old company in lands will be practically lost. It will be a most shortsighted thing for the stockholders and security holders to permit this tremendous loss, for, by a united effort, it can be prevented in a large part, and possibly wholly."

Attention is then directed to the rich and promising oil and gas discoveries which have been made upon this great body of land called the "Cumberland Plateau." This circular, of course, was designed mainly to secure subscriptions to the proposed plan of reorganization. After setting out in detail many other substantial grounds on which the reorganization should be supported, the document concludes with a touching and eloquent appeal to that sentiment which was expected to establish and make successful the city of Harriman, in language as follows:

"In all the bitter disappointments, in the many troubles that have come upon us, we must not forget the original aim in this whole investment,—prohibition an object lesson to the country. It is chiefly because of this that your chairman has wrought as he has during the past eighteen months. Whatever our losses may be, prohibition still remains an issue of overwhelming importance. During one of his great battles, Napoleon, riding up to his chief of staff, asked how the battle was going. The officer replied, 'Sire, this battle is lost, but [pointing to the sun, still an hour high] there is time enough to win another.' The ranks were formed, and a decisive victory was won. We have lost a battle at Harriman, but there is time enough yet to win, on that same battle field, a victory that will help the entire nation, and one that will go into history. With a heart within and God o'erhead, let us go forward."

Keeping in view the surrounding circumstances, we do not doubt that the state's officials accepted the court's action in authorizing the receivers to execute the contract previously made between the railroad companies, as assurance that the court, in its subsequent dealing with this property, would make good to the state its right to the freight rates secured to it by such contracts. We think these officials were well warranted in the belief that the court would do this, and that they have acted all along upon that assumption. The receivers were the officers, "the mere arm" and agents, of the court in the administration of the trust then in hand, and any obligation assumed by them might justly be regarded as an obligation of the court. And, certainly, a court is under the highest possible obligation to require full performance of every obligation incurred with the court's sanction. And parties and officers in a case before the court should be allowed to create no just expectations which the court does not fully satisfy. Felton v. Ackerman, 22 U. S. App. 154, 9 C. C. A. 457, and 61 Fed. 225; Wabash, St. L. & P. Ry. Co. v. Central Trust Co. of New York, 22 Fed. 269; High, Rec. §§ 1, 2, 175; Railroad Co. v. Hoechner, 31 U. S. App. 644, 14 C. C. A. 469, and 67 Fed. 456.

In view of what has been said, and without pursuing the discussion further, we conclude that the two contracts now under consideration are to be construed together, both of them having been ex-

ecuted in part, for the purpose of giving the state such a rate of freights as would induce it to proceed with the purchase of the property and development of the coal mine, with the benefits resulting therefrom to the railroad company, and that so construed, in the light of all the surrounding circumstances, these contracts conferred upon the state the right to the traffic rate stipulated for, and that to this extent the state may in its own name, in a court of equity, enforce the obligations of these contracts, the first as well as the second, although not a formal party to that contract. Undoubtedly, the primary object in the execution of these contracts by the railroad company, and subsequently the execution of the one by the receivers under authority of the court, was to confer upon the state a contract right in respect to freights such as would induce the state to act as it then contemplated doing; and the Harriman Coal & Iron Railroad will manifestly receive the benefits arising, and hereafter to arise, from the plan of operations thus entered upon by the state. So, too, the interests which were benefited by the sale of the coal fields to the state, being, as we have seen, the same interests now represented in the purchase of the road, we are clear that the railroad should be burdened with the obligation of the contracts so far as they operate in favor of the state. Upon the facts, no question is or could be seriously made upon the power of the court to sanction a contract of this character by the receivers. Nor is there room for doubt that the court's discretionary power was in this case properly exercised. Kennedy v. Railroad Co., 5 Dill. 519, Fed. Cas. No. 7,707; Mercantile Trust Co. v. Missouri, K. & T. Ry. Co., 41 Fed. 8. It results from this view that the circuit court should have pronounced a decree declaring the state's rights accordingly, and further adjudging that the purchase of Quintard was subject to the terms and obligations of these contracts, so far as they operated in favor of the state; and as the purchasers denied such right, and resisted the relief sought, the decree should have been with costs against the defendants. Reversed, and case remanded, with directions to enter decree in favor of the state, and for such further proceedings as may be necessary not inconsistent with this opinion.

HYER v. RICHMOND TRACTION CO. et al.

(Circuit Court of Appeals, Fourth Circuit. May 14, 1897.)

No. 198.

CONTRACTS—ILLEGALITY—PUBLIC POLICY.

An agreement between rival applicants for a street-railway franchise to combine in order to prevent competition between themselves or by others in procuring the franchise, and to avoid the imposition of conditions by the municipal authorities, is void as against public policy; and equity will not interfere to compel one of the parties to share with the others the fruits of their combination.

Brawley, District Judge, dissenting.

Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

This case comes up on appeal from the circuit court of the United States for the Eastern district of Virginia. The cause was heard below upon demurrer to the bill. The bill states, in substance, the following facts: The complainant is a civil engineer, who has been engaged in promoting and constructing street railways in various cities of the United States. His attention was attracted to the city of Richmond as a promising field for his enterprise, and, having secured the assurance of assistance from capitalists, he made application to the city council of that city for the franchise of a street railway through Broad street. He succeeded in obtaining an ordinance granting him this franchise for a company to be called the Richmond Conduit Railway Company. But the ordinance as it finally passed did not contain certain terms which he had asked for, and had deemed essential. He therefore asked amendments and modifications of the ordinance, and received assurances from prominent officials that the desired amendments would be made, provided that a deposit of $10,000, as a guaranty of good faith, should be made in one of the banks of Richmond. This deposit was, in fact, made by him on 17th July, 1895, and shortly thereafter he went to New York to obtain from the capitalists who were at his back the financial assistance he required. While he was engaged in these efforts to secure his franchise and to amend the ordinance, he was aware that he had active competition from other parties, who sought the same franchise for the Richmond Traction Company. This competition was led by one P. B. Shield, a lawyer in Richmond. These competitors, however, had no communication with each other prior to the departure of complainant for New York, and, indeed, there was no personal acquaintance between them. The complainant regarded himself as having altogether the inside track, and appeared to himself to be master of the situation. Stewart & Co., of New York, were the capitalists on whose assistance complainant relied. When he left Richmond and went to New York, as above stated, he called at the office of Stewart & Co., to complete his negotiations with them, and found that P. B. Shield was at that moment in private conference with the head of the firm, S. H. G. Stewart. During the day Shield and the complainant separately had interviews with Mr. S. H. G. Stewart, and finally Mr. Stewart, after telling the complainant that Shield's purpose was to get some recognition for the promoters of the Richmond Traction Company at the hands of the promoters of the Richmond Conduit Company, advised complainant to do so. He urged that the rivalry between the conduit company and your orator and his associates, on the one hand, and the traction people and the said P. B. Shield and his associates, on the other hand, and antagonism of this character, would probably result in the defeat of both their schemes, or the passage of the franchise in favor of one of the two competitors loaded with such onerous and exacting conditions that no capitalist could be induced to put money in the enterprise; and he therefore urged complainant to shake hands with said Shield, to unite forces with him upon one of the two ordinances,—the conduit ordinance or the traction ordinance,—and thus to secure and share the fruits of victory, instead of the disappointment and bitterness of defeat. The advice of Mr. Stewart was accepted. The late rivals became allies. They met in conference in New York, came to a full understanding, and, as its result, embodied their agreement in a letter to Mr. S. H. G. Stewart:

"New York, August 9th, 1895.

"S. H. G. Stewart, Esq., 40 Wall Street, City—Dear Sir: We, the undersigned, L. H. Hyer, of Washington, D. C., and Phil. B. Shield, of Richmond, Va., have this day entered into the following agreement: That both of us, being interested in the procuring of a franchise for and the construction of a street railway on Broad street, in the city of Richmond, Virginia, with collateral lines, have made the following agreement: That we hereby bind ourselves, in our own behalf and for our associates, mutually to co-operate one with the other in securing a franchise for said railway, and to divide equally between us and our associates whatever may be realized from the enterprise, first deducting from said amount whatever actual expenses may have been incurred by either side, such expenses to be paid out of the first money realized from said enterprise. It is further agreed between us that the deposit already made with the State Bank of Richmond, in Richmond, Virginia, by Mr. L. H. Hyer or his associates, is to stand and remain intact as it now is for the pur-

pose of securing the franchise aforesaid, subject to any conditions for the withdrawal thereof made by Mr. Hyer with the depositor after the seventeenth day of August, 1895; and, further, it is agreed that the application and franchise to be presented to the common council of the city of Richmond shall be that of the Richmond Traction Company, for the building of an overhead trolley railway or cable system. Among ourselves we will decide what names are proper to be used in the franchise, and the policy we will use in procuring the same.

"Yours, very respectfully, [Signed] L. H. Hyer.
"[Signed] Phil. B. Shield."

The bill alleges that Shield was the agent of and acted for all the promoters of the Richmond Traction Company who were such at the date of this complaint; and that all persons who have come into the enterprise since that date, having received the benefit of the contract, are also bound by it. This contract having been made, all efforts to perfect the ordinance granting franchises to the Richmond Conduit Company ceased, the ordinance was withdrawn, and an ordinance was passed authorizing the construction and operation of a street railway within the limits of the city of Richmond by the Richmond Traction Company. Shield broke off all relations with the complainant after he had obtained this contract, and sold his interest in the enterprise to certain financiers in Richmond. The ordinance granted the franchise to the Richmond Traction Company, composed of John W. Middendorf, John L. Williams, John S. Williams, Everett Waddey, Reuben Shereffs, Philip B. Shield, Charles T. Child, and W. F. Jenkins. The ordinance was passed on 26th August, 1895. The complainant, on the afternoon of that day, caused to be published a notice in the Richmond State newspaper of the nature and character of his claim on the franchise of the traction company; that is to say, that he was entitled to one-half thereof when it was granted, in consideration of the fact that he had caused the withdrawal of the Richmond Conduit Company's application for franchises in favor of the traction company. This notice, either because it was too late, or for some other reason, did not affect or stop the action of the Richmond council. He also gave notice to each of the persons named in the ordinance of his contract with Shield and his claim thereunder. Upon taking this franchise for the Richmond Traction Company, the persons named in the ordinance undertook to form a corporation and issue shares of stock with a capital of $300,000, with full notice or means of notice of complainant's rights in the premises. That said corporation was not formed in accordance with the laws of Virginia in such case made and provided. That notwithstanding they selected a board of directors, all of whom but one—A. B. Addison—had notice of complainant's rights and claims. And that the directors determined to execute, and did in fact execute, a mortgage to the Maryland Trust Company of all the franchise and property of said traction company to secure 500 bonds of $1,000 each, but that said mortgage itself is void as not executed by lawful authority, or in accord with the laws of Virginia in such case made and provided.

The complainant, after filing his original bill, craved and obtained leave to file amended and supplemental bills. The prayer of the original bill is as follows: "That each and all of said parties defendant, their agents and servants, be enjoined and restrained from transferring or incumbering the franchise or property of the said Richmond Traction Company, or any part thereof, or any interest therein, or from issuing any stock or bonds of said company, or in any other way borrowing money for the use of said company upon its franchise or property; that your orator may be decreed by this honorable court to have valid right and claim to a full one-half interest in and under said contract of August 9th, and, upon the basis of said contract, to have such right and claim to a full one-half interest in the said Richmond Traction Company's franchise, enterprise, property, and stock; that specific execution of said contract be decreed your orator, and enforced under the power and process of the court; that all parties defendant be required and compelled by the process of the court to do and perform every act which may be requisite and necessary to the vesting of your orator's full rights in the premises." The amended bill prays that this prayer of the original bill may be read, treated, and granted as if again fully repeated, and further prays that the so-called subscription to the capital stock of the Richmond Traction Company be declared illegal, null, and

void; that the scrip issued be called in and canceled; that the organization of the company based thereon be declared illegal, null and void, and vacated; that all transactions at any meetings of the so-called stockholders and directors be declared null and void, especially the authorization, execution, and issue of the bonds and the mortgage to the Maryland Trust Company of Baltimore, and that all the bonds be called in and canceled; that all the stockholders and directors who participated in these matters, except Addison, be declared wrongdoers, conspiring to hinder, delay, and defraud complainant, and liable in damages to him for all losses he may suffer in the premises; that they be required to do whatever may be necessary to discharge the Richmond Traction Company and franchise from the consequences of the organization of the said company, and from all contracts, debts, and liabilities contracted in the name of said company; that the Maryland Trust Company be enjoined from acting as trustee under the mortgage, and from authenticating any of the bonds, or issuing, delivering, or selling the same to any one, and from paying over to any one proceeds of sale of any bonds heretofore sold. And "that the said Richmond Traction Company, its officers, directors, and all others acting, or purporting to act, in its name, may be enjoined and restrained from entering into any contract or incurring any debt or liability in the name of the said Richmond Traction Company, or exercising any of the rights, powers, functions, or privileges of the Richmond Traction Company; that a receiver may be appointed, pending the determination of this cause, to take charge of all of the aforesaid bonds, of all the proceeds from the sale of such of them as may have been sold or otherwise disposed of, and of all the property and assets of the said Richmond Traction Company of every character and wherever situated; and that all proper inquiries may be made, accounts taken, and decrees entered. And your orator further prays that he may have and be granted such other, further, general, and complete relief as may be agreeable to equity and the nature of his case." The defendants demurred to the bill, setting forth nine grounds of demurrer. The first and third go to the jurisdiction of a court of equity, in that complainant has a plain, adequate, and complete remedy at law. The second denies the jurisdiction, because of the citizenship of the parties. These three grounds the court below overruled. The fourth ground is as follows: "(4) That the contract and agreement set forth in said bill as the sole cause of action of said complainant is against public policy, and null and void, and no court of equity will enforce the same." This ground of demurrer the court below sustained, and thereupon dismissed the bill, the remaining six grounds of demurrer assigned by the defendants not being considered or determined by the court. Leave was granted to complainant to appeal, and the cause is here on assignments of error. The first assignment of error goes to the ruling of the court below that the contract sued upon is void as contrary to public policy. The second assignment of error asserts error in the court in not overruling all the grounds of demurrer filed by defendants, and in not granting the relief prayed. The third and fourth are too general and vague, and will not be regarded.

Robert Stiles and A. L. Holladay, for appellant.

W. Wirt Henry and George Whitelock, for appellees.

Before FULLER, Circuit Justice, SIMONTON, Circuit Judge, and BRAWLEY, District Judge.

SIMONTON, Circuit Judge (after stating the case as above). The question in this case is: Is the contract set forth in the bill as the sole cause of action such a contract as a court of equity will enforce? There were two competitors before the municipal authorities of Richmond, each seeking for himself, upon the best terms he could, the grant of a street-railway franchise. Apparently both of them were promoters,—that is to say, were without sufficient capital themselves, depending upon securing the aid, co-operation, or purchase of capitalists. The competition evidently was bitter and hostile, for

the competitors had no communication whatever with each other. The complainant was satisfied that he had "the inside track," and was "master of the situation." With this high hope and encouragement, he sought his capitalist in New York, to obtain the fruition of his efforts. There he unexpectedly meets his rival in close conference with the capitalist. Under the advice of this capitalist, he lays aside his rivalry, and the competitors become allies, and all competition between them ceases. The reasons which induced him were that the antagonism would probably result in the defeat of both, or that, before the franchise was obtained, it would be loaded with such onerous and exacting conditions that no capitalist could be induced to put money in the enterprise. The result of the advice was the contract in question. By this contract complainant and his rival joined hands, withdrew all competition, agreed to co-operate in securing a franchise for a street railway from the municipal authorities of Richmond, and to divide whatever was realized from the enterprise, first deducting expenses incurred by either side. They agreed to use, so far as it went, the advantage of complainant's deposit in a Richmond bank, and the franchise to be asked for was that of the Richmond Traction Company for the building of an overhead trolley railway or cable system. Adding these words: "Among ourselves, we will decide what names are proper to be used in the franchise, and the policy we will use in procuring the same." The effect of this reconciliation of interests was to prevent all competition between the rival promoters; to shut off, as far as they could, all possible competition from others, which might result in the defeat of both; and to avoid the imposition of conditions by the municipal authorities, which the promoters, and especially capitalists, might consider onerous and exacting. The circuit court which tried the case was of the opinion that the contract was against public policy.

A text writer (Greenhood) states the rule to be this:

"Any agreement which, in its object or nature, is calculated to diminish competition for the obtainment of a public or quasi public contract to the detriment of the public or those awarding the contract is void." Greenh. Pub. Pol. p. 178, Rule 172.

In Pingry v. Washburn, 1 Aiken, 264, the court held that an agreement on the part of a corporation to grant to individuals certain privileges in consideration that they will withdraw their opposition to the passage of a legislative act touching the interests of the corporation is void as against public policy, and prejudicial to correct and just legislation.

In Hunter v. Nolf, 71 Pa. St. 282, a contract between two candi dates for the office of United States assessor that one should withdraw, and, if the other were appointed, they should divide profits, was recognized and treated as against public policy, and void. To the same effect is Meguire v. Corwine, 101 U. S. 108.

In Smith v. Applegate, 23 N. J. Law, 352, a note given to a person in consideration that he withdrew all opposition to the opening of a road was held void for the same reason.

The supreme court of Massachusetts in Gibbs v. Smith, 115 Mass. 592, clearly marks the line in an analogous case:

"An agreement between two or more persons that one shall bid for all upon property about to be sold at public auction, which they desire to purchase together, either because they intend to hold it together or afterwards to divide it into such parts as they individually wish to hold, neither desiring the whole, or for any similar honest or reasonable purpose, is legal in its character, and will be enforced. But such an agreement, if made for the purpose of preventing competition, and reducing the price of the property to be sold below its fair price, is against public policy, and void."

A citation and examination of the very many cases on this fruitful subject would run this opinion, already too long, into an unreasonable length. Any effort which stifles competition, or prevents a fair and reasonable price for property, is against public policy. Especially is this the case when the property is a public or quasi public franchise. In the case at bar there were two bidders before the municipal authorities of Richmond for the franchise of a street railway. Naturally and normally that competitor would receive the franchise who made the greatest concession for the public welfare. The competition was active. Its tendency was to promote the public interest. It was withdrawn by the coming together of the parties, who agreed to abandon it for fear that they would neutralize each other, and also for fear that the passage of the franchise in favor of one of the two competitors would be loaded with such onerous and exacting conditions that no capitalist could be induced to put his money in it. In other words, the competition would induce great and extraordinary concessions for the public good. To prevent this, it was abandoned. Among themselves they would decide what names to be used in procuring the franchise, and the policy to be used in procuring it; that is to say, there being but one contractor in the field, the promoters themselves could, in the absence of competition, decide to whom the contract should be awarded, and could, in some measure, dictate the terms and concessions to be used in procuring the franchise. "The true inquiry is, is it the natural tendency of such an agreement to injuriously influence the public interests? The rule is that agreements which, in their necessary operation upon the action of the parties to them, tend to restrain their natural rivalry and competition, and thus to result in the disadvantage of the public or third parties, are against the principles of sound public policy, and are void." Atcheson v. Mallon, 43 N. Y. 147. The conclusion is not unreasonable that the contract was against public policy and void.

But it is contended that, if this be admitted, the complainant is still protected by the doctrine laid down in Brooks v. Martin, 2 Wall. 80, recognized in Farley v. Hill, 150 U. S. 576, 14 Sup. Ct. 186, and in the dissenting opinion in Burck v. Taylor, 152 U. S. 668, 14 Sup. Ct. 696; Armstrong v. Bank, 133 U. S. 467, 10 Sup. Ct. 450. The principle decided in these cases is:

"When several persons enter into an illegal contract for their own benefit, and the illegal transaction has been consummated, and the proceeds of the enterprise have been actually received, and carried to the credit of one of such parties, so that he can maintain an action therefor without requiring the aid of the illegal transaction to establish his case, he may be entitled to relief." McCrary, J., in Cook v. Sherman, 20 Fed. 170.

See, also, Jackson v. McLean, 36 Fed. 217.

This construction by Judge McCrary is sustained upon examining the case of McBlair v. Gibbes, 17 How. 233, which is the leading case on which this principle depends. In that case, and in all the quotations cited to support it, the cause of action was not the illegal transaction,—the void act,—but a subsequent independent contract which the law raised. The difference is between enforcing illegal contracts and asserting title to money derived from them. Tenant v. Elliott, 1 Bos. & P. 3; Farmer v. Russell, Id. 296; Thomson v. Thomson, 7 Ves. 473,—all cited and approved in McBlair v. Gibbes, supra. Sir William Grant, in the case in 7 Ves. 473, clearly states the principle. In that case there had been a sale of the command of an East India ship to the defendant. This was an illegal transaction. In consideration of the sale, he had agreed to pay an annuity of £200 to the previous commander, from whom he purchased, so long as he remained in command. Defendant, after remaining in command for some time, retired, and secured the retiring allowance of £3,540. The bill was filed to get a decree enforcing the contract, and investing so much of this as would produce £200 per annum. The objection was made that the contract providing for the annuity was illegal, and a court of equity would not enforce it. The distinguished master of the rolls held the contract illegal. He recognized the equity in the fund, if it could be reached by a legal agreement, but there was no claim on the money, except through the medium of an illegal agreement, which, according to the determinations, cannot be supported. "How, then," says he, "are you to get at it except through this agreement? There is nothing collateral, in respect of which, the agreement being out of the question, a collateral demand arises." In the case at bar the entire cause of action is on the agreement, which is void through public policy. The complainant depends altogether upon that agreement, and seeks to set aside everything that has been done, and to enforce the specific performance of that agreement. He asks the court "to enforce this illegal contract, and requires the aid of the illegal transaction to establish his case." It follows that the contract under consideration can neither be enforced nor made the basis of any relief in a court of equity. The maxim in pari delicto applies. The court will leave the parties to such a contract precisely where it finds them. "Courts cannot be made the handmaids of iniquity." Bank v. Owens, 2 Pet. 539.

It is urged, however, that the complainant, on the very afternoon of the day on which the city council gave the franchise, exposed his agreement with Shield in a public print. Assuming that this was seen by the members of the council, it cannot avail him. The wrong complained of is not that he concealed his contract, but that he made the contract; not that he pretended still to seek a franchise, but that he sold himself out, and, doing so, defeated competition, shut the city council in to but one bidder, deprived the public of that contention among bidders which would protect the public from loss, and secure the highest price for the sale of the franchise. This is not a case in which a court of equity should interfere. and the decree of the circuit court should be affirmed, without prejudice, however, to

any right which complainant may have to seek relief, if any he be entitled to, in a court of law.

The CIRCUIT JUSTICE concurred in the result, on the ground that the remedy of the complainant, if any, was at law.

In this conclusion, also, SIMONTON, Circuit Judge, concurred.

BRAWLEY, District Judge. I dissent. Hyer and Shield were rival promoters, each seeking from the city council of Richmond a franchise for a street railway on Broad street, and both looked to Stewart, a banker in New York, for the money to carry out the enterprise. Hyer had already obtained a franchise from the council, and was asking for some amendments thereto. Stewart, fearing that the continued rivalry might result in the defeat of both, or in the obtaining of a franchise of such nature that capital would not embark in it, advised the parties to come together, and they united in an agreement for mutual co-operation, and for an equal division of whatever profits were realized. The agreement does not, on its face, bear any of the indicia which mark a dishonest purpose. It does not show, nor can it be reasonably inferred, that any sinister, extraneous, or corrupting influences were to be brought to bear upon the city council of Richmond to superinduce the granting of the franchise, nor is it alleged that any improper means were to be used to accomplish it, and thus it is clearly distinguished from all that class of cases where the courts have held contracts void as reeking with corruption, such as using official influence for private gain, securing public office for pay, retiring from competitive candidacy under agreements to divide fees, securing public contracts upon like terms, or bargains for lobbying services to influence legislation. None of those elements enter here, and the sole ground upon which the decision rests is that the agreement was calculated to diminish competition for the obtaining of the franchise. It is not contended, nor can it be assumed, that Hyer or Shield, either or both, had such control or monopoly of the building of street railways that they could, by combination, put up the price, or demand an unusual or unreasonable franchise, or embarrass the city of Richmond, and thus injure or jeopardize the public interest, either by their action or nonaction. A rule that might be justly applicable to a kind of business which could not be restrained to any extent whatever without prejudice to the public interest ought not to be arbitrarily extended so as to interfere with that freedom of contract which is a fundamental right. The franchise in question was not a thing that was put up at public auction, and bound to go to the lowest bidder, where a combination to chill the bidding might be held to be in contravention of the public interest. The city council of Richmond, faithful, as it must be assumed, to its obligations to the public, was not bound to give the franchise to this or any other combination except upon such terms as it chose to annex, and there was no agreement for any corrupting influences to affect its action. An honest co-operation between two parties to effect an