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power, thus further consuming the time of the legislature with purely local problems. A more reasonable construction of charter powers would obviate these harmful results.

F. M. PARKER.

Taxation—Trusts—Power to Tax Interest of Beneficiary.

An Ohio statute¹ levied a tax on all investments from which income is derived, excepting interests in land, but expressly not excepting equitable interests in land divided into shares evidenced by transferable certificates. Plaintiff, a resident of Ohio, was the owner of transferable land trust certificates in seven separate trusts,² four of which consisted of office building properties in Ohio, the other three outside of Ohio. Plaintiff claimed that his certificates represented an interest in land, and that the tax on the Ohio trusts violated the uniformity clause of the Ohio constitution³ because the land had already been taxed against the trustee, and in the case of the out-of-state trusts, the tax was a violation of the Fourteenth Amendment of the Federal Constitution as a tax on land outside the jurisdiction of Ohio. The Supreme Court of Ohio sustained the tax in each instance.⁴ The decision was reversed by the Supreme Court of the United States, three justices dissenting.⁵

There is presented here the question of the power of a state to tax the beneficiary's equitable interest in a trust, and whether that power may be affected by the nature of the trust and the composition of the *res*.

¹ "Investments' defined. §5323. The term 'investments' as used in this title includes the following: . . . Annuities, royalties and other contractual obligations for the periodical payment of money and all contractual and other incorporeal rights of a pecuniary nature whatsoever from which income is or may be derived, however evidenced, excepting (1) patents and copyrights and royalties derived from each, (2) interests in land and rents and royalties derived therefrom, other than equitable interests divided into shares evidenced by transferable certificates." 115 LAWS OF OHIO 552 *et seq.* (1933).

² The trusts were all similar but entirely separate. There was no connection between managements. Parcels of land were severally conveyed to trustees, each trustee holding but one parcel and, by the terms of the trust agreement, undertaking to hold and manage the property, to receive the income and pay it over ratably to the certificate owners. If the lands were sold under the existing options the proceeds were likewise to be ratably distributed. Each owner of a certificate was registered on the books of the trustee, but had no right to possession or partition, and had no control over the trustee. The certificates were freely transferable. For more detailed information on the usual set-up for Ohio land trust certificates see Goldman and Abbott, *Land Trust Certificates with Relation to Ohio Law* (1928) 2 U. OF CIN. L. REV. 255.

³ Art. XII, §2 of the Constitution of Ohio provides, ". . . Land and improvements thereon shall be taxed by uniform rule according to value." Apparently this view had been previously accepted by the Attorney General of Ohio. See the principal case, *infra* note 5. 55 Sup. Ct. 800, 803, 79 L. ed. (Ad. opinions) 863, 866. See also OHIO GENERAL CODE (1929) §§710-140 (d).

⁴ Senior v. Braden, 128 Ohio 597, 193 N. E. 614 (1934).

⁵ Senior v. Braden, 55 Sup. Ct. 800, 79 L. ed. (Ad. opinions) 863 (U. S. 1935).

In a trust of intangibles the income and corpus may be taxed against the trustee by the state of his domicile.⁶ The income may be taxed against the beneficiary by the state of his domicile.⁷ A few states,

⁶ *Corpus*: Price v. Hunter, 34 Fed. 355 (C. C. E. D. Pa. 1888); Higgins v. Commonwealth, 126 Ky. 211, 103 S. W. 306 (1907); Welch v. City of Boston, 221 Mass. 155, 109 N. E. 174 (1915). If the trust is held by more than one trustee and there is diversity of citizenship between the trustees, then the general rule is that the corpus will be taxed pro rata according to the number of resident trustees. MacKay v. City & County of San Francisco, 128 Cal. 678, 61 Pac. 382 (1900); Court v. Gill, 50 Md. 377 (1878); Hardy v. Inhabitants of Yarmouth, 88 Mass. 277 (1863). New York follows this rule by statute, and it applies to executors as well as trustees. People *ex rel.* Kellog v. Wells, 182 N. Y. 314, 74 N. E. 878 (1905) (trustees); People *ex rel.* Moller v. O'Donnell, 183 N. Y. 9, 75 N. E. 540 (1905) (executors). Before the statute apparently the New York rule had been otherwise. People *ex rel.* Barrow v. Coleman, 119 N. Y. 137, 23 N. E. 488 (1890) (Perhaps distinguishable on the grounds that the resident trustees were non-active, the active trustees and the beneficiaries were non-residents, and the certificates for the property were kept out of the state); People *ex rel.* Day v. Barker, 135 N. Y. 656, 32 N. E. 252 (1892). *Contra*: Goodsite v. Lane, 139 Fed. 593 (C. C. A. 6th, 1905) (Where one trustee had a residence in Ohio but was not active there, the other trustee and the cestuis were non-residents, the property certificates were kept out of Ohio. *Held* not taxable by Ohio . . . "Where this tax has been sustained, either the trust estate, or the beneficiary, or the trustee as trustee, was receiving benefits from the state, for which it was only fair the trustee should pay."). Massachusetts, by statute, Croker v. City of Malden, 229 Mass. 313, 118 N. E. 527 (1918). If both trustee and beneficiary live in the same state, the state may tax the trust property against the beneficiary instead of the trustee, though apparently most states tax the trustee. Mayor, *et al.*, of Baltimore v. Safe Deposit & Trust Co., 97 Md. 659, 55 Atl. 316 (1903); Hathaway v. Fish, 95 Mass. 267 (1866); *cf.* Davis v. Macy, 124 Mass. 193 (1878) (where resident trustee was taxed for *pro rata* interest of non-resident beneficiaries, resident beneficiaries being taxed at their domicile); Ellet v. Commonwealth, 132 Va. 136, 110 S. E. 358 (1922) (where the court said it made no difference whether the tax was assessed against the non-resident trustee or the resident beneficiary). On the question of the right to tax a non-resident trustee, this case is overruled by Safe Deposit & Trust Co. v. Virginia, 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180 (1929). Trust property may be taxable against a trustee for state and county taxes when it is not for borough taxes. Borough of Carlisle v. Marshal, 36 Pa. 397 (1860) (trustee domiciled in Pennsylvania, beneficiaries domiciled in New York). The executor of an estate is taxed on the intangible property he holds by the place of his appointment regardless of his individual residence, or the residence of the testator or cestuis, or the location of the property certificates. McClellan v. Board of Review of Jo Davies County, 200 Ill. 116, 65 N. E. 711 (1902); Commonwealth v. Peebles, 134 Ky. 121, 119 S. W. 774 (1909); Tafel v. Lewis, 75 Ohio St. 182, 78 N. E. 1003 (1906); William's Executor, 102 Va. 778, 47 S. E. 867 (1904). In general see Beale, *Jurisdiction to Tax* (1919) 32 HAR. L. REV. 587, 619-623; Note (1928) HAR. L. REV. 511; 2 COOLEY, TAXATION (4th ed. 1924) §§469, 470; Goodrich, CONFLICT OF LAWS (1927) §54.

Income: Hutchins v. Commissioner of Corporations and Taxation, 272 Mass. 422, 172 N. E. 605 (1930); People *ex rel.* Bank of America v. Gilchrist, 244 N. Y. 56, 154 N. E. 821 (1926); State *ex rel.* Wis. Trust Co. v. Widule, 164 Wis. 56, 159 N. W. 630 (1916).

⁷ Maguire v. Trefry, 253 U. S. 12, 40 Sup. Ct. 417, 64 L. ed. 739 (1920). *Cf.* the attitude taken toward Maguire v. Trefry, *supra*, by the Court in the principal case, *supra* note 5, 55 Sup. Ct. 800, 803, 79 L. ed. (Ad. opinions) 863, 866, Mr. Justice McReynolds speaking for the majority: ". . . The opinion accepted and followed the doctrine of Blackstone v. Miller, 188 U. S. 189, 47 L. ed. 439, 23 S. Ct. 277, and Fidelity & C. Trust Co. v. Louisville, 245 U. S. 54, 62 L. ed. 145, 38 S. Ct. 40, L. R. A. 1918C, 124. Those cases were disapproved by Farmers Loan & T. Co. v. Minnesota, 280 U. S. 204, 74 L. ed. 371, 50 S. Ct. 98, 65 A. L. R. 1000.

notably Maryland, Massachusetts, Vermont and Virginia, have also taxed a resident beneficiary on the corpus where the trustee was a non-resident.⁸ It would appear that this taxation of the corpus against the beneficiary could not be sustained since, under the decision of *Safe Deposit & Trust Co. v. Virginia*,⁹ the corpus has its situs for taxation at the residence of the trustee. But whether the beneficiary's equitable interest in the corpus of the trust will be recognized as a subject for taxation in addition to the legal interest of the trustee is an issue which does not seem to have been squarely presented to the Supreme Court of the United States. In the *Safe Deposit Case* Mr. Justice Stone pointed out in his concurring opinion that the tax in issue was levied directly against the corpus of the trust and not against the beneficial equitable interest of the *cestui que trust*. He suggested that a tax on this latter interest might be valid.¹⁰ The exact issue, however, seems to have been pre-

They are not in harmony with *Safe Deposit & T. Co. v. Virginia*, 280 U. S. 83, 74 L. ed. 180, 50 S. Ct. 59, 67 A. L. R. 386, and views now accepted here in respect to double taxation. . . ." Mr. Justice Stone speaking for the dissent: ". . . The fact that it is now thought by the Court to be necessary to discredit or overrule *Maguire v. Trefry*, 253 U. S. 12, 64 L. ed. 739, 40 S. Ct. 417, *supra*, in order to overturn the tax imposed here, should lead us to doubt the result, rather than the authority which plainly challenges it, and should give us pause before reading into the Fourteenth Amendment so serious and novel a restriction on the vital elements of the taxing power." *Cf. Rowe v. Braden*, 126 Ohio 533, 186 N. E. 392 (1933).

⁸ *Maryland*: *Humbird v. State Tax Commission*, 141 Md. 405, 119 Atl. 157 (1922); *McCeney v. County Commissioners*, 153 Md. 25, 137 Atl. 291 (1927); *Mayor & City Council of Baltimore v. Gibbs*, 166 Md. 364, 171 Atl. 37 (1934) (apparently overruling the two previous cases without mentioning them). *Massachusetts*: The leading case in Massachusetts is *Hunt v. Perry*, 165 Mass. 258, 43 N. E. 103 (1896). See also, *Bates v. Boston*, 59 Mass. 93 (1849); *Dorr v. Boston*, 72 Mass. 131 (1856); *Hathaway v. Fish*, 95 Mass. 267 (1866); *Davis v. Macy*, 124 Mass. 193 (1878); *Kenny v. Stevens*, 207 Mass. 358, 93 N. E. 586 (1911). *Vermont*: *City of St. Albans v. Avery*, 95 Vt. 249, 114 Atl. 31 (1921). *Virginia*: *Selden v. Brooke*, 104 Va. 832, 52 S. E. 632 (1905); *Wise v. Commonwealth*, 122 Va. 693, 95 S. E. 632 (1918); *Ellet v. Commonwealth*, 132 Va. 136, 110 S. E. 358 (1922); *Trust Co. of Norfolk v. Commonwealth*, 151 Va. 883, 141 S. E. 825 (1928), *rev'd* by *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180 (1929). *Contra*: *City of Augusta v. Kimball*, 91 Me. 605, 40 Atl. 666 (1898); *Anthony v. Caswell*, 15 R. I. 159, 1 Atl. 290 (1885).

⁹ 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180 (1929).

¹⁰ See also *City of Augusta v. Kimball*, 91 Me. 605, 40 Atl. 666 (1898): "They [the tax assessors] did not assess a tax directly against these annuitants [residents of the taxing State] for the annuities payable to them, nor for any sums due them or to come to them under the trust. They undertook to assess directly against the defendants [the non-resident trustees] a tax upon the corpus of so much of the estate thus held by them in trust as was held to provide the annuities for the two [resident beneficiaries] which amount the assessors calculated to be 16/55 of the whole property scheduled under that trust. . . . We do not hold, however, that the assessors . . . cannot assess a tax directly against the annuitants resident in Augusta for their annuities or other interests arising out of the property or trust." The majority of the court in the *Safe Deposit Case* declined to consider this issue at all, and decided the case on the grounds that the corpus, for purpose of taxation, had its situs in Maryland at the domicile of the trustee and where the certificates

sented in a recent Maryland case,¹¹ where the tax was levied on the beneficiary's equitable interest in a foreign trust of intangibles, computed by capitalizing the income. The Maryland Court of Appeals, relying on *Safe Deposit & Trust Co. v. Virginia*, held the tax invalid on the ground that, for purposes of taxation, there was no middle ground between income and the value of the property constituting the trust.¹² The court apparently rejected the distinction made by Mr. Justice Stone.¹³

The corpus of the trust in the principal case was composed entirely of real property. There was no question of the power of the state in which the land was located to assess and tax it against the trustees. The tax on the beneficiary was not an income tax, on which basis it might have been sustained, but it was a property tax measured by income.¹⁴ The majority opinion, treating the trust as a pure trust and applying the doctrine of *Brown v. Fletcher*,¹⁵ held the tax void, but did not say that the plaintiff had no taxable interest. The holding was that the beneficiary's interest was an *in rem* interest in the *res*,¹⁶ hence an interest in land, and, with regard to the out-of-state trusts, was beyond the jurisdiction of Ohio; and with regard to the Ohio trusts, the levy would subject the realty to double taxation contrary to the uniform rule of the Ohio constitution.¹⁷ There is left undecided the question of tax-

for the property were located, and the tax was void as an attempt to tax property outside of the jurisdiction of the State.

¹¹ *Mayor & City Council of Baltimore v. Gibbs*, 166 Md. 364, 171 Atl. 37 (1934).

¹² *Certiorari denied*, *Mayor & City Council of Baltimore v. Gibbs*, 293 U. S. 559, 55 Sup. Ct. 71, 79 L. ed. 91 (1934).

¹³ *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180 (1929).

¹⁴ Ohio does not have an income tax, but the taxpayer, owner of intangibles, may elect to file a verified copy of his federal income tax return in which case the amount of such income would be taken as the assessment of his investments yielding income, in lieu of the assessments thereof as otherwise prescribed for such property, 115 *Ohio Laws* 559 *et seq.* (1933) §§5372-3. In a state having an income tax there would appear to be no reason for not taxing the income from a domestic trust. The income from a foreign trust could be taxed under the decision of *Maguire v. Trefry*, 253 U. S. 12, 40 Sup. Ct. 417, 64 L. ed. 739 (1920). It was not claimed that the tax here was an income tax. It purported to be a tax on intangible property measured by income, and was so treated by both the Supreme Court of Ohio and the Supreme Court of the United States.

¹⁵ 235 U. S. 589, 35 Sup. Ct. 154, 59 L. ed. 374 (1915).

¹⁶ For conflicting views on this point, see articles by Stone and Scott in (1917) 17 *Col. L. Rev.* 269 and 467, cited in the principal case.

¹⁷ If such a separate interest should be recognized, then its situs for taxation might be controlled by the principles of the instant case. If the interest of the beneficiary is an *in rem* interest in the *res*, partaking of the nature of the *res*, and the corpus of the trust consists of intangibles, then the beneficiary's interest would appear to be intangible, and hence taxable at his domicile according to the conventional doctrine of *mobilia sequuntur, personam*; or it might acquire a business situs. *Bristol v. Washington County*, 177 U. S. 133, 20 Sup. Ct. 585, 44 L. ed. 701 (1900); *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395, 27 Sup. Ct. 499, 51 L. ed. 853 (1907); *Liverpool Ins. Co. v. Board of Assessors of New*

ation of the beneficiary's interest by a state which is not hampered by a state constitutional uniformity rule.

The dissenting opinion adopted a functional approach, emphasized the analogy of the land trust certificates to corporate stock certificates, and held they were a new and different legal interest in land, enjoying benefit and protection from the state, and should be subject to taxation under the statute.¹⁸ This attitude is not without precedent. Business trusts and corporations have been subjected to similar treatment for several purposes. The federal income tax law has imposed the same tax upon business trusts and corporations.¹⁹ The Supreme Court of the United States has classed them with corporations in denying them "privileges and immunities" of an individual.²⁰ Under state decisions the business trust has been held to be a separate legal entity,²¹

Orleans, 221 U. S. 346, 31 Sup. Ct. 550, 55 L. ed. 762 (1911). If the *res* consists of tangible personalty having a fixed situs, it would appear that the beneficiary's interest might be taxable only at such situs regardless of his own domicile. Union Refrigerator Transit Co. v. Kentucky, 199 U. S. 194, 26 Sup. Ct. 36, 50 L. ed. 150 (1905); Frick v. Penn., 268 U. S. 473, 45 Sup. Ct. 603, 69 L. ed. 1058 (1925). If the corpus consists of realty, as in the principal case, it could be taxed only by the state where situated, but that state, having a right to tax all the interest in the land, might be able to provide for taxing part of it against the beneficiary, with a corresponding deduction in the amount assessed against the trustee, as with mortgages. Saving & Loan Society v. Multnomah County, 169 U. S. 421, 18 Sup. C. 392, 42 L. ed. 803 (1898).

¹⁸ The justification for the corporation tax is said to rest on the privilege and benefit derived from the use of the corporate device created and maintained by the state. The same argument could be made for exacting the tax on the trust device, since it is only by virtue of the laws and protection of the state that the trust can be maintained and enforced.

¹⁹ Hecht v. Malley, 265 U. S. 144, 44 Sup. Ct. 462, 68 L. ed. 949 (1924); Burk-Waggoner Oil Ass'n v. Hopkins, 269 U. S. 110, 46 Sup. Ct. 48, 70 L. ed. 138 (1925). For holdings under previous statutes, cf. Elliott v. Freeman, 220 U. S. 178, 31 Sup. Ct. 360, 55 L. ed. 424 (1911); Crocker v. Malley, 249 U. S. 223, 39 Sup. Ct. 270, 63 L. ed. 573 (1919). Rommel, *Tax Liability of Business Trusts* (1929) 7 NAT. INCOME TAX MAG. 14 (distinguishing Crocker v. Malley and Hecht v. Malley, *supra*).

²⁰ Hemphill v. Orloff, 277 U. S. 537, 48 Sup. Ct. 577, 72 L. ed. 978 (1928). (Cf. the attitude of Mr. Justice McReynolds, in this case, 277 U. S. at 550, 48 Sup. Ct. at 579, 72 L. ed. at 984: "Whether a given association is called a corporation, partnership, or trust, is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment." The majority opinion in the principal case, also written by Mr. Justice McReynolds, neglected entirely the similarity between the business trust and the corporation, although the point was stressed by both the dissent and the Supreme Court of Ohio.) In the same case below, 238 Mich. 508, 213 N. W. 867 at 872 (1925), the Supreme Court of Michigan said: "These entities come to this state masquerading as 'pure trusts,' claiming the right as disclosed by their so-called declarations of trust to here exercise the 'powers or privileges of corporations not possessed by individuals or partnerships,' and to here engage in pure business activities usually engaged in by corporations and until of late never engaged in by trustees. . . . It is the duty of this court to look beyond the form to the substance, to strip them of their finery, and to apply the constitutional and statutory definitions of corporations to them."

²¹ Hamilton v. Young, 116 Kan. 128, 225 Pac. 1045 (1924).

subject to Blue Sky Laws,²² and subject to service by publication as a foreign corporation.²³ It has also been required to conform to regulations governing the corporation before being allowed to do business within a state,²⁴ and where there was failure to comply, the members have been held personally liable as partners.²⁵ Technically a distinction can be drawn, but it would seem to be a formal one, for apparently the trust device here was being employed to effect the same business purposes as the corporate device, and the evident intention of the Ohio legislature was to impose on the two types of investments, represented by trust certificates and stock certificates, the same property tax burden. The corporation and trustee are subject to income and property tax. Stockholder and beneficiary may be subject to income tax, and since the stockholder may also be subject to property tax on his investment in corporate shares it would not seem less equitable to subject the beneficiary to property tax on his investment in land trust certificates.²⁶

It appears that the decisions do not preclude a tax on the equitable interest of the beneficiary of a trust if, as a matter of tax policy, the court should deem it advisable.²⁷ However, in view of the recent trend of decisions toward the elimination of double taxation,²⁸ it is probable

²² *Reiley v. Clyne*, 227 Ariz. 432, 234 Pac. 35 (1925); *Wagner v. Kelso*, 195 Iowa 959, 193 N. W. 1 (1923); *Home Lumber Co. v. Hopkins*, 107 Kan. 153, 190 Pac. 601 (1920); *People v. Clum*, 213 Mich. 651, 182 N. W. 136 (1921). Cf. *Malley v. Bowditch*, 259 Fed. 809 (C. C. Q. 1st, 1919) (business trust held liable for federal stamp tax on "certificates of stock of an association, company, or corporation").

²³ *Harris v. U. S. Mexico Oil Co.*, 110 Kan. 532, 204 Pac. 754 (1922).

²⁴ *McClaren v. Dawes Electric Sign Mfg. Co.*, 86 Ind. App. 196, 156 N. E. 584 (1927); *Weber Engine Co. v. Alter*, 120 Kan. 557, 245 Pac. 143 (1926); *State v. Hinkle*, 126 Wash. 581, 219 Pac. 41 (1923); *State v. Paine*, 137 Wash. 566, 243 Pac. 2 (1926). Cf. *Liverpool & London Ins. Co. v. Massachusetts*, 77 U. S. 566, 19 L. ed. 1029 (1871).

²⁵ *Wiley v. Howggson Corp.*, 90 Fla. 343, 106 So. 408 (1925) ("... such a so-called trust... is nothing but a veiled and futile effort to avoid the liabilities of a co-partnership and acquire the privileges and immunities of a corporation without complying with the corporation laws of the state..."); *McClaren v. Dawes Electric Sign Mfg. Co.*, 86 Ind. App. 196, 156 N. E. 584 (1927); *Weber Engine Co. v. Alter*, 120 Kan. 557, 245 Pac. 143 (1926). Cf. *Williams v. Boston*, 208 Mass. 497, 94 N. E. 808 (1911) (Massachusetts trust held taxable as a partnership.) But cf. *Williams v. Milton*, 215 Mass. 1, 102 N. E. 355 (1913).

²⁶ Query if a distinction should not be made between business trusts, with equitable interests evidenced by transferable certificates, and pure testamentary trusts with no certificates.

²⁷ If it is desired to avoid an additional tax, why not eliminate the tax on the trustee who holds only empty legal title, the real and ultimate ownership being in the beneficiaries.

²⁸ *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36, 50 L. ed. 150 (1905); *Frick v. Penn.*, 268 U. S. 473, 45 Sup. Ct. 603, 69 L. ed. 1058 (1925); *Wachovia Bank & Trust Co. v. Doughton*, 272 U. S. 567, 47 Sup. Ct. 202, 71 L. ed. 413 (1926); *Brooke v. City of Norfolk*, 277 U. S. 27, 48 Sup. Ct. 422, 72 L. ed. 767 (1928); *Safe Deposit & Trust Co. v. Virginia*, 280 U. S. 83, 50 Sup. Ct. 59, 74 L. ed. 180 (1929); *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 50 Sup. Ct. 98, 74 L. ed. 371 (1930); *Baldwin v. Missouri*, 281 U. S. 586, 50 Sup.

that the Court will be reluctant to recognize another taxable interest, and is likely to adopt the view taken by the Maryland Court that, for purposes of taxation, there is no intermediate ground between the income and the value of the property held by the trustee.

FRANKLIN S. CLARK.

Torts—Inducing Breach of Contract—Malice.

Plaintiff contracted to sell land to *B*. Defendant, who held a deed of trust on the land, induced *B* to breach his contract by falsely informing him that plaintiff could not pass good title and by promising to sell the land to him after the pending foreclosure proceedings for an amount less than that stated in plaintiff's contract. Plaintiff sued for malicious interference with his contract and was non-suited. *Held*, judgment affirmed. Since defendant had a right to compete with plaintiff, the question of malice was immaterial, for it could not make an act unlawful which in essence was lawful.¹

The right to maintain an action against a third person for maliciously inducing another to break his contract with the plaintiff has long been recognized in this state.² Though there was no indication at first that the rule would be extended beyond the field of employment contracts, it was later held that an action would lie for maliciously inducing the breach of any contract.³ This is the majority rule today.⁴

North Carolina, however, has at times receded from this position, and at present the state of the law is uncertain. Doubt was first thrown upon the early cases in 1909 when the court said that generally no action could be maintained for inducing breach of contract, since the consequence is only a broken contract for which the party injured may sue.⁵

Ct. 436, 74 L. ed. 1056 (1930); *Beidler v. South Carolina*, 282 U. S. 1, 51 Sup. Ct. 54, 75, L. ed. 131 (1930); *First National Bank v. Maine*, 284 U. S. 312, 52 Sup. Ct. 174, 76 L. ed. 313 (1932).

¹ *Holder v. Atlantic Joint Stock Land Bank*, 208 N. C. 38, 178 S. E. 861 (1935).

² *Haskins v. Royster*, 70 N. C. 601 (1874) (employment contract).

³ *Jones v. Stanly*, 76 N. C. 355 (1877) (contract to haul goods).

⁴ *Dade Enterprises v. Wometco Theaters*, 160 So. 209 (Fla. 1935); *Caverno v. Fellows*, 286 Mass. 440, 190 N. E. 739 (1934); *Louis Kamm, Inc. v. Flink*, 113 N. J. Law 582, 175 Atl. 62 (1934); *Lumley v. Gye*, 2 E. & B. 216 (Q. B. 1853), a leading case which is the forerunner of all cases allowing recovery for inducing breach of employment contracts. For a collection of the cases, see Note (1933) 84 A. L. R. 43. For detailed treatments of the subject, see Carpenter, *Interference with Contract Relations* (1928) 41 HARV. L. REV. 728; and Sayre, *Inducing Breach of Contract* (1923) 36 HARV. L. REV. 663.

⁵ *Swain v. Johnson*, 151 N. C. 93, 65 S. E. 619 (1909). "To this rule there are but two generally recognized exceptions—one where servants and apprentices are induced from malicious motives to leave their masters before the term of service