12-1-1953

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pressure, the refusal of real estate agents even to show Negroes houses in restricted residential areas, and the disinclination of banks to furnish loans for such purchases will serve to retain the effect of the restrictions for a long time to come.\textsuperscript{26} Other devices are the use of cash deposits, neighborhood clubs or corporations, options to repurchase, land trusts, and long-term leases.\textsuperscript{26} Only time, education, and the gradual disappearance of emotional prejudices can bring to an end these devices.

LINDSAY TATE

Contracts—Inducing Breach—Intentional Interference with Contractual Relations—Justification—Privilege

Plaintiff, a contract carrier, alleged that he had contracted with various persons to carry them to and from Camp Lejeune, and that defendant induced these named persons to break their contracts with plaintiff and ride on defendant’s bus instead. In sustaining an order overruling a demurrer to this cause of action, the court affirmed the general principle that a party may be held liable in damages for inducing another to breach his contract.\textsuperscript{1}

The principle of tort liability for inducing breach of contract is relatively new. The first significant case, \textit{Lumley v. Gye},\textsuperscript{2} held that the defendant’s inducement of a famous singer to breach her contract to sing at plaintiff’s theater was actionable.\textsuperscript{3} The principle was first recognized in North Carolina in \textit{Haskins v. Royster}\textsuperscript{4} where the defendant induced a servant of plaintiff to breach his employment contract with the plaintiff,\textsuperscript{5} and was affirmed and extended in \textit{Jones v. Stanly}\textsuperscript{6} where the de-

\textsuperscript{26} Scanlan, \textit{Racial Restrictions in Real Estate}, 24 \textit{Notre Dame Law.} 157, 179 (1949).

It seems obvious that some of the means formerly employed are now outlawed by the \textit{Barrows} decision. Declaratory judgments and advisory opinions by state courts would be state action in violation of the Constitution. Also the inclusion of racial restrictions as conditions in a fee simple determinable or a conditional fee is probably now illegal, at least so far as enforcement is concerned. The effect of the \textit{Barrows} decision should be kept in mind when reading the articles cited throughout this note.

\textsuperscript{1} Bryant v. Barber, 237 N. C. 480, 75 S. E. 2d 410 (1953).
\textsuperscript{2} (1853) 2 Ell. & Bl. 216.
\textsuperscript{3} The chief significance of this case being a holding that the action would lie even though the means used were not tortious to the singer, which had long been a requisite. (Italics supplied.) See: Garret v. Taylor, (1621) Cro. Jac. (K. B.) 567.
\textsuperscript{4} 70 N. C. 601 (1874).
\textsuperscript{5} It is said that rights to the performance of a contract are property rights. Second National Bank v. M. Samuel and Sons, 12 F. 2d 963 (2d Cir. 1926); Kock v. Burgess, 137 Iowa 727, 149 N. W. 858 (1914); Winston v. Lumber Co., 227 N. C. 339, 42 S. E. 2d 218 (1947).
\textsuperscript{6} 76 N. C. 355 (1877).
fendant induced a railroad company to refuse to transport freight in accordance with the terms of a contract between plaintiff and the railroad.

Intended interference with the contractual relations of another creates a prima facie tort, and the burden of showing justification rests upon the defendant. To establish justification as a defense the defendant must have been protecting an interest at least equal in value to the contract rights of the plaintiff. It has been said that "The question of privilege is of course as broad as the catalogue of possible interests involved. . . ." In Bryant v. Barber, the court applied the general rule that the privilege of free competition does not justify intentional interference with established contractual relations, refusing to recognize the defendant's contention that he was merely engaging in "legal competition." Efforts to eliminate business competitors, besides incurring criminal liability, are actionable if they interfere with contractual relations. Thus, where plaintiff had patented an attachment for hosiery machines and had assigned a one-fourth interest to the defendants, it was held to be an actionable wrong for the defendants to interfere with plaintiff's contract with another party to use the attachment on a partnership basis.

Furthermore, the privilege of free competition will not justify inducing breach of a non-competitive agreement. In Sineath v. Katzis, where plaintiff bought a laundry and dry-cleaning establishment, including the previous owner's goodwill, and where part of the consideration for the purchase price was an agreement with the former owner not to compete anywhere in the county for 15 years, and where it was shown to the court's satisfaction that the defendant had induced the former owner to assist her in establishing and running a dry-cleaning establishment, the court held that the defendant had violated the non-competition agreement.


8 Carpenter, Interference with Contractual Relations, 41 Harv. L. Rev. 728, 745 (1928); Sayre, Inducing Breach of Contract, 36 Harv. L. Rev. 663, 686 (1923).

9 Prosser, Torts 996 (1941).

10 237 N. C. 480, 75 S. E. 2d 410 (1953).

11 Westinghouse Electric Co. v. Diamond State Fibre Co., 268 Fed. 121 (D. C. Del. 1920); Sperry and Hutchinson Co. v. Pommer, 199 Fed. 309 (N. D. N. Y. 1912); Cumberland Glass Manufacturing Co. v. DeWitt, 120 Md. 381, 87 Atl. 927 (1913), aff'd, 237 U. S. 447 (1915); Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907). But cf. Schonwald v. Ragains, 32 Okla. 223, 229, 122 Pac. 203, 210 (1912) where it was held that use of fair means with the primary object of bettering one's business which incidentally results in breach of plaintiff's contract is not actionable.


14 Coleman v. Whisnant et al., 225 N. C. 494, 35 S. E. 2d 647 (1945). Relevant to the question before the court here was the fact that the defendants had also interfered with plaintiff's efforts to form other contracts. The court inferentially did not consider the defendants' assignment of plaintiff's patent rights of sufficient moment to justify the interference with plaintiff's contractual relations.

15 218 N. C. 740, 12 S. E. 2d 671 (1941).
in the same city, contrary to his non-competitive agreement with the plaintiff, it was held that the defendant was liable.

Where a party has a contract of his own which conflicts with the contract of another, he is not precluded from acting to protect his own contract. One is also privileged to interfere with the contractual relations of another if he acts to protect the public health, safety, or morals, or to perform a duty owed a third person. There is a privilege to give disinterested advice even though it incidentally results in a breach of contract by one acting upon the advice, and there is a privilege to protect the ownership or condition of property. Furthermore, a principal is privileged to act in protection of his agent's interests. And, of course, one is privileged if he is acting in obedience to a governmental order or regulation.

It has been said that the privilege to protect an interest equal to or greater than the plaintiff's contract rights is conditional and is lost if exercised for the wrong purpose. North Carolina, however, for many years allowed intentional interference with contracts to convey interests in land, elevating in a series of decisions what could have more easily been considered privileged protection of interests, under the circumstances, to the status of an absolute right which could be asserted regardless of motive. Thus, in Holder v. Atlantic Joint Stock Land Bank, where plaintiff had contracted to sell a tract of land, and where defendant, holder of a deed of trust on the land, induced the prospective buyer to breach his contract, representing to him that the plaintiff could not pass good title and that the defendant would sell the land after the pending foreclosure proceedings to the buyer for less than the contracted

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17 Brimelow v. Casson, (1924) 1 Ch. 302.


20 O'Brien v. Western Union, 62 Wash. 598, 114 Pac. 441 (1911).


22 Garcia Sugars Corp. v. N. Y. Coffee and Sugar Exchange, 7 N. Y. S. 2d 532 (1938).

23 Carpenter, Interference with Contractual Relations, 41 Harv. L. Rev. 728, 746 (1928).


25 Holder v. Atlantic Joint Stock Land Bank, 208 N. C. 38, 178 S. E. 861 (1935); Elvington v. Waccamaw Shingle Co., 191 N. C. 515, 132 S. E. 274 (1926); Biggers v. Mathews, 147 N. C. 299, 61 S. E. 55 (1908). Barnhill, J., in a concurring opinion in Bruton v. Smith, 225 N. C. 584, 36 S. E. 2d 9 (1945) inferred that these decisions were exceptions bottomed upon the force and effect of the North Carolina registration statute, i.e., that a party to an unregistered contract to convey land has no contract rights for the courts to protect anyway.

26 208 N. C. 38, 178 S. E. 861 (1935); see Note, 14 N. C. L. Rev. 112 (1935).
amount, it was held that the defendant had a legal right to compete with
the plaintiff for the buyer and could exercise the right regardless of
motive. Later decisions have given land sale contracts more protection
from outside interference, refusing to recognize, as privileged, action by
the defendant in protection of his less clearly defined "rights" when
the contract is registered as required by statute. In *Winston v. Lumber Co.*, allegations by plaintiff that he had executed a contract with *S*,
owner of a certain tract, and registered the contract, by the terms of
which *S* agreed to sell certain timber on the tract, and that defendant
had unlawfully, wrongfully, and maliciously persuaded *S* to break his
contract with plaintiff and convey to the defendant instead were held
sufficient as against a demurrer.

That a party is liable for inducing breach of contract when he entices
away employees who have employment contracts with their employers
is also well established. This is made a misdemeanor by statute,
which may account for the fact that the criminal indictment is apparently
more common in this situation than a civil action.

Although the general principle of liability for inducing breach of
contract has been discredited and limited in North Carolina decisions,
it is submitted that the recent decision of *Bryant v. Barber*, has affir-

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30 "Malice" being the cornerstone of the basis of liability, meaning nothing more than lack of legal justification or excuse. *Holder v. Cannon Mfg. Co.*, 135 N. C. 392, 47 S. E. 481 (1904); *Morgan v. Smith*, 77 N. C. 37 (1877); *Jones v. Stanly*, 76 N. C. 355 (1877); PROSSER, *TORTS* 996 (1941).

31 It should be mentioned that knowledge of the existence of the contract by the defendant is, of course, requisite to liability, *Sineath et al. v. Katsis*, 218 N. C. 740, 12 S. E. 2d 671 (1941), and that it must be shown that the defendant's wrongful acts proximately caused the breach. *Glencoe Sand and Gravel Co. v. Hudson Bros. Commission Co.*, 138 Mo. 439, 40 S. W. 93 (1897).

32 As regards liability for procuring an employee's discharge to his damage, see *Holder v. Cannon Mfg. Co.*, 135 N. C. 392, 47 S. E. 481 (1904). The question of liability of a labor union for procuring breach of employment and related contracts is extensive and complicated, and is not within the scope of this note.


34 N. C. GEN. STAT. § 14-347 (1953).

35 For decisions construing this statute see Annotations, N. C. GEN. STAT. § 14-347 (1953).

36 It has been said that mere negligence or non-feasance which results in a breach of another's contract is not a basis for liability. *Robins Dry Dock and Repair Co. v. Flint*, 275 U. S. 303 (1927); *Ford v. C. E. Wilson Co.*, 129 F. 2d 614 (2d Cir. 1942); *Lamport v. 4175 Broadway*, 6 F. Supp. 923 (S. D. N. Y. 1934).


39 237 N. C. 480, 75 S. E. 2d 410 (1953).
matively extended this doctrine to the area of everyday business compe-
tition where a contracting party's competitor has attempted to appro-
priate the plaintiff's contract rights for himself.⁴⁰

R. G. HALL, JR.

Criminal Law—Search Warrants—Extension of the Law in North Carolina

In North Carolina, search warrants are authorized by statute to issue
for the seizure of the following objects: (1) stolen property; (2) false
or counterfeit coins, notes, bills, or bonds, and instruments used for
counterfeiting them; (3) any personal property, tickets, books, papers,
and documents used in connection with and in the operation of lotteries,
gaming, and gambling;¹ (4) liquor illegally possessed for the purpose
of sale;² (5) deserting seamen;³ (6) game taken in violation of the game
laws;⁴ and (7) re-used bottles.⁵ A search warrant may not issue for
any object not covered by statute,⁶ and its availability may not be ex-
tended by construction to any case not clearly covered by statute.⁷

At common law, facts discovered by illegal searches and seizures
could be used in evidence.⁸ In 1913, State v. Wallace⁹ recognized that

⁴⁰A party is liable for any intentional, unprivileged interference with con-
tractual relations of others. Jasperson v. Dominion Tobacco Co., (1923) A. C.
709, L. R. 92 P. C. 190. See also Philadelphia Record Co. v. Leopold, 40 F. Supp.
346, 348 (S. D. N. Y. 1941) (principle applicable to inducement to "tender spurious
performance," where professional puzzle solvers sold contestants answers to plain-
tiff's puzzle series, where the contestants were under no contractual obligation to
perform).

For a detailed study of the whole subject of liability for procuring breach of
contract see Annotation, 84 A. L. R. 43; Annotation, 26 A. L. R. 2d 1227; Carpen-
ter, Interference with Contractual Relations, 41 HARv. L. REV. 728 (1928); Sayre,

¹N. C. GEN. STAT. § 15-25 (1953).
²N. C. GEN. STAT. § 18-13 (1953).
³N. C. GEN. STAT. § 14-351 (1953).
⁴N. C. GEN. STAT. § 113-91(d) (1952).
⁵N. C. GEN. STAT. § 80-28 (1950).
⁶"Ordinarily even the strong arm of the law may not reach across the threshold
of one's dwelling and invade the sacred precinct of his home except under authority
of a search warrant issued in accord with pertinent statutory provisions." In re
Walters, 229 N. C. 111, 113, 47 S. E. 2d 709, 710 (1948); People ex rel. Simpson
Co. v. Kempner, 208 N. Y. 16, 101 N. E. 794 (1913); State v. Mann, 27 N. C. 45
(1844); MACHEN, THE LAW OF SEARCH AND SEIZURE § 2(1950); cf. Ltr. of Atty.
Gen. of N. C. to Mr. J. K. Morris, 22 July 1952 ("it is seriously doubted if a
search warrant would be the proper method of searching a tourist camp which is
suspected of operating for immoral purposes.").
⁷Rose v. St. Clair, 28 F. 2d 189 (D. C. 1928); State v. Certain Contraceptive
Materials, 126 Conn. 428, 11 A. 2d 863 (1940); State ex rel. Wilson v. Quigg, 154
Fla. 348, 17 So. 2d 697 (1944); Powell v. State, 65 Okla. Cr. 221, 84 P. 2d 442
(1938); 47 AM. JUR. SEARCHES AND SEIZURES § 14 (1938).
⁹162 N. C. 623, 631, 78 S. E. 1, 4 (1913). The court approved the following
statement of the rule: "It may be mentioned in this place that though papers and
other subjects of evidence may have been illegally taken from the possession of
the party against whom they are offered, or otherwise unlawfully obtained, this is
no valid objection to their admissibility if they are pertinent to the issue. The
court will not take notice how they were obtained, whether lawfully or unlawfully,
nor will it form an issue to determine that question."