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Inducing Breach of Contract in Ohio

Arlene B. Steuer

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*by Arlene B. Steuer**

ONE WHO, without privilege to do so, induces or otherwise purposely causes a third person not to:

(a) perform a contract with another, or

(b) enter into or continue a business relation with another,

is liable to the other for the harm caused thereby.[2]

This is a concise statement of the basis of a tort action in Ohio today.

History

The action had its origin in the law of enticing servants from their masters.[3] In 1621[4] the King's Bench held one liable to another for interfering with the other's business by threats to those who worked for or bought from him, and this principle was again followed in 1793.[5] However, it was not until 1853, in the decision of *Lumley v. Gye*,[6] that recovery was allowed against one who had induced breach of contract by mere persuasion, without violence. In that case a singer, under contract to sing at plaintiff's theatre, was induced by defendant, the operator of a rival theatre, to break her contract with plaintiff. Inducement by defendant was accomplished by persuasion, without the use of violence or defamation. This case lays the foundation for the

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[1] This article is limited in its scope to the development in Ohio of a cause of action for the tort of wrongfully inducing breach of contract, either by fraud, duress, obstruction, etc., or by mere persuasion, and the extent to which an invasion of contractual rights will be privileged by the fact that the actor is a competitor. It is not intended to cover generally the subject of interference with contract rights, nor the various situations under which an actor will be privileged to interfere with another's contractual rights except when the privilege claimed is competition. The development of this doctrine in questions involving labor disputes, and the liability incurred for inducing an agent to breach his fiduciary relationship with his principal are not discussed.

[2] RESTATEMENT, TORTS, § 766 (1939).

[3] Sayre, *Inducing Breach of Contract*, 36 HARV. L. REV. 663, 665-666 (1923).

[4] Garret v. Taylor, Cro. Jac. 567 (1621).

[5] Tarleton v. McGawley, Peake 205 (1793).

[6] 2 E. & B. 216, 118 Eng. Rep. 749, 1 Eng. Rug. Cas. 706 (1853).

recognition given by courts today to a person's right to have contract obligations fulfilled without interference by another person not a party thereto.

The decision was followed in *Bowen v. Hall*,[7] which also involved breach of a contract for personal services. Inasmuch as both the aforementioned cases concerned contracts for personal services, it was questionable that the doctrine would be followed when other types of contracts might be involved. However, in 1893[8] the English court rendered a decision dispelling all belief that an action for maliciously procuring a breach of contract was confined to cases involving personal services, and extended the doctrine to other contracts as well.

The principle set forth in *Lumley v. Gye*[9] is generally followed in American courts today. Even the few jurisdictions that fail to give credence to this doctrine will recognize a violation of one's rights when another induces a breach of contract by use of force, threats or fraud.

Inducing Breach By Tortious Methods

In Ohio one of the first cases to be decided on the issue of the right of action for inducing a breach of contract by tortious methods was *Dannerberg v. Ashley*,[10] in the year 1894. Here the plaintiff, a railroad employee, was granted a recovery against defendant, who had exerted economic pressure[11] upon plaintiff's employer to persuade the railroad to discharge him because the plaintiff had testified against defendant in a law suit. The court in rendering its decision cited with approval a Massachusetts case[12] wherein the following elements were held to be necessary prerequisites to the maintenance of such an action:

(1) . . . "Intentional and wilful acts,
(2) . . . "Calculated to cause damage to plaintiffs in their lawful business,

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[7] 6 Q. B. D. 333, 50 L. J. Q. B. 305, 1 Eng. Rul. Cas. 717 (1881).

[8] Temperton v. Russell, 1 Q. B. 715 (1893).

[9] See note 6 *supra*.

[10] 10 Ohio C. C. 558, 5 Ohio C. Dec. 40 (1894).

[11] Defendant was the General Manager of The Toledo AA & NM Ry. Co., which railroad controlled the Toledo railroad yard. The Pennsylvania Railway used this yard in Toledo for their trains by virtue of a business arrangement with the railroad with which defendant was associated. By reason of his position, defendant had special influence with the managers of the Toledo Division of the Pennsylvania RR.

[12] Walker v. Cronin, 107 Mass. 555 (1871).

(3) . . . "Done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice), and

(4) . . . "Actual damage for loss resulting."

Thus the Ohio courts recognized that once a valid and existing contract was established, plaintiff would be entitled to recovery for damages caused by a stranger's malicious and intentional interference.

In 1904 an Ohio court again recognized plaintiff's right to enjoy the benefits of his contracts without interference from a stranger in *Hillenbrand v. Building Trades Council.*[13] In that case a union was held liable for coercing plaintiff's employees to break their contracts with plaintiff. The sole purpose of the union's action was to injure plaintiff's business, and thus compel him to accede to the union's demands. This was declared to be an unlawful purpose.

In 1909[14] the court intimated that a party would be guilty of an actionable wrong when by fraudulent statement[15] he induced a third party to breach his contract.

The most recent Ohio decision[16] deals with a situation wherein defendant prevented a third party from performing his contract with plaintiff. In the case of *Reichman v. Drake* plaintiff entered into a lease with the owner of certain premises, which lease contained a provision that possession would be given when the incumbent tenant, the defendant, vacated the premises. The owner of the building informed defendant of this lease, but when defendant's term of tenancy expired, he failed and refused to move for several months thereafter, thereby causing plaintiff certain

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[13] Hosea (Ohio) 327, 14 Ohio Dec. (N. P.) 628 (1904).

[14] Allen v. Sinning, 20 Ohio Dec. 101, 8 Ohio N. P. (N. S.) 201 (1909).

[15] Defendant was indebted to plaintiff on four promissory notes secured by a mortgage on defendant's property. Upon maturity plaintiff sought recovery on the notes and foreclosure of the mortgage. Defendant counter-claimed, seeking damage for slander of title, and alleging the following:—Defendant had entered into an agreement with a third party to sell the mortgaged property and satisfy the amount due on the promissory notes from the proceeds of the sale; upon discovering the foregoing, plaintiff induced the prospective purchaser to breach the contract by misrepresenting to her that defendant's title to said property was not good; Defendant's title was good, but he was unable to find another purchaser for the property. The court held that the facts did not constitute a good counter-claim to plaintiff's action, but that defendant would have a good cause of action in a separate suit on the principle of interference with contract relations.

[16] Reichman v. Drake, 89 Ohio App. 222 (1951).

damages. The court held that as defendant had purposely, and without privilege, prevented the owner from carrying out his contractual obligations with the plaintiff, he would be liable for all damages thereby caused the plaintiff.

Inducing Breach By Persuasion

It is clear from the cases cited in the foregoing section that Ohio courts will afford relief when plaintiff's contractual rights are interfered with by a third person through the use of fraud, duress, coercion, and obstruction. Ohio courts *state* that relief will be granted when a party to a contract with plaintiff has been persuaded by defendant not to perform, providing defendant has no justification for his acts. However, inducement of the breach must be proven to the court's satisfaction.

It is necessary that plaintiff prove the defendant's invasion of his contract rights to be intentional and malicious before recovery will be allowed. But the interpretation of the terms *intentional* and *malicious* given by the courts is somewhat different than one might suppose at first glance.

By malice is meant an "intentional doing of a harmful act without legal justification or excuse" [17]; or as used in connection with inducing breach of contract, "Malice * * * denotes unjustified interference with the contractual relationship" as distinguished from ill will or spite on the part of the actor.[18]

As the malice meant is legal malice and not ill will, the fact that the action is motivated by spite toward the plaintiff will not create liability on defendant's part if he is in the lawful exercise of an absolute right. This is illustrated in *Lancaster v. Hamburger*.[19] The plaintiff was a streetcar conductor, and defendant several times threatened to see to it that plaintiff lost his job. In keeping with his threats, defendant reported every infraction by plaintiff of the rules of his job to plaintiff's superintendent, as a result of which plaintiff lost his job. The court held that where one is in the exercise of a clear legal right or performance of a duty, the motive prompting his action is immaterial. Motive is important only where defendant is committing a wrongful act.[20]

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[17] *Id.* at 228.

[18] *Ibid.*

[19] 70 Ohio St. 156 (1904).

[20] Frazier v. Brown, 12 Ohio St. 294 (1861);
Letts v. Kessler, 54 Ohio St. 73 (1896);
Kelley v. The Ohio Oil Co., 57 Ohio St. 317, 327 (1897).

The fact that defendant has knowledge of plaintiff's contract rights, and subsequently aids a third party in breaching his contract with the plaintiff, has been held not to be an intentional invasion unless defendant's acts were the motivating factor in inducing the third party to commit the breach. In *Uihlein v. Cincinnati Car Company*,[21] the Court of Appeals of Hamilton County found that plaintiff must allege malice in its petition. The court held that merely alleging that the defendant was a party to a conspiracy to aid and abet a corporation in violating its contract with the plaintiff was insufficient; that it was necessary to allege and prove that defendant had actually induced the breach by the corporation.

In the same year the *Uihlein* decision was rendered, the court, in *Weinberg v. Schaller*,[22] held that a finding of fact by a jury that the defendant induced the breach, *or in the alternative* participated in the breach of the contract, was insufficient to support a verdict for plaintiff. A mere participation in breaching a contract by one not a party to the contract was not enough to impose liability.

But contrast the *Uihlein* and *Weinberg* decisions with one rendered in 1921 by the Circuit Court of Appeals for the 6th District.[23] Plaintiff in this case was in the business of selling acetylene gas in tanks. In the sales contracts with its customers plaintiff reserved the title to the tanks, and the exclusive right to refill the empty tanks. Defendant, an operator of the same type of business, knowingly assisted and encouraged plaintiff's customers to violate their contracts with plaintiff by having the tanks refilled with gas by defendant. It was held that where there is convincing evidence that defendants are actively *assisting* and encouraging customers to violate their contracts with plaintiff, this is an actionable wrong.

Also, compare the foregoing cases with the advanced view set forth in a recent English case,[24] wherein the court held that when a person knowingly and without justification actively *facilitates* a breach of contract, and thereby causes damage, he is guilty of the tort of procurement of breach of contract. The plaintiff was a trade association whose members had agreed that,

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[21] 34 Ohio App. 52 (1929).

[22] 34 Ohio App. 464 (1929).

[23] Auto Acetylene Light Co. v. Prest-O-Lite Co., 276 Fed. 537 (6th Cir. 1921), *cert. denied* 258 U. S. 662, 77 L. Ed. 795, 52 Sup. Ct. 314 (1922).

[24] British Motor Trade Association v. Salvadori, et al., 1 Ch. 556 (1949).

in an effort to curb inflation in the price of new automobiles, caused by the scarcity of new cars in England, all purchasers would be required to execute a covenant agreeing not to resell for a period of twelve months after purchase. Defendants were dealers who sold above the price levels set by the association. The cars offered by them for sale to the public were obtained from persons who had, in turn, induced customers of plaintiff's members to breach the covenant in their sales contracts by reselling the cars to such persons. Defendant also obtained cars from people who had purchased new cars and executed the covenants for the express purpose of resale at a profit, thereby breaching their contracts with the trade association dealers. It should be noted that the defendant dealers did not themselves actually procure the breaches of contract. The court differentiates between *inducing* a breach and *interference* with a contract. It discusses the statement made by Lord MacNghten in *Quinn v. Leathem*[25] that "It is a violation of legal rights to *interfere* with contractual relations recognized by law if there be no sufficient justification for the interference." The court states that it believes Lord MacNghten made a deliberate use of the word *interference* in preference to the word *inducing*. With that decision in mind, the court held that active *inducement* of the breach was not necessary, but any active step taken by the defendant having knowledge of the covenant by which he *facilitates* a breach of the covenant is sufficient. This is probably one of the most advanced decisions on this question in either the American or English courts.

While Ohio courts will not hold a defendant liable for merely aiding and assisting another to breach his contract with plaintiff, an actor will be held liable as a principal when he knowingly and intentionally aids and abets a conspiracy to induce a breach of contract in violation of plaintiff's rights.[26]

Justification (Privilege)

Thus far consideration has been given only to situations where a third party's interference with plaintiff's contractual rights was unjustified. It has been illustrated that a person will always be held liable for unjustified and intentional interference with plaintiff's contractual rights, whether by coercive methods or mere

[25] (1901) A. C. 495, 510.

[26] Hillenbrand v. Building Trades Council, Hosea (Ohio), 327, 14 Ohio Dec. (N. P.) 628 (1904).

solicitation. The rule is well set forth in *Sterling and Welch Company v. Duke*[27] that "it is unlawful to pursue any course of conduct the sole purpose of which is to induce breach of contract." Not all acts of solicitation, however, are unlawful, and the fact that the actor is a competitor of plaintiff will justify certain of his acts. The question is, how far will the privilege of competition extend in justifying a person's acts?

The interest one has in having contractual obligations fulfilled is superior to the freedom of action of a competitor to enter into contractual relations with a third party, if to do so he must actively solicit a breach of an existing contract. To this extent one's right to deter a third party from dealing with another is qualified. But the courts draw a fine line as to how far a competitor may go. For instance, C, a competitor, is not prohibited from continuing to solicit B's future business in the normal course, by advertising and other usual methods, even though he knows of an existing contract between A and B. In Ohio C is not prevented from entering into a contract with B, even though C knows that to fulfill such contract it will be necessary for B to breach an existing contract with A. However, C must not set out with the purpose in mind of inducing B to breach his contract with A in order to accomplish his own ends; that is, C must not be the motivating force in inducing B's breach of his contract with A. The gist of the action is not that C sought to advance his own interests by lawful means, as a result of which A, a competitor, was injured. If this were the case, our competitive form of doing business would be at an end. But when C sets out with the wrongful intent of advancing his own interests by endeavoring to appropriate the contract rights of A to himself, a recovery will be given A for C's interference should C succeed in his endeavors.

It becomes apparent, therefore, that the court in each case must determine what was in the actor's mind, that is, what was his intent at the time of his actions. In determining the actor's intent the court may be aided by whatever outward manifestations of his purpose can be adduced in evidence by the plaintiff.

How liberal courts will be in their determinations is illustrated in *Sorenson v. Chevrolet Motor Co.*[28] Plaintiff was a Chevrolet dealer and the owner of an agency contract with the defendant, Chevrolet Motor Co., terminable upon a certain time notice.

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[27] The Sterling & Welch Co. v. Marie Duke, et al., 33 Ohio Op. 482 (1946).
[28] 171 Minn. 260, 214 N. W. 754 (1927), 84 A. L. R. 35 (annotated pgs. 43-100).

Plaintiff alleged that the defendant, Sander, was also an automobile dealer, and that he conspired and agreed with the corporation to take away plaintiff's business. As a result, plaintiff alleged, the defendant corporation breached its contract with plaintiff without notice, and gave the dealership to Sander. The court held that Sander had a perfect right to negotiate and make an agency contract with defendant corporation, and the fact that plaintiff was thereby injured would not make Sander's actions wrongful. But the court further determined that the sole purpose of Sander's actions was to deprive plaintiff of the benefits of the contract, and of his established business. In answer to the defense of competition, the court stated that Sander's desire to appropriate the business to himself only accentuated the inherent wrongfulness of Sander's contract.[28a] The theory of the court is that "the right to competition is not the right to destroy contractual rights." [29]

In *Horth v. American Aggregates Corporation*[30] the Ohio Appellate Court for Darke County faced a similar situation. Plaintiff had entered into a contract with a Cable Company to furnish certain supplies should the Cable Company obtain a contract from the Government. Upon obtaining such contract from the Government, the Cable Company entered into negotiations with defendant to furnish the necessary supplies. Defendant's agents had personal knowledge of the existence of plaintiff's contract. In addition plaintiff had notified the defendant prior to consummation of defendant's contract with the Cable Company that it would be held liable by plaintiff for damages suffered as the result of any breach by Cable Company of its contract. The court briefly discussed the *Sorenson* case in its opinion, but pointed out that such was an action merely to determine whether or not the

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[28a] In a dissenting opinion, Stone, J. pointed out that the action exists to compensate for unjustified or wrongful interference by defendant with contractual rights. Here Sanders was not proven guilty of any wrongful intent, as he had the right to want to advance his own business interests. His conduct was justified because Sanders was promoting his own interests, in a lawful manner, in a competitive business. Stone's position is that this case has the effect of letting the court's decision turn on its determination of the state of mind and intent of the actor at the time of soliciting business for himself; of creating a tort out of defendant's admission that he hoped, by his solicitation of business, to obtain immediate benefits rather than future benefits. The result, Stone asserts, is to penalize the truthful and reward the dishonest.

[29] Beekman v. Marsters, 195 Mass. 205, 80 N. E. 817 (1907).

[30] 31 Ohio L. Abs. 331 (1940).

petition stated a cause of action; that in the case under discussion there was a total absence of any evidence supporting plaintiff's petition on the issue of a wilful inducement by the defendant. The court adopted the theory set forth in the Restatement of the Law of Torts[31] that—

> "It is not a malicious inducement of a breach of contract for a person to enter into an agreement with another person with knowledge that such other person has a contract with a third person covering the same subject matter, and that both contracts cannot be performed."

Proof must be brought forth by the plaintiff that defendant induced the third party to breach his contract with plaintiff.

The next case to be decided along these lines was in 1943.[32] Two route drivers for a milk company had executed contracts with the company, by the terms of which they agreed to refrain from soliciting any customers on their routes for a period of six months after their employment by the company terminated. The company sold its business to the plaintiff milk company, and "assigned" the driver's contracts. The drivers worked for the plaintiff, but refused to sign employment contracts containing such a restrictive clause with the plaintiff. After a period of six months they left plaintiff's employ, went to work for the defendant, a rival milk company, and began soliciting all their former customers from plaintiff. Plaintiff alleged in its suit against the defendant that it entered into a conspiracy with the route men with the unlawful purpose and intention of appropriating the good will purchased by plaintiff; that to accomplish this purpose defendant corporation solicited the route men and other employees of plaintiff to work for them. The court found that employment contracts are personal, and not assignable without consent of the employees; that, therefore, the route men were employed on a week-to-week basis, which contract was terminable at will. As defendant was a competitor, it was (as will be shown *infra*) justified in soliciting the route men to work for it. Further, the court did not find from the evidence that defendant induced the route men to breach their employment contracts. The court further found the route men had fulfilled their original contracts to refrain from soliciting their former customers, by waiting for six months after the sale by the former company to plaintiff. As

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[31] RESTATEMENT, TORTS, § 766, comment i (1939).

[32] Pestel Milk Co. v. Model Dairy Products Co., 39 Ohio L. Abs. 197 (1943).

they had never signed new contracts to that effect with plaintiff, there were no breaches of this covenant by the route men. The court notes in passing that plaintiff was careless in not heeding the warning constantly before it in the form of the route men's refusal to sign such a contract with it. But having determined that there was no contract breached with plaintiff by the route men, the court could not hold defendant responsible for inducing a non-existent breach.

Had there been any breach of this covenant by the route men, the outcome might have been different, for the court states in its opinion that it is not in sympathy with a firm that seeks to promote its own interests by soliciting aid from former employees of its rival to acquire an unfair advantage. Nevertheless, the court makes it clear that it will not presume or imply a malicious intent on the part of defendant at the time of its actions, but that the burden is upon the plaintiff to show this by substantial evidence in order to maintain its action.

Contracts Terminable At Will

The fact that a contract is terminable at will does not justify a malicious and unprivileged inducement of a third party to breach such contract. A stranger to a contract cannot assert that inasmuch as the parties to a contract had an absolute right to terminate it, he had an equally absolute right to persuade either of the parties to exercise that right. A contract terminable at the will of either of the contracting parties does not make it terminable at the will of a third party.[33] The contracting parties have a mutual interest in the freedom of the exercise of each other's judgment in terminating or continuing their contractual relations without unjustified interference or compulsion by a third party. This interest will be protected by Ohio courts.[34]

An important difference arises, however, between contracts for a definite period or purpose and those terminable at will in determining whether or not a privilege for the actor's conduct exists. Professor Carpenter, in his article on *Interference with Contract Relations*[35] has made the broad statement that "competition gives a privilege intentionally to invade interests in con-

[33] Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. 7 (1915).
[34] Dannerberg v. Ashley, 10 Ohio C. C. 558, 5 Ohio C. Dec. 40 (1894).
[35] Carpenter, *Interference with Contracts Relations,* 41 HARV. L. REV. 728, 763 (1927).

tracts terminable at will." The Restatement of Torts[36] also asserts that one is privileged purposely to induce a third person not to continue a business relationship with a competitor of the actor, but then qualifies its statement by saying that:

(1) The actor must not use improper means;
(2) The relationship must concern a matter involving the competition between the actor and competitor;
(3) The actor must not intend thereby to create or continue an illegal restraint of competition; and
(4) The actor must be motivated in part at least by his desire to advance his interest in the competition.

The privilege is based upon the reasoning that every man has at least an equal right of freedom to negotiate and contract by use of proper means, and that such freedom promotes efficiency and service in business, and therefore inures to the benefit of the public.

The limitation in (2) above is promulgated for the obvious reason that when business or contracts are obtained by exerting an influence outside the sphere of the relationship about which the competition revolves, better business methods and service are not promoted. The exact opposite may be true, and the business may be obtained despite the fact that the public might be better served elsewhere.

The requirement in (4) exists for the equally apparent reason that no purpose will be served by aiding one to establish a business enterprise for the sole purpose of driving another out of business, with the intent of discontinuing the enterprise immediately upon the gratification of the actor's ill will toward the competitor.

Business Relationships
Not Yet Cemented By Contract

In 1944 a proposition new to the annals of Ohio case law was decided in *Leibovitz v. Central National Bank.*[37] The plaintiff was the proprietress of a candy and cigar stand located in the building owned by defendant bank. She had received an offer for the sale of her business. The evidence establishes that the sale would have been consummated but for the unjustified inter-

[36] RESTATEMENT, TORTS, § 768 (1) (1939).
[37] 75 Ohio App. 25, 30 Ohio Op. 288, 60 N. E. 2d 727 (1944).

ference by defendant, which set the purchase price at a sum less than the amount offered as a condition to accepting the purchaser as a tenant. Plaintiff sued defendant for the difference between the price obtained for the business and the original offer. The court held that defendant's conduct in maliciously inducing a person not to enter into a contract with another, where the evidence clearly establishes that such contract would have been consummated but for such wrongful interference, is an actionable wrong. The court will hold the defendant liable to parties to such contract for any damages sustained as a result of defendant's interference.

Remedy

In Ohio it is clear that even when there is a legal remedy, equity will grant an injunction against a defendant, restraining him from further inducing any breach of plaintiff's contractual rights, or from engaging in any conspiracy for this purpose, where there is—(1) an injury which threatens an irreparable damage, or (2) a continuing injury when the legal remedy therefor may involve a multiplicity of suits.[38]

Where defendant has already accomplished his purpose, and the breach of contract is complete, a court will not grant an injunction against such breach, but will limit plaintiff to his damages at law. This is particularly true where the contract has subsequently been given to a third party, and the injunction would have the effect of causing a breach of this latter contract. The court states that "the function of injunction is to afford preventive relief, not to redress wrongs already committed."[39]

Comment

The purpose of creating the tort in question was to establish a certain degree of economic stability by protecting from interference by a third party the reasonable expectation of having contractual obligations performed. Against this purpose must be balanced the rights of a competitor to advance his own business interests by lawful means. However, a competitor should never

[38] Central Metal Products Corp. v. O'Brien, *et al.*, 278 Fed. 827 (N. D. Ohio 1922); Auto Acetylene Light Co. v. Prest-O-Lite Co., *supra*, note 21; The Sterling & Welch Co. v. Marie Duke, et al., 33 Ohio Op. 482 (1946); Hillenbrand v. Building Trades Council, Hosea (Ohio) 327, 14 Ohio Dec. (N. P.) 628 (1904).

[39] J. C. McFarland Co. v. O'Brien, et al., 6 F. 2d 1016 (N. D. Ohio 1925).

be allowed intentionally to invade another's contract rights in an endeavor to further his own interests.

It will be noted that while Ohio gives lip service to the foregoing principles, to date no recovery has been granted to a plaintiff in such an action unless defendant has accomplished his purpose by unlawful means, or there has been an obvious interference without any excuse whatsoever by defendant, as in the *Leibovitz*[40] case. Yet on the facts almost every case presented in this article, which was adversely decided by the Ohio courts, might have been decided the other way in a different jurisdiction.

This is due to the almost impossible burden of proof imposed upon plaintiff by the Ohio courts. The courts have stated they will not imply a malicious intent on the part of the defendant from his actions; that mere knowledge of an existing contract will not prevent a defendant from soliciting the business which is the subject matter of the contract, nor from entering into a contract with a third party which will prevent his performance of his contract with the plaintiff. How else may a plaintiff prove defendant's intent, except perhaps by obtaining an admission from the defendant or from the party induced by the defendant—a very unlikely occurrence.

Surely it should be recognized by the courts that it is defendant's unjustified *interference* from which plaintiff is to be protected, and the *inducement* should be implied from the fact that a defendant has solicited and consummated a contract with a third party with knowledge that plaintiff's contractual rights and expectancies would thereby be frustrated. In view of the rights sought to be protected, it would seem that the decisions rendered in the cases cited herein from the Federal court[41] and other jurisdictions[42] are more equitable, and recovery should be granted upon proof of defendant's intentional and unjustified interference with plaintiff's contractual rights rather than inducement of a breach thereof.

Summary

From the Ohio cases cited herein, the following principles of law may be drawn:

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[40] 75 Ohio App. 25, 30 Ohio Op. 288, 60 N. E. 2d 727 (1944).

[41] Auto Acetylene Light Co. v. Prest-O-Lite Co., *supra* note 21.

[42] Sorenson v. Chevrolet Motor Co., *supra* note 26; British Motor Trade Association v. Salvadori, et al., *supra* note 22.

I. *Contract for a definite period of time or purpose*

(a) Where the evidence shows that defendant purposely and without privilege induced a third party to breach his contract with the plaintiff, or prevented its performance, the defendant will be liable to plaintiff for the damages caused him thereby.

(b) The court will not imply from the fact that the defendant assisted a third party or participated with him in breaching his contract with the plaintiff that the defendant maliciously induced the breach. Plaintiff must prove that defendant intentionally induced a third party to breach his contract with plaintiff, or that defendant was a party to a conspiracy for the purpose of inducing a third party to breach his contract.

(c) Where the plaintiff proves that the defendant has maliciously induced a third party to breach a contract with the plaintiff, it may be inferred from Ohio case law that competition will not constitute such a privilege as will excuse the defendant for invading the contractual obligations owed to the plaintiff. However, it must be noted that an actor's intent is usually a difficult thing to prove, and the Ohio courts have demanded that plaintiff produce clear evidence of defendant's intent before they will grant a recovery. To date there is no Ohio decision in point where it has been proven to the court's satisfaction that the defendant was the procuring cause of the breach.

II. *A contract terminable at will*

(a) Where the defendant's action is not privileged, a wrongful and intentional interference will constitute an actionable wrong for which he will be held liable.

(b) Where the actor claims the privilege of competition, this would seem to be sufficient justification for inducing another, by proper means, not to continue a business relation with plaintiff, and the injury suffered by plaintiff is *damnum absque injuria.*

III. *A relationship that will terminate in a contract*

(a) Where the evidence clearly indicates that a contract would have been consummated between the plaintiff and a third party but for the interference of the defendant, and such interference is intentional and without justification, the defendant will

be held liable for all damages sustained by the plaintiff by reason of the defendant's wrongful action.

(b) If the actor is a competitor, this fact would undoubtedly justify his actions, providing he did not resort to improper means to influence the third party.