usually provide that after a judgment has been rendered against a motorist for damages arising out of an automobile accident, if such judgment remains unsatisfied, he must provide proof of his financial responsibility by securing insurance protection, depositing security with the state, or providing a satisfactory bond; otherwise his motor vehicle license is subject to revocation.

Under a "compulsory insurance law" such as that in effect in Massachusetts, the jury could reasonably assume that an insurance company was interested in the action and therefore no prejudice would arise by reason of the questioning of prospective jurors upon their voir dire as to their connection with or interest in a liability insurance company.

A group of eminent lawyers, the "Committee to Study Compensation for Automobile Accident," has suggested a plan of compensation for injuries resulting from motor car accidents comparable to that of the workmen's compensation laws. An outline by Arthur B. Ballentine, chairman of the committee, appears in 18 Am. Bar Assoc. Jour. 221 (1932). A symposium in 32 COL. L. REV. 785 (1932) presents the arguments for and against this plan.

If such a step is not feasible it might be possible to combine in Ohio the essential features of the Wisconsin statute permitting the joinder of insurance companies as parties defendant, with those of the Massachusetts "compulsory insurance law." This would obviate possible objections to the decision of the Supreme Court in the case of *Dowd-Feder* v. *Truesdell, supra.* More important, it would assure the financial responsibility of those who own and operate motor vehicles.

JAMES R. TRITSCHLER.

TRUSTS

NATURE OF THE RIGHT OF A CESTUI QUE TRUST WITH PARTICULAR REFERENCE TO TAXATION

Plaintiff, an Ohio resident, held seven transferable trust certificates, representing undivided equitable interests in land, some parcels of which were situated within and some without Ohio. The beneficiary was entitled to a share of the rentals, while exclusive powers of management were vested in the several trustees. The Ohio Intangible Tax Law, Sections 5323, 5328-1, 5370, 5389, 5638, General Code, provided for a tax, measured by five per cent of the income yield, on the investments of Ohio residents. The definition of investments included "equit-

able interests" in land "divided into shares evidenced by transferable certificates." Plaintiff sought to enjoin the collection of the tax, as violative of his rights under the "due process" clause of the Fourteenth Amendment of the United States Constitution, as the land had already been taxed to the trustees. The Ohio Supreme Court ruled the tax valid as to all the certificates. *Senior* v. *Braden*, 128 Ohio St. 597, 193 N.E. 614 (1934). On appeal, the United States Supreme Court, with three justices dissenting, held the tax invalid as to all the certificates, on the ground that the tax on those representing equitable interests in land beyond the state violated the "due process" clause of the Fourteenth Amendment of the Federal Constitution, and that the tax on those certificates, representing equitable interests in Ohio land violated Article 12, Section 2 of the Ohio Constitution, not being by "uniform rule according to value." *Senior* v. *Braden*, 295 U.S. 422, 55 S. Ct. 800, 79 L. Ed. 1520 (1935).

Tangible property, real or personal, is taxable only in the state where it is situated. *Louisville & Jeffersonville Ferry Co.* v. *Kentucky*, 188 U.S. 385, 23 S. Ct. 463, 47 L. Ed. 513 (1902); *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150, 4 Ann. Cas. 493 (1905). And recently it has been the tendency of the Supreme Court to eliminate taxation of the same *intangible* property interest by more than one state. It has generally held the state of the owner's domicile to be the proper power for the taxation of intangibles. *Farmer's Loan & Trust Co.* v. *Minnesota*, 280 U.S. 204, 50 S. Ct. 98, 74 L. Ed. 371, 65 A.L.R. 1000 (1929); *Baldwin* v. *Missouri*, 281 U.S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A.L.R. 1000 (1930). Therefore, if the plaintiff's rights constituted an interest in realty, it would seem to follow from these decisions that Ohio had no power to tax the certificates representing equitable interests in land in other states. On the other hand, if the plaintiff had an intangible property interest, the certificates would seem to be properly taxable by Ohio.

Two views have been set forth by legal authorities as to the nature of the right of the cestui que trust in the trust res. Bogert, Trusts and Trustees, V. 2, Sections 262-263 (1935). One view is that the cestui has an in rem interest in the subject matter of the trust. Scott, *Nature of the Rights of the Cestui Que Trust*, 17 Col. L. Rev. 269 (1917); *Brown* v. *Fletcher*, 235 U.S. 589, 35 S. Ct. 154, 59 L. Ed. 374 (1915); *Narragansett Mutual Fire Ins. Co.* v. *Barker*, 51 R.I. 37, 150 Atl. 756 (1930). Another line of authority views the cestui's interest as a chose in action against the trustee. Stone, *Nature of the*

Rights of the Cestui Que Trust, 17 Col. L. Rev. 467 (1917); Abbott & Goldman, *Land Trust Certificates with Relation to Ohio Law*, 2 Cinn. L. Rev. 255 (1928).

It was held by the United States Supreme Court in *Maguire* v. *Trefry*, 253 U.S. 12, 40 S. Ct. 417, 64 L. Ed. 739 (1920), that the income of a beneficiary from a trust consisting of intangibles located in another state is taxable in the state of the domicile of the beneficiary.

But the Supreme Court has recently held that the state of the beneficiary's domicile could not properly impose a tax upon the trust res, as such, located in another state. *Safe Deposit & Trust Co. of Baltimore* v. *Virginia*, 280 U.S. 83, 50 S. Ct. 59, 74 L. Ed. 180, 67 A.L.R. 386 (1929). (See *City of St. Albans* v. *Avery*, 95 Vt. 249, 114 Atl. 31 (1931). There also the corpus of the trust consisted of intangibles. That decision expressly left undecided the intermediate question as to whether or not it is within the power of a state to tax the resident beneficiary of a foreign trust, measured by his equitable interest. See *Brooke* v. *Norfolk*, 277 U.S. 27, 48 S. Ct. 422, 72 L. Ed. 767 (1928).

The Maryland Supreme Court has recently taken the view that a tax on the capitalized value of the income of a beneficiary from a foreign trust of intangibles is equivalent to a tax on the corpus itself and is therefore prohibited by the Fourteenth Amendment. *Mayor & City Council of Baltimore* v. *Gibbs*, 166 Md. 364, 171 Atl. 37 (1934). However, the opposite view was taken in *Rowe* v. *Braden*, 126 Ohio St. 533, 186 N.E. 392 (1933), where the court sustained a tax, measured by income yield, on the resident cestui's interest in a trust of intangibles situated in another state. The court there relied chiefly on *Maguire* v. *Trefry*, *supra*. Which of these two views will be adopted by the United States Supreme Court is doubtful, but in view of its decision in the instant case and its opposition to multiple taxation, it is probable that the view of the Maryland court will be accepted.

The above cases dealt with trusts of intangible property, while the trust res in the instant case consisted of real estate. In holding that a cestui's interest in a land trust was an ownership of land, the court placed chief reliance on *Brown* v. *Fletcher*, *supra*, where it was decided that a transfer by a beneficiary of his interest in a real estate trust was not an assignment of a chose in action so as to preclude the assignee from suing in the federal courts. However, that case is perhaps to be distinguished from the present one, as there the cestui, by the terms of the will, had a right to the corpus of the trust on arrival at a certain age, while in the principal case, the plaintiff was to be at no time entitled to receive anything other than a portion of the income from the rental of the property.

It was the opinion of the minority in the instant case that the beneficiary's right was a chose in action against the trustee and not an in rem interest in the trust res. This was also the view taken by the Ohio Supreme Court. *Senior* v. *Braden, supra.* An analogy was drawn to those cases sustaining a tax on the debt of a mortgagee secured by a mortgage on land outside of the state. *Kirtland* v. *Hotchkiss,* 100 U.S. 491, 25 L. Ed. 558 (1879). Likewise an analogy was drawn to the cases permitting a state to tax its residents' shares of stock in a foreign corporation. *Kidd* v. *Alabama,* 188 U.S. 730, 23 S. Ct. 401, 47 L. Ed. 669 (1903); *Hawley* v. *Malden,* 232 U.S. 1, 34 S. Ct. 201, 58 L. Ed. 477, Ann. Cas. 1916 C 842 (1914).

It would seem that the plaintiff had nothing more than choses in action in the instant case, since he was only entitled to a share of the rentals from the real estate, and could never get possession of the subject matter of the trusts. Further, it is submitted that there is no essential difference in principle between land trust certificates and shares of stock or mortgage debts, taxes on both of which have been sustained, even though the realty on which they were based was situated beyond the borders of the state. The cestui's rights, evidenced by the transferable trust certificates, receive the protection of the laws of the state of his domicile, and as was stated by the minority opinion, a tax on such rights would not be unduly oppressive.

Although not strictly an income tax, the tax in the instant case was to be measured by a percentage of the income yield. This fact the court did not discuss. Furthermore, it expressly disapproved of *Maguire* v. *Trefry, supra,* where a beneficiary's income from a foreign trust of intangibles was held taxable by the state of his domicile. Thus is made doubtful the question as to whether or not a tax on the income of a beneficiary from a foreign trust may be properly imposed by the state of his domicile.

However, the majority opinion is in line with the Supreme Court's tendency to eliminate so-called double taxation of the same property interest. And in holding that the cestui's right extends to the realty, the court is supported by the apparent weight of authority.

If the cestui's rights extend to the corpus of the trust, it logically follows that the tax on those certificates which evidenced equitable interests in lands within Ohio violated the uniformity clause of the Ohio Constitution.

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