

directly to the depositors, as money at interest. Rev. St., c. 39, s. 3. And when the corporate agent was substituted for the depositors in the assessment, the tax was declared to be in full for all taxes imposed upon the deposits, or on the depositors on account of the deposits. Laws of 1864, c. 4028, s. 1. If an additional and full tax were assessed to them, upon their deposits as money at interest, the case would be instantly recognized as one of double taxation. On that point there would be, in this state, no difference of opinion.

If the savings-bank tax, being constitutional, were not a property tax, it would be such an impost as the legislature could levy in addition to a full property tax of the deposits separately appraised. The depositors' privilege of employing the corporation, instead of an unincorporated body of trustees, as their agent in the investment of their common property, may be of some value to them. But it is not supposed to be worth to each depositor one per cent. annually of his share of the common personal property. And an assessment of all the common property at its full value as property, and a further assessment of one per cent. of the common personal property as a tax upon the corporate privilege, would not be an exercise of the power of making an equal division of the public expense. In an equal division a corporate franchise is taxed, like other property, at its value. The fact that the value of the franchise is often included in the appraisal of other property assessed at its full value to the equitable owners or their corporate agent, may not be material in jurisdictions where double and unequal taxation is maintained upon nominal distinctions, in disregard of the substance of equal right.

The assignment, and the substitution of the assignees as unincorporated trustees in place of the incorporated one, did not change the equitable title of the depositors. *Simpson v. Savings-Bank*, 56 N. H. 466. And the tax is due as if there had been no change of trustee.

Case discharged.

STANLEY and CLARK, JJ., did not sit: the others concurred.

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FERREN v. MOORE.

A husband's duty of supporting his wife is not terminated by her adultery, committed with his consent given upon condition that she shall not look to him for support.

ASSUMPSIT, for necessaries furnished the wife of the defendant while living separate from him. Facts found by a referee.

Sulloway & Topliff, for the plaintiff.

. *Straw and C. R. Morrison*, for the defendant.

DOE, C. J. As we understand the referee's report, the question is, whether the defendant's duty to support his wife ceased when she committed adultery in pursuance of his express written license, given, with deliberation and without solicitation, upon condition that she should not look to him for support. What he consented to he cannot complain of in this suit. The execution of their agreement that she should violate their marriage contract was not a justification of his violating that contract by turning her out of doors, and refusing to support her. He can no more enforce the condition of his license than he could maintain an action upon her promise, or the promise of any other person, to pay him for the license a sum equal in value to a release of his obligation of support. That obligation, whatever it is, cannot be avoided by such illegal bargains. Marital rights and duties are established by law. The marriage contract may be broken by either party, with or without the consent of the other; but it cannot be rescinded or modified by them. *Cross v. Cross*, 58 N. H. 373. The plaintiff is in no way connected with the lawless transaction. The case does not raise the question whether the husband's duty of supporting his wife, when she is able to support herself, is, under any circumstances, in any degree, affected by modern legislation, or the question whether the obligation of support is mutual. *Harris v. Webster*, 58 N. H. 481; 1 Parsons Contracts 350; *Walker v. Loughton*, 31 N. H. 111; *Tebbets v. Hapgood*, 34 N. H. 420; *Morris v. Palmer*, 39 N. H. 123, 126; *Morrison v. Holt*, 42 N. H. 478.

Judgment for the plaintiff.

BINGHAM, J., did not sit: the others concurred.

MORRILL v. HOVEY.

In an action by the purchaser for deceit in the sale of land, the jury will not be instructed to return a verdict for nominal damages, for the reason that the plaintiff has failed to pay off a mortgage on the premises conveyed, which he assumed and agreed to pay as part of the purchase-money. But, the mortgage debt being fully due, judgment will not be entered on a verdict for the actual damage until the plaintiff performs his agreement by paying off the mortgage.

CASE, for deceit in the sale of land. Plea, the general issue.