CURRENT DECISIONS

BANKRUPTCY—COMPOSITIONS—ORIGINAL INDEBTEDNESS NOT REVIVED BY NON-PAYMENT OF COMPOSITION NOTES.—Under a composition confirmed by the bankruptcy court the creditors accepted a settlement of thirty per cent. partly in the debtor's promissory notes. In a subsequent bankruptcy proceeding, the notes being unpaid, a creditor sought to prove a claim based on the original indebtedness, contending that it was revived by non-payment of the composition notes. *Held,* that the original indebtedness was not revived. *Matter of Mirkus* (1923, C. C. A. 2d) 289 Fed. 732.

This is the first decision on the point by a Circuit Court of Appeals. An opposite result was reached under the Bankruptcy Act of 1867. *In re Hurst* (1876, C. C. E. D. Mich.) Fed. Cas. No. 6925. *Dicta* expressing a view contrary to the principal case are to be found under the present Act. See *Re Kinnane Co.* (1915, S. D. Ohio) 221 Fed. 762; Loveland, *Bankruptcy* (4th ed. 1912) 1281. The decision in the principal case is based on the similarity in the provisions, under the present act, concerning a confirmed composition, and a discharge in bankruptcy. The court correctly prefers an interpretation which excludes the old creditors from sharing with the new ones assets acquired since the composition, except to the extent of unpaid composition obligations. *Jacobs v. Fensterstock* (1923, N. Y.) 69 N. Y. L. JOUR. 595. Even at common law, non-payment of notes given under a composition agreement did not revive the original indebtedness if the creditors had agreed to accept the notes themselves as full satisfaction. See *Evans v. Powis* (1847) 1 Exch. 601; 3 Williston, *Contracts* (1920) 3168.

CONSTITUTIONAL LAW—DECLARATORY JUDGMENT—DETERMINATION OF UNCERTAIN JURAL RELATIONS.—The plaintiff sublet to one Hawley a contract to paint a building for the defendant Hospital and the defendant Casualty Company was surety for faithful performance. Hawley partially performed and then abandoned his agreement. The plaintiff completed the contract but part of the contract price was withheld by the Hospital because two mechanics' liens were filed upon the building. The plaintiff asked for a declaratory judgment to determine the jural relations of the parties, and for consequential relief after the validity of the liens was determined. *Held,* that the plaintiff was entitled to the relief asked. *Joy v. Amsterdam Casualty et al.* (1923) 98 Conn. 794.

The constitutionality of the declaratory judgment seems to be definitely established notwithstanding the temporary doubt cast upon it by the since discredited opinion in the case of *Anway v. Grand Rapids Ry.* (1920) 211 Mich. 592, 179 N. W. 350. See COMMENTS (1922) 31 YALE LAW JOURNAL, 419; *Braman v. Babcock* (1923) 98 Conn. 549, 120 Atl. 150; *Blakeslee v. Wilson* (1923, Calif.) 213 Pac. 495. Where the legal relations of the parties in interest are uncertain, and, the parties being before the court, a useful purpose is served by relieving the uncertainty, the court will render a declaratory judgment. See COMMENTS (1920) 29 YALE LAW JOURNAL, 545; Borchard, *The Declaratory Judgment—A Needed Procedural Reform* (1918) 28 *ibid.* 1, 105; Sunderland, *The Declaratory Judgment* (1917) 16 MICH. L. REV. 69.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—GRAIN FUTURES ACT.—The plaintiffs sought to enjoin as unconstitutional the enforcement of the Act of Sept. 21, 1922 (42 Stat. at L. 998) which forbade the use of interstate communication in making sales of grain for future delivery. *Held,* that the bill was properly

dismissed. *Board of Trade of Chicago v. Olsen* (1923) 262 U. S. 1, 43 Sup. Ct. 470.

In holding that the flow of grain through Chicago is interstate commerce notwithstanding a local change of title, the Supreme Court has carried out a practical conception of commerce as a current or movement of commodities across state lines. The court properly held that a manipulation of the market has a direct relation to this movement. *Swift & Co. v. United States* (1905) 196 U. S. 375, 25 Sup. Ct. 276; *Stafford v. Wallace* (1922) 258 U. S. 495, 42 Sup. Ct. 397; *cf. Lemke v. Farmers' Grain Co.* (1922) 258 U. S. 50, 42 Sup. Ct. 244.

CONSTITUTIONAL LAW—SPECIAL ASSESSMENTS—LEGISLATIVE POWER TO DETERMINE EXTENT OF DRAINAGE DISTRICT.—The legislature established a drainage district including the plaintiff's land and assessed lands within the district for the benefit of the Bronx Valley Sewer. N. Y. Laws, 1917, ch. 646. No benefit could accrue to the plaintiff without the construction of a connecting sewer. *Held,* that the assessment was valid. *The Valley Farms Co. v. County of Westchester* (1923, U. S.) 43 Sup. Ct. 261.

The federal limitation on the power of the state legislatures to make or lay the conditions of special assessments prohibits only purely arbitrary action. *Houck v. Little River Drainage District* (1915) 239 U. S. 54, 36 Sup. Ct. 58; *Miller & Lux v. Sacramento & San Joaquin Drainage District* (1921) 256 U. S. 129, 41 Sup. Ct. 404. For a discussion of the constitutionality of special assessments in general, see Page and Jones, *Taxation by Assessment* (1909) ch. V; (1916) 14 MICH. L. REV. 419.

CONTRACTS—EXPRESS CONDITIONS PRECEDENT—PERFORMANCE RENDERED IMPOSSIBLE BY OTHER PARTY.—The defendant contracted to supply the plaintiff with automobiles for resale, and to pay an additional discount provided the contract remained in force a full year and provided also that the plaintiff took his full allotment. Either party could cancel the contract on five days' notice. Before the expiration of the year, but after the plaintiff had taken his allotment, the defendant cancelled the contract. The plaintiff sued to recover the additional discount. *Held,* that he could not recover. *Superior Motor Co. v. Chevrolet Motor Co.* (1923, Kan.) 212 Pac. 100.

Although the obvious purpose of the conditions was accomplished the court nevertheless insists upon a strict performance of all express conditions precedent. See 2 Williston, *Contracts* (1920) sec. 668; *cf. Kelso and Co. v. Ellis* (1918) 224 N. Y. 528, 121 N. E. 364. The plaintiff cannot set up impossibility of performance caused by the defendant's exercise of his power of cancellation. See Williston, *op. cit. supra,* sec. 677; Corbin, *Conditions in the Law of Contracts* (1919) 28 YALE LAW JOURNAL, 739; Ashley, *Conditions in Contract* (1905) 14 YALE LAW JOURNAL, 424; Corbin, *Supervening Impossibility of Performing Conditions Precedent* (1922) 22 COL. L. REV. 421.

CONTRACTS—THIRD PARTY BENEFICIARIES—DONEE-BENEFICIARY ALLOWED TO ACQUIRE IMMUNITY FROM SUIT.—One Bagdan assigned a promissory note made by the defendant to the plaintiff with the express condition that he not demand payment within one year. The defendant refused to pay on demand within the year and the plaintiff sued on the note. The defendant set up the agreement for the extension of time. The plaintiff's demurrer to this defense on the ground that the defendant was not a party to the agreement was sustained and the defendant appealed. *Held,* that the demurrer should be overruled. *Baurer v. Devenes* (1923, Conn.) 121 Atl. 566.

The decision of the instant case definitely places Connecticut among the great majority of states adopting the better view that donee-beneficiaries may sue on

a contract. See Corbin, *Contracts for the Benefit of Third Persons* (1918) 27 YALE LAW JOURNAL, 1008; Whittier, *Contract Beneficiaries* (1923) 32 YALE LAW JOURNAL, 790. It is doubtful if Connecticut has ever denied such a power to a donee-beneficiary. See Corbin, *Contracts for the Benefit of Third Persons in Connecticut* (1922) 31 YALE LAW JOURNAL, 489. The instant case, however, is not one of conferring on a creditor a power to sue, but of conferring on a debtor an immunity from suit within the stipulated time.

FEDERAL PRACTICE—INJUNCTION BASED UPON CONSTITUTIONALITY OF STATUTE—NUMBER OF JUDGES REQUIRED.—The plaintiffs, corporations furnishing natural gas to consumers, alleging that the rates established by the orders of the Corporation Commission were confiscatory, asked for injunctions on the ground that the orders were unconstitutional. *Held,* that although the constitutionality of the orders and not of a statute was involved, the cases were within section 266 of the Judicial Code requiring a hearing by three judges. *Oklahoma Gas Co. v. Russell* (1923, U. S.) 43 Sup. Ct. 353.

The United States Supreme Court expressly construed section 266 of the Judicial Code as it had before assumed it to be, stating that the amendment was introduced to prevent any question that such orders were within the section. Act of March 3, 1911 (36 Stat. at L. 1087, 1162) as amended by Act of March 4, 1913 (37 Stat. at L. 1013); *Cumberland Tel. and Tel. Co. v. La. Commission* (1922, U. S.) 43 Sup. Ct. 75; (1923) 32 YALE LAW JOURNAL, 621; *contra: Michigan Telephone Co. v. Odell* (1922, E. D. Mich.) 283 Fed. 139.

HUSBAND AND WIFE—CRIMINAL CONVERSATION—ACTION BY WIFE.—The plaintiff brought an action against the defendant for having had criminal intercourse with her husband, without the plaintiff's privity, connivance or consent. The trial court submitted the case to the jury. *Held,* that a judgment on the verdict for the plaintiff should be sustained. *Oppenheim v. Kridel* (1923) 236 N. Y. 156.

Actions of criminal conversation brought by a wife are commonly joined with an action for alienation of affections. *Seaver v. Adams* (1890) 66 N. H. 142, 19 Atl. 776; *Dodge v. Rush* (1906) 28 App. D. C. 149; *Nolin v. Pearson* (1906) 191 Mass. 283, 77 N. E. 890. However, even where the action is for criminal conversation alone, the courts, as in the above cases, are today inclined to give the wife a cause of action. *Watkins v. Lord* (1918) 31 Idaho, 352, 171 Pac. 1133; *Turner v. Heavrin* (1918) 182 Ky. 65, 206 S. W. 23; *Frederick v. Morse* (1914) 88 Vt. 126, 92 Atl. 16. See *Valentine v. Pollak* (1920) 95 Conn. 556, 111 Atl. 869; *Smith v. Lyon* (1918) 9 Ohio App. 141, 143; *contra: Kroessin v. Keller* (1895) 60 Minn. 372, 62 N. W. 438.

INJUNCTION—TRESPASS TO LAND—INJURY TO CROPS.—The plaintiff asked for an injunction to enjoin the defendant from going on his land and taking possession of and harvesting his wheat crop. *Held,* that although the insolvency of the defendant was not shown an injunction should be granted. *Nazarenus v. Wigle* (1923, Colo.) 212 Pac. 826.

In a few cases the courts have said that a violation of the right which a person has in the exclusive dominion over his soil is such an injury as will justify equitable relief. *Cf. Lamprey v. Danz* (1902) 86 Minn. 317, 90 N. W. 578; *Oliphant v. Richmond* (1904) 67 N. J. Eq. 280, 59 Atl. 241; NOTES (1915) 15 COL. L. REV. 537. This seems an extreme application of the rule that equity will act only to prevent irreparable injury. In the instant case the injunction seems to have been granted solely on the ground of the threatened loss of ordinary crops. The weight of authority seems to be contrary. *Moore v. Halliday* (1903) 43 Or. 243, 72 Pac. 801; *Bridges v. Sargent* (1895) 1 Kan. App. 442, 40 Pac. 823; *Monk-*

man v. Babington (1888, Q. B.) 5 Manitoba, 253; *contra: Wilson v. Eagleson* (1903) 9 Idaho, 17, 71 Pac. 613; *Bank of Edwall v. Bateman* (1917) 98 Wash. 447, 167 Pac. 1102; L. R. A. 1918 B, 413, note.

LIBEL—POWER OF A MUNICIPALITY TO SUE.—The defendant newspaper, during a political campaign, published statements to the effect that the plaintiff city, as a result of mal-administration, was bankrupt and could not pay its debts. To a complaint alleging that the statements were false and actuated by malice in fact, and had resulted in special damages of $10,000,000, the defendant demurred. *Held,* that the demurrer should be sustained, since the defendant had an absolute privilege to criticize the government. *City of Chicago v. Tribune Co.* (1923, Ill.) 139 N. E. 86.

The case seems to be of first impression. All the analogies of the law of libel are against the decision. Thus a municipality can be sued for libel. *Stanley v. Sangerville* (1920) 119 Me. 26, 109 Atl. 189. And conditional privilege has always been regarded as sufficient protection to the public interest in statements regarding candidates for public office. *Hubbard v. Allyn* (1908) 200 Mass. 166, 86 N. E. 356; *Kutcher v. Post Printing Co.* (1915) 23 Wyo. 178, 147 Pac. 517; *Galveston Tribune v. Johnson* (1911, Tex. Civ. App.) 141 S. W. 302. And see (1923) 21 MICH. L. REV. 915. It can be argued for the decision that the absolute privilege granted is safeguarded from abuse by the individual rights of any officials criticized; that any criticism of an administration for extravagance, inefficiency, or corruption must of necessity lead to some incidental damage to a city's credit; and that any other rule will permit demagogues to shelter themselves behind the city and make unlimited use of the public purse in silencing opposition. If the innovation in the law is to be approved on this basis, the absolute privilege should at least be limited to the case of damage suffered by a city as an incidental result only of political attacks on its administrators for the time being.

LIBEL AND SLANDER—PRIVILEGE—LETTER TO ANTI-VICE CORPORATION BY MEMBER.—The defendant, a member of a moral uplift society, sent a letter to the organization, falsely charging the plaintiff with maintaining a disorderly house and keeping girls for immoral purposes. The purpose of the communication was to cause an investigation to be started. *Held,* (two judges *dissenting*) that the communication was not privileged. *Pecue v. Collins* (1923) 204 App. Div. 142, 197 N. Y. Supp. 835.

The instant decision seems indicative of a reluctance to allow private organizations to usurp the functions of the public prosecutor. *Cf.* COMMENTS (1922) 31 YALE LAW JOURNAL, 765; (1913) 23 *ibid.* 99; COMMENTS (1922) 32 *ibid.* 80.

RECEIVERS—CLAIMS—BREACH OF EXECUTORY CONTRACT BY APPOINTMENT OF RECEIVER.—The plaintiff made several contracts to sell sugar to the defendant corporation. Before the maturity of one of these contracts, the defendant corporation went into receivership and the contract was not performed. A claim for damages was presented in receivership proceedings. *Held,* that the claim should be allowed, payable out of the general assets in control of the receiver. *Napier v. People's Stores Co.* (1923) 98 Conn. 414, 120 Atl. 295.

The instant case overrules the prior leading case of *Wells v. Hartford Manilla Co.* (1903) 76 Conn. 27, 55 Atl. 599, and establishes for Connecticut the more desirable rule that the appointment of a receiver for a contracting party constitutes an anticipatory breach of its contracts, unless the receiver elects to perform. See Clark, *Contingent and Immature Claims in Receivership Proceedings* (1920) 29 YALE LAW JOURNAL, 481; COMMENTS (1919) 28 *ibid.* 673, 679; Clark, *Set-Off in Cases of Immature Claims in Insolvency and Receivership* (1920) 34 HARV. L. REV. 178.