24 Colo. 107, 48 Pac. 963; *Miller v. Sutliff* (1911) 241 Ill. 521, 94 N. E. 651; *Hunt v. Lewis* (1914) 87 Vt. 528, 90 Atl. 578. The reason for this view is stated in *Miller v. Sutliff, supra,* "If an intention not to perform constituted fraud, every transaction might be avoided where the facts justified an inference that a party did not intend to pay the consideration, or keep his agreement." This seems to be nothing more than an assurance that the doctrine of caveat emptor will be maintained in all its ancient viciousness.

In Missouri there are cases holding that a promise made with present intent to break it is sufficient fraud to warrant a recission of the contract. *Laswell v. National Handle Co.* (1910) 147 Mo. App. 497, 126 S. W. 969; *Culbertson v. Young* (1901) 86 Mo. App. 277. However the rule seems to be settled that "a promise made without intention to fulfill is not a misrepresentation of an existing fact", within the rule that a misrepresentation of fact is ground for recission. *Younger v. Hoge* (1908) 211 Mo. 444, 111 S. W. 20; *Estes v. Desnoyers Shoe Co.* (1900) 155 Mo. 577, 56 S. W. 316. As was pointed out by the dissenting judge, the cases in which this minority rule has been applied do not upon their facts call for its application. Furthermore, in the instant case, the matter was before the court on a demurrer so that the issue of legal sufficiency was clear cut. Had the court seen fit to do so, it could have established the majority rule in this state, without necessarily overruling previously decided cases, and the opportunity to decide this specific question of law alone was afforded. It is somewhat to be regretted that Judge Gantt was unable to prevail upon his associates to adopt the views which he expounds in the dissenting opinion, and thereby drawing this jurisdiction away from old common law rules which favored chicanery. It seems hard to perceive, from a practical point of view at least, how the court can refuse to recognize the fraudulent nature of a promise made with present intent not to perform. A. P., '33.

INTERNAL REVENUE—REFUNDS—AMENDMENT AFTER TIME FOR FILING NEW CLAIM HAS EXPIRED.—Two recent decisions by the Supreme Court of the United States, both written by Mr. Justice Cardozo, have served to clarify the law of this important subject, although they have left it in a position which seems highly illogical. The recent revenue acts have contained provisions that in order to secure a refund a claim, in the form prescribed by the regulations of the Treasury Department, must be made within a certain period after the tax has been paid. The period for filing these claims with the commissioner of internal revenue has varied. Under the Revenue Acts of 1926 and 1928 it was four years, but the Revenue Act of 1932 reduced the period to two years. 44 Stat. 66 (1926), 45 Stat. 871 (1928), 11 U. S. C. 1065b; Revenue Act of 1932 sec. 322.

In the first case the claim had been filed within the proper time, but was too general to meet the tests of the regulation. Nevertheless, the federal agents investigated the claim and were apparently about to allow it, when the commissioner discovered it was not in the proper form. He notified the

claimant of this, but did not reject the claim at that time. The claimant then sought to amend the claim so as to specify properly the cause for which the refund was sought. This amendment was sought to be made after the time limit had run against the filing of new claims. *Held*: The amendment should have been allowed. *U. S. v. Memphis Oil Co.* (1933) 53 S. Ct. 278.

In the second case the claim as originally filed was in the proper form in that it specified a definite ground upon which the refund was claimed. After the time for filing new claims had passed, the claimant tried to amend the claim and set up another ground of recovery. *Held*: Such an amendment is improper. *U. S. v. Henry Prentiss & Co.* (1933) 53 S. Ct. 283.

In the opinion in the *Memphis Oil Co.* case Mr. Justice Cardozo discusses the analogies of cases of amendment after the Statute of Limitations has run and reaches the conclusion that the law on this subject is so confused as to furnish little help in the actual decision of the controversy. The general principle is that the amendment must not change the cause of action after such a period, but the cases are in inextricable confusion as to what amendments have this effect. Clark, Code Pleading pp. 513-516. The earlier case of *Lewis v. Reynolds* (1931) 284 U. S. 281 had held that the filing of a claim for a refund "involves a redetermination of the entire tax liability" (but this holding was made to support the commissioner's refusal to allow a refund for the improper disallowance of one claimed deduction on the ground that another claimed deduction was improperly allowed). The nature of the claim for a refund is most nearly like an action under the common counts for money had and received, and hence the specification may be made later. The function of the time limitation is to prevent the presentation of stale claims, while the function of the form prescribed by the regulations is to aid research. The research had been done on the basis of the claim, and hence the amendment should have been allowed. The opinion in the second case is by no means so satisfactory. The opinion purports to decide the general question of amendment from one specification to another, but relies solely upon the special nature of the particular kind of claim first made and the practice of the Treasury Department in dealing with claims of such a nature not to make a general investigation.

It is settled that the commissioner may waive defects of form. *Tucker v. Alexander* (1927) 275 U. S. 228; *Bonwit Teller & Co. v. U. S.* (1931) 283 U. S. 258. It has likewise been held that a defectively stated claim will not support a suit when the defects were neither waived nor an attempt made by the claimant to amend. *U. S. v. Felt & Tarrant Co.* (1931) 283 U. S. 269. The commissioner may reject claims because they were not properly stated and amendments cannot be made after such a rejection. *Connell v. Hopkins* (D. C. N. D. Tex. 1930) 43 F. (2d) 773; *Sugar Land Ry. Co. v. U. S.* (Court of Claims 1931) 48 F. (2d) 973. Where the commissioner has rejected the claim because it was improperly stated, he is under no duty to reopen the case so that an amendment may be made. *Solomon v. U. S.* (D. C. S. D. N. Y. 1931) 49 F. (2d) 638.

There are several cases before the lower federal courts which reached es-

sentially the same conclusion as the *Memphis Oil Co.* case, but they based it on a different process of reasoning. In two cases where the facts were virtually identical with the present case, the amendment was allowed on the ground that all objections on the ground of form had been waived by the investigation made of the claim and that the only purpose of the amendment was to make a record which would be complete in form so as to aid the courts when the case was later taken to them. *Art Metal Construction Co. v. U. S.* (D. C. W. D. N. Y. 1929) 35 F. (2d) 379; *Zeller v. U. S.* (D. C. W. D. N. Y. 1929) 35 F. (2d) 870. The Court of Claims had taken the view that the amendment should be allowed since the commissioner could pay on an insufficiently stated claim and that the requirements as to form were only essential when an appeal was made to the courts. *Factors & Finance Co. v. U. S.* (Court of Claims 1932) 56 F. (2d) 903, *aff'd* (1933) 53 S. Ct. 287 (on the basis of the opinion in the *Memphis Oil Co.* case as far as the question of amendment was concerned).

It would seem that the result of these two cases is to encourage an attorney who is not quite sure of the ground on which the claim is to be finally supported to file a mere general claim without making any attempt to follow the regulations by being specific. If he does so, he can amend at any time before the claim is rejected, while if he attempts to follow the regulations, he must adhere to his first choice. This seems scarcely just. Moreover, any such practice must have the effect either of forcing the agents to investigate every feature of a complicated tax return as soon as a refund is claimed, or of being faced with claims on particular grounds for which they have not collected the evidence, which may no longer be completely available. G. W. S., '33.

LIBEL AND SLANDER—ABSOLUTE PRIVILEGE—STATEMENTS BEFORE COMMISSIONS.—An insurance agent whose license had been revoked by the insurance commissioner sued his former employers alleging the president of the defendant company had slandered him by maliciously making false statements to the commissioner in an effort to have his license revoked after he had transferred to a rival company. *Held.* Such statements are absolutely privileged because the insurance commissioner was acting in a quasi-judicial capacity. *Independent Life Ins. Co. v. Rodgers* (Tenn. 1933) 55 S. W. (2d) 767.

The scope and nature of absolute privilege have been well stated, "The publication of defamatory words may be under an absolute or under a qualified or conditional privilege. Under the former there is no liability although the defamatory words are falsely and maliciously published. The class of absolutely privileged communications is narrow and practically limited to legislative and judicial proceedings and acts of state". *Hassett v. Carroll* (1911) 85 Conn. 23, 81 Atl. 1013; Odgers on Libel and Slander (6th ed.) 189. When the occasion is absolutely privileged, the English courts extend this protection whether or not the words are relevant to the proceeding. *Dawkins v. Lord Rokeby* (1875) L. R. 7 H. L. 744; *Seaman v. Netherclift* (1876)