

210 Mo. 424, 99 S. W. 1062; *Brower v. Northern P. R. Co.* (1910) 109 Minn. 385, 124 N. W. 10; *Williams v. Dean* (1907) 134 Iowa 216, 111 N. W. 931; *Southern R. Co. v. Grizzle* (1906) 124 Ga. 735, 53 S. E. 244. Other authorities escape the confusion resulting from such a distinction by declaring that an agent who assumes the control of property is charged with the duty of so managing and using it as not to injure the property or person of another; thus creating a duty in law making the agent liable to third persons for misfeasance and "nonfeasance." *Tippecanoe Loan & Trust Co. v. Jester* (1913) 180 Ind. 357, 101 N. E. 915, L. R. A. 1915E, 721.

At most, the foregoing limitations are inadequate. First, because the failure of the agent to enter into performance of the contract after lulling his principal into inactivity, may cause the injury to a third person. Secondly, the injury may result from an agency which does not allow the agent full control over the principal's property. The best means of escape from *Lane v. Cotton*, supra, and the error into which its misapplication lead the courts would seem to be to adopt the rule proposed by the American Law Institute: "An agent who undertakes to act for the principal under such conditions that some action is necessary for the protection of the person of others or of their tangible things is subject to liability to such others for physical harm to them or to their things caused by his undertaking and subsequent failure to act, if the need for action is so immediate or emergent that withdrawal from the undertaking is no longer possible without unreasonable risk to them, and the agent should so realize." American Law Institute, *Restatement of Agency* (1933), sec. 354.

H. A. G. '35.

BANKRUPTCY—LEASE TERMINATED BY SUCH—PROVABLE CLAIMS.—By the terms of the lease, the filing of a petition in bankruptcy against the lessee was to be deemed a breach of the lease, terminating it ipso facto and without entry or other action by the lessor. A further provision gave the lessor as damages for said breach an amount equal to the amount of the rent reserved for the residue of the term less the fair rental value. The bankruptcy petition was filed against the lessee prior to the termination of the lease. In an action to establish a claim for damages under the lease, held, affirming the judgment of the Circuit Court (69 F (2d) 90) that the lessor had a provable claim under the Bankruptcy Act. *Irving Trust Co. v. Perry*—U. S.—, (U. S. Law Week, December 4, 1934).

"Debts of the bankrupt may be proved and allowed against his estate which are a fixed liability . . . absolutely owing at the time of the filing of the petition against him." Bankruptcy Act 1898, ch. 541, sec. 63 a (1); 30 Stat. 562.

Contingent claims cannot be liquidated or proven. 2 Collier on Bankruptcy (12th Ed. 1921), 978. *In re Imperial Brewing Co.* (W. D. Mo. 1906) 143 Fed. 579. Accordingly, rent which the bankrupt has agreed to pay and which is to accrue subsequent to the filing of the petition in bankruptcy does not constitute a provable claim; it is not a "fixed liability" under section 63 a (1) nor an existing demand, but both the existence and the

amount of the possible future demand are contingent upon unforeseen events. *Atkins v. Wilcox* (C. C. A. 5, 1900), 105 Fed. 595; 53 L. R. A. 118.

For the same reasons, a provision in a lease, authorizing the landlord to re-enter upon the bankruptcy of the tenant and permitting him to recover the difference between the rent reserved and that collected from other sources, does not enable the landlord to prove a claim for rent accruing subsequent to the bankruptcy of the tenant. 2 Collier, p. 982. For the lease is terminated not by the bankruptcy but by the re-entry, and, the lessor nor being obliged to re-enter, whether he will do so or not is manifestly uncertain. Furthermore at the time of the petition in bankruptcy, which is the ruling date for determining provability, it is uncertain whether there will be any loss in rents. *In re Roth and Appel* (C. C. A. 2, 1910) 181 F. 667, 31 L. R. A. (N. S.) 270; *Slocum v. Soliday* (C. C. A. 1, 1910), 183 Fed. 410.

In the principal case the contingencies which defeated the claims in the earlier cases were avoided by the express terms of this lease, thus removing all obstacles to the provability of the claim. Here the bankruptcy itself, not a possible subsequent re-entry by the lessor, terminated the lease. It has been held that when the filing of a petition in bankruptcy itself amounts to a breach of contract, the claim for damages ripens simultaneously with the filing of the petition. 2 Collier, p. 951 f. n. *Hutchinson v. Dee* (C. A. A. 1, 1901) 112 Fed. 315. Nor can the objection be raised that at this date the damages were contingent and uncertain in amount. At the filing of the petition it was at once ascertainable whether a loss existed and what its amount would be; for the prescribed standard of appraisal was effective as of that date. The claim then is based on a promise which does not look to the future, but which is to pay the difference between two amounts presently ascertainable. The fact that the amount of the loss is not fixed in advance is immaterial. *Wm. Filene's Sons Co. v. Weed* (1918), 245 U. S. 597.

Based on a somewhat analogous theory is the holding that a covenant in a lease, making all future installments of rent due and payable upon termination of the lease by the bankruptcy of the lessee, creates a fixed liability within the meaning of the Bankruptcy Act. 2 Collier, p. 982. *In re Pittsburg Durg Co.* (W. D. Pa. 1908) 164 Fed. 482.

J. I. W. '35.

CONFLICT OF LAWS—FOREIGN CORPORATIONS—BURDEN ON INTERSTATE COMMERCE.—A foreign corporation doing business in Minnesota and having its principal office there, brought suit in Minnesota against a foreign corporation also doing business in Minnesota, on a foreign cause of action. Suit was commenced by attaching a vessel owned and operated by the defendant corporation which was a carrier of merchandise in interstate and foreign commerce. Held, that the exercise of jurisdiction by the Minnesota court would not unreasonably burden interstate commerce. *International Milling Co. v. Columbia Transportation Co.* (1934) 292 U. S. 511.

The position of the United States Supreme Court on the question whether a foreign corporation may be sued on a foreign cause of action in a state