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 determing 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 analagous 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

where it is doing business is not at all clear. See Stimson, *Jurisdiction Over Foreign Corporations* (1932) 18 St. Louis L. Rev. 195, 204. It has decided the question both ways. In the affirmative, *Barrow S. S. Co. v. Kane* (1898) 170 U. S. 100; Contra: *Old Wayne Life Ass'n. v. McDonough* (1907) 204 U. S. 8; *Simon v. Southern Ry. Co.* (1915) 236 U. S. 115. It would seem that the sound view is that the foreign corporation may be sued on transitory causes of action wherever it may be found and served. Many cases so hold. *Johnston v. Trade Ins. Co.* (1882) 132 Mass. 432; *Logan v. Bank of Scotland* (1904) 2 K. B. 495; *Tauza v. Susquehanna Coal Co.* (1917) 220 N. Y. 259, 115 N. E. 915. A state's jurisdiction over transitory causes of action has been limited, however, by constitutional law under the due process clause and the commerce clause. The due process clause is not infringed when the defendant is doing business within the jurisdiction and such provision has been made for service as to give him adequate notice. The commerce clause is invoked to prevent the importation of suits which will unreasonably burden interstate commerce.

The application of the commerce clause as a limitation on the right to sue a foreign corporation seems to have originated in the case of *Davis v. Farmer's Co-Operative Equity Co.* (1923) 262 U. S. 312, where it was held that a state cannot take jurisdiction of a suit on a cause of action which did not arise in the forum in which the transaction giving rise to it was entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside, because of the manifest inconvenience to the non-resident defendant in procuring witnesses and evidence and thus unreasonably burdening interstate commerce. The principle applies to suits commenced by attachment as well as to actions in personam. *Atchinson, Topeka and S. F. Ry. v. Wells* (1928) 265 U. S. 101. The *Davis* case has been distinguished, and trial of a case permitted in a state other than that in which the cause of action arose, by holding the burden on interstate commerce reasonable where the plaintiff was a resident of the state of suit. *Griffin v. Seaboard Ry.* (W. D. Mo. 1928) 28 F. (2nd) 998; *Cressey v. Erie Ry.* (1932) 278 Mass. 401, 180 N. E. 160. Cf. *Mich. Central Ry. v. Mix* (1929) 278 U. S. 492. Or where the cause of action arose out of a shipment of goods to be delivered in the state. *St. L. B. & M. Ry. v. Taylor* (1924) 266 U. S. 200; *Maverick Mills v. Davis* (D. Mass. 1923) 294 F. 404. Cf. *A. T. & S. F. Ry. v. Wells* Supra. And where the defendant corporation was sued in the state of its incorporation. *Hoffman v. Mo. ex rel. Foraker* (1927) 274 U. S. 21. Or where the cause of action arose in the state of suit. *Kulaszewicz v. Kilger & Son* (W. D. Mich. 1926) 16 F. (2nd) 940. Or where the defendant railroad had lines within the state. *Schendell v. McGee* (C. C. A. 8 1924) 300 F. 273; *Witort v. C. & N. W. Ry.* (1929) 178 Minn. 261, 226 N. W. 934. Cf. *Denver & R. G. W. Ry. v. Terte* (1932) 284 U. S. 284. And where the cause of action arose out of a transaction that was entered into within the state. *L. & N. Ry. v. Chatters* (1929) 279 U. S. 320.

It is, however, difficult to see how these distinctions lessen any of the actual burden on interstate commerce. Justice usually can better be pro-

cured where the cause of action arose and the witnesses and evidence are; and because of this some courts have refused to take cognizance of any causes of action arising outside the jurisdiction between non-residents. Blair, *The Doctrine of Forum Non Conveniens* (1929) 29 Col. L. Rev. 1. Had not the Minnesota courts previously rejected this useful doctrine, they could have refused to entertain jurisdiction on this ground. *State v. District Court* (1914) 126 Minn. 501, 148 N. W. 463; *Boright v. C. R. & P. Ry.* (1930) 180 Minn. 52, 230 N. W. 457. The decision in the instant case apparently conforms to the cases above cited where the burden on interstate commerce was held a reasonable one by reason of the existence of special circumstances; the presence of the ship in Minnesota waters being equivalent to trackage and the operation of trains by a railroad corporation, the additional fact that the plaintiff's principal office was in Minnesota being considered by the court as the equivalent of residence of an individual plaintiff. J. C. C. '35.

CONFLICT OF LAWS—PUBLIC POLICY—DUE PROCESS.—The defendant, a citizen of New Jersey, obtained a loan from an Indiana corporation, the contract being made in Indiana. The note given by the defendant was usurious under the New Jersey Small Loan Act, but it was perfectly valid under the laws of Indiana. The plaintiff brought suit on the note in New Jersey. *Held*, a state is not bound to recognize or enforce the contract of another state if that contract is injurious to its own interests or the interests of its citizens or if it is contrary to the public policy of the state. *Continental Adjustment Corporation v. Klause* (N. J. 1934) 174 At. 246.

The decision is in accord with the majority rule that, although a contract valid where made is valid everywhere, one state will not enforce the contract of another if to do so would be in violation of its statutes or settled public policy, or if it would work an injury to that state or its citizens. *Bond v. Hume* (1916) 243 U. S. 15; *Green v. Van Buskirk* (1866) 5 Wall. 307, 18 L. Ed. 599; *International Harvester Co. v. McAdams* (1910) 142 Wis. 114; 124 N. W. 1042.

In cases in which the plaintiff's action fails only because of the public policy of the forum, the courts admit that the plaintiffs have acquired vested rights. When they in situations not involving any deep-rooted public policy refuse to recognize or enforce these rights, are they not denying due process of law? The United States Supreme Court has so held in cases involving the application of local statutes to foreign insurance contracts. In *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.* (1934) 54 S. Ct. 634 and *Home Insurance Co. v. Dick* (1929) 281 U. S. 397, the policies sued on contained clauses limiting the time for making a claim thereon. It was held a denial of due process to apply local statutes invalidating such clauses, since they were valid in the state where made. In *Aetna Life Insurance Co. v. Dunken* (1924) 266 U. S. 389 there was a similar holding when a Texas court, in a suit on a Tennessee policy, attempted to apply a local statute providing for payment of damages and attorneys fees if the insurer did not pay within thirty days after demand.