SPECULATIVE CONTRACTS.

The U. S. District Court of Wisconsin, in *Clark* v. *Foss et al.*, has given a decision affecting a very numerous class of contracts entered into at the present day. The action was brought by the assignee of C. B. Stevens & Sons to set aside and cancel certain promissory notes made by the bankrupts in favor of the defendants. It was alleged that the notes were void, being given to secure a consideration arising out of certain option contracts for the sale and delivery of grain, which it was claimed were wagering contracts.

The bankrupts were for many years prior to the fall of 1874, when the transactions occurred, merchants and dealers in grain and produce upon the Mississippi river at De-Soto, Wis., and as such, had for several years purchased and shipped wheat and other grain to the defendants, who were commission merchants at Chicago, and members of the Board of Trade, doing business under the name of S. D. Foss & Co., and had, also, from time to time, speculated in grain in the Milwaukee market, and also in the Chicago market, through the defendants acting as their factors and commission men at that place. They were then in good financial circumstances, though with small capital; had a running account, and were in good credit and standing with S. D. Foss & Co. In October, 1874, the bankrupts ordered defendants, at different times, by telegraph, to make sales of grain for them upon the Chicago market for November delivery, amounting in the aggregate to 70,000 bushels of corn, and 5,000 or 10,000 bushels of wheat. The defendants, upon receiving these orders, went upon the market in Chicago and executed them, by making, as was the custom, contracts, generally in writing, and in their own name, with different parties, for the sale of the grain for November delivery, in lots of 5,000, or multiples of 5,000 bushels, and immediately notified bankrupts by telegram and by letter, of what they had done, and their acts were fully approved by the bankrupts. No "margins" were required to be put up by C. B. Stevens & Co, as they had an account with the defendants, and were accounted by them responsible.

About the time or a little before these contracts matured, the defendant performed a part of them on behalf of C. B. Stevens & Sons, by a purchase and actual delivery of the grain, to the parties to whom the sales were made. The evidence showed that as to 20,000 bushels of corn, there was an actual delivery of the grain, and as to 10,000 more, a delivery of warehouse receipts for that amount. As to the balance of the grain contracted to be sold, the defendants went upon the market and purchased it of different parties and had it ready for delivery; and then finding other parties who had similar deals for November purchases and sales, formed rings, or temporary clearing houses, through which, by a system of mutual offsets and cancellations that had grown upon the board, the contracts were settled by an adjustment of differences, saving an actual delivery and change of possession. It happened that there was a considerable rise in the market price of corn during the month of November; and it was found that after these transactions were closed, there had been a loss to C. B. Stevens & Sons, of something over $10,000, which the defendants, having paid in cash for them on the purchase of the grain, debited to their account, according to the previous course of dealing between the parties.

The notes were soon afterwards given by the bankrupts to secure a portion of the sums so advanced by the defendants for them.

Two years afterwards, on November 19, 1876, C. B. Stevens & Sons filed their petition in bankruptcy, and were on the same day adjudged bankrupts. The assignee in bankruptcy brought this suit to set aside the notes, and in substance claimed that C. B. Stevens and Sons, at the time the orders for the sale of grain were made and executed in October, 1874, had no corn to sell, and no expectation of having any, with which to fill these contracts. That these facts were known to both parties, that is to the bankrupts, and to the defendants, and that it was understood between them at the time, that no grain was in fact to be delivered by C. B. Stevens & Sons, but the contracts were to be settled by the payment or receipt of differences, according as the market should rise or fall in the month of November, and that they were thus mere wagers upon the November market, and as such, contrary to law and void, and that the notes and mortgage confessedly given to secure