tion. The old rule that choses in action are not assignable has not only been abolished, but the prevailing doctrine is that causes of action for torts to property, real or personal, which survive to executors or administrators, are also assignable. Snyder v. Railway Co., 86 Mo. 613; Pom. Rem. & Rem. Rights, § 147. Under a variety of circumstances which may be supposed, a man might find it necessary to sell or hypothecate an interest in a claim which happened to be in litigation for the purpose of raising money wherewith to prosecute his business successfully, or to assert or defend his rights in the courts; and it would be a great hardship if he were denied the right to raise money by such means, or if money so obtained could not be recovered. We can perceive no reason, therefore, founded either on considerations of public policy or the terms of the Colorado statute, why the contract sued upon should be pronounced invalid.

It is insisted, however, that the plea avers certain facts, not disclosed by the contract itself, which render it invalid. A careful analysis of the plea will show, we think, that the only fact tending to overthrow the agreement which the plea avers is that the plaintiff, Bolles, proposed to buy, and did purchase, an interest in the claim against Wheeler, for the purpose of preventing a compromise of the claim and prolonging the suit that had been commenced to enforce it. The question then arises whether the agreement is rendered unlawful by the motive which prompted one of the contracting parties to execute it, although the contract, when judged by its provisions, is valid and enforceable. The law furnishes some examples, notably in the case of fraudulent conveyances, where an agreement, otherwise valid, may be avoided because of the motive which induced the parties to execute it. So, when it appears that a contract for the sale of a commodity is merely colorable, and made to cover a gambling transaction, no delivery of the commodity sold being intended by either party, the law pronounces the same to be void. Such contracts are held invalid on account of their fictitious character, because neither the vendor nor the vendee intended to do what they in terms agreed to do, but rather to lay a wager on the rise and fall of prices. It is also true that a contract valid on its face may be impeached by showing that the consideration on which the promises, or some of them, rest, was the doing of an act which was either unlawful, immoral, or opposed to public policy, or a promise to do acts of that kind. All of this is familiar law. Ordinarily, however, a contract which is valid on its face, in that it does not require either party to do an act that is unlawful, immoral, or opposed to public policy, will be enforced, regardless of the motive which may have inspired one of the parties to execute it. The ulterior motives of the parties to a contract are usually immaterial when the thing agreed to be done is lawful, and does not injuriously affect the public welfare, and the consideration paid or promised for doing the act contemplated was not illegal. West Plains Tp. v. Sage, 32 U. S. App. 725, 16 C. C. A. 553, and 69 Fed. 943. It is manifest from the averments of the plea that the contract in suit was neither fictitious nor colorable. The parties to the agreement evidently intended to do precisely what it bound them to do, nothing more and nothing

less, for while the alleged proposal to supply money to assist in the prosecution of the pending suit against Wheeler and others may have been held out as an inducement when the negotiations which culminated in the contract began, yet, when the contract was executed, it took the form of a bona fide sale of an interest in the claim for a stipulated sum, and did not bind the purchaser to contribute a cent towards the maintenance of the litigation, nor obligate the defendant, Rucker, to use the money which he had received in the prosecution of the pending suit. It is clear, therefore, that there was no arrangement or understanding existing between the parties binding them to do or refrain from doing any acts except such as were distinctly specified in the agreement. The plea does not even aver that Rucker's motive in entering into the agreement was to obtain funds wherewith to further prosecute his suit against Wheeler. Moreover, the consideration moving from one party to the other, and upon which their promises were founded, was clearly set forth and described in the agreement. The contention, therefore, that the plea shows the agreement to have been unlawful, rests upon the single proposition that it was invalid, because of the motive which induced the plaintiff, Bolles, to execute it; and we are not able to assent to that proposition. We are of opinion that the contract cannot be impeached by showing that one of the parties thereto was influenced by improper motives in executing it, inasmuch as the contract itself did not bind either party to do any act that can be esteemed unlawful, immoral, or against public policy. It results from these views that the demurrer to the third defense was properly sustained.

It is further contended that an error was committed by the trial court in instructing the jury relative to the issues raised by the fifth plea contained in the answer. With reference to that defense, the court instructed the jury that the plea averred, in substance, that the plaintiff, Bolles, had renounced and rescinded the agreement on which the suit is founded, and had released the defendant from all obligations thereon. It further charged the jury in these words:

"To make this defense available, it must be made to appear by the evidence that there was some consideration moving to the plaintiff, Bolles, to support the release and rescission of the contract as alleged by the defendant. The consideration need not necessarily be the payment of money, but it must be something beneficial to the plaintiff, and if, from the evidence in this case, you do not find that there was any consideration for the release alleged in this fifth defense, then, upon this issue, you should find for the plaintiff."

An exception was saved to this instruction, on the ground that it confined the consideration necessary to support the release to "something beneficial to the plaintiff," ignoring the fact that the consideration for the release might as well have consisted in the doing of something that was detrimental to the defendant. We have felt some doubt as to whether the trial court properly construed the fifth defense in holding, as it appears to have done, that the defense stated in the plea was a release founded upon a consideration moving from the defendant to the plaintiff. It seems more probable, we think, in view of the character of the fourth defense, that by the fourth plea the defendant intended to plead a release of the contract by

breach—that is to say, that while the contract was in a measure executory, he (the defendant) had been discharged from all obligations under the same by the plaintiff's refusal to further execute the agreement on his part. This would seem to be the character of the defense which the defendant intended to make in the fifth paragraph of his answer. But, be this as it may, the trial court clearly erred in holding that the release could only be supported by showing that something of value was received by the plaintiff. It is familiar law that the doing of an act which is detrimental to one party to a contract will support a promise made by the opposite party, as well as a benefit conferred on him by whom the promise is made. If one party to a contract agrees to release the opposite party therefrom in consideration of his doing some act which he is under no obligation to do, the doing of that act is a sufficient consideration for the release, although it was not beneficial to the first party. Violett v. Patton, 5 Cranch, 142; Dyer v. McPhee, 6 Colo. 174, 193; Clark v. Sigourney, 17 Conn. 517. In the case at bar there was some evidence tending to show that Bolles requested Rucker to compromise his suit against Wheeler, promising the latter that if he did so he would release him from all obligations under the contract in suit; and that the compromise with Wheeler was made in pursuance of such request. In any aspect, therefore, in which the case may be viewed, the instruction above quoted concerning the fifth defense was misleading and erroneous. Some other questions of less importance have been argued by counsel, but, for the reasons already disclosed, we think that the judgment must be reversed, and a new trial granted. It is so ordered.

UNITED STATES v. JONES.

(Circuit Court, E. D. Virginia. April 11, 1897.)

LARCENY FROM MAILS—DECOY LETTERS.

Criminal prosecutions for abstracting money from the mails may be based upon the taking of money from decoy letters mailed by post-office inspectors.

This was an indictment, under Rev. St. § 5467, against Ulysses T. Jones, Jr., for abstracting and embezzling money from the mails.

The facts, as developed in the evidence, show that complaints had been made against the post office at Mattoax, where the defendant was assistant postmaster, in consequence of which the post-office department had delegated one of its inspectors to investigate the matter. This investigation showed that two letters mailed on the train from Richmond to Mattoax by the inspector on the 9th of February last, which contained money, were not in the mail bag after it passed through the hands of the assistant postmaster at Mattoax, whereupon the post-office inspector visited the post office at Mattoax, and, together with a person called in as a witness by him, found the money, which had been placed in one of the letters and marked, in a barrel in the post office, and one of the other letters, which had been mailed by him that morning, with money in it, marked, together with four other letters in the post office. The assistant postmaster stated to the inspector that he knew nothing of the letters at first, but subsequently produced one of the decoy letters and four other letters which had been detained from the said mail. The accused stated that these five letters had been left out of the mail accidentally, and denied all knowledge of

the other letter, the money from which was found in the barrel. Such, in brief, are the facts. Upon these facts the defense asked the court to instruct the jury that a decoy letter, addressed to a fictitious person, could not be the subject of theft. The court declined to give the instructions, and, under decisions of the supreme court of the United States, instructed the jury that such a letter could be the subject of theft.

W. H. White, U. S. Atty., cited the following authorities:

U. S. v. Rapp, 30 Fed. 818; U. S. v. Hamilton, 9 Fed. 442; U. S. v. Cottingham, 2 Blatchf. 470, Fed. Cas. No. 14,872; U. S. v. Foye, 1 Curt. 364, Fed. Cas. No. 15,157; U. S. v. Matthews, 35 Fed. 890; Goode's Case, 159 U. S. 663, 16 Sup. Ct. 136; Montgomery's Case, 162 U. S. 410, 16 Sup. Ct. 797; Price v. U. S., 17 Sup. Ct. 366.

HUGHES, District Judge. The circuit courts of the United States have not been disposed to encourage the use of decoy letters as the basis of criminal prosecutions for depredations upon the mails. There is something repugnant in the idea of the government, by art and contrivance, entrapping one of its citizens into the commission of crime in order to subject him to criminal prosecution; and such prosecutions have been felt by the courts to be more or less objectionable in morals and in policy. The use of decoy letters for the purpose of discovering who the mail robbers are is in itself probably necessary, and, if objectionable, is at least tolerable, on the ground of necessity. But to go further, and, after the citizen has been seduced by the government into robbing the mail, to prosecute him criminally for the act, is more or less offensive to public sentiment. I should have been disposed to follow the rulings of some of the circuit courts in discouraging these prosecutions, but I think the supreme court has decided, unmistakably, not only that the use of decoy letters is necessary to the detection of certain offenses, but that criminal prosecutions based on decoys must be sustained. I will therefore give to the jury the instructions asked for by the district attorney, and will refuse to give the instructions offered by counsel for the defense.

HOLMES v. HURST.

(Circuit Court of Appeals, Second Circuit. May 8, 1897.)

COPYRIGHT—VALIDITY—SERIAL PUBLICATION.

The publication of a work in serial form in a monthly magazine, before depositing a copy of the title, as required by the statute, invalidates a copyright afterwards obtained.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This is an appeal from the circuit court, Southern district of New York, dismissing complainant's bill. 76 Fed. 757. The suit is brought to restrain publication of the well-known book written by Oliver Wendell Holmes, and entitled "The Autocrat of the Breakfast Table." On November 2, 1858, the title of the book was deposited in pursuance of the statutes of the United States relating to copyrights. On November 22, 1858, a copy of the book was delivered to the clerk of the district court, as therein provided, and the other statutory require-