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COURTS—INJUNCTION AGAINST USE OF AIR BY RADIO.—There was an agreement between the State Marketing Commissioner who operates Radio Broadcasting Station WO S, and plaintiff who operates Radio Broadcasting Station K L D S on same wave length, to have a division of hours for broadcasting so as not to interfere with each other, which was broken by the defendant. Suit in equity to enjoin defendant from further interfering. *Held*, that federal courts have jurisdiction, and that the observance of a condition in a radio license is enforceable by injunction. *Carmichael v. Anderson*, 14 Fed. (2d) 166.

This decision brings up the very interesting question of who has a right to the use of the air. In cases where the broadcasting station has power to transmit messages from one state to another, the federal courts have jurisdiction as to agreements to broadcast, and licenses, under U. S. Comp. Stat., sec. 10100. And while the Secretary of Commerce, by U. S. Comp. Stat., sec. 10101, may grant licenses only in accordance with the provisions of the legislative act, still he may issue licenses with restrictions which the parties interested may agree upon. *Carmichael v. Anderson*, *supra*. 24 Op. Atty. Gen. 100 states, "The transmission of messages by wireless telegraphy is commerce, and the power of the United States to regulate commerce and to preserve the territorial integrity of this country does not depend upon the means employed, but the end attained." This clearly indicates an intention to make some stand toward regulating the use of the air so that there will be no undue congestion.

This proposition as to the right of way of the air has been very little litigated. The only questions which the courts have so far decided are those having to do with copyright infringements, *Remick v. Automobile Accessories Co.*, 5 Fed. (2d) 411; *Witmark v. Bamberger Co.*, 291 Fed. 776; and those having to do with municipally owned stations, *Fletcher v. Hylan*, 211 N. Y. S. 397, deciding that municipal corporations may own broadcasting stations. C. H. L. '28.

DAMAGES—INTEREST—RIGHTS AND LIABILITIES IN GENERAL—DEMANDS NOT LIQUIDATED—Plaintiff, Olson, was employed by defendants to procure coal leases for them and as a result of his efforts, defendants were able to secure leases on about 6,000 acres of land and paid plaintiff \$7,000, this amount to apply on the cost of his services. There being no express contract for compensation, this suit is one on a *quantum meruit* to recover the claimed balance due for said services. *Held*, that in an action for services rendered, plaintiff is entitled to interest from the time of completion of services on the amount found to be due him, although such amount was previously in dispute. *Olson v. Shuler et al.*, (Iowa 1926) 210 N. W. 453.

An unliquidated claim with reference to the allowance of interest, has been defined as one which is undetermined as to certainty of amount. At common law, the rule was that interest was not recoverable upon unliquidated demands but was allowable only after such demands shall have become merged in a judgment, *Proctor & Gamble Co. v. Emerman*, 191 Ill. App. 530. The reason, of course, was that the defendant did not know what sum was due and hence could not discharge his debt, until the amount of same was rendered certain, as by a judgment, *Lowell v. Shortbill*, 103 Kan. 904, 176 P. 647. This rule has been modified by modern decisions so that interest is allowed even in the case of unliquidated demands when the amount is readily ascertainable by mere computation or by reference to existing, well established market values, *Cox v. McLaughlin*, 76 Cal. 60, 18 P. 100; or when the failure to determine on a fixed amount was through the defendant's fault, *McMahon v. N. Y. etc. Ry. Co.*, 20 N. Y. 463. This rule as modified has found frequent application in cases of unliquidated demands for service rendered, *Cox v. McLaughlin*, 76 Cal. 60, 18 P. 100. In some jurisdictions, interest is allowed from the date of the writ starting the proceedings, *Brewer v. Inhabitants of Tyringham*, 12 Pick. (Mass.)

547, while in others there is no interest except from the date of rendering judgment, *American Hawaiian, etc. Co. v. Butler*, 17 Cal. App. 764, 121 P. 709. Thus, it can readily be seen that states vary as to the exact date from which interest is to be allowed in cases of *quantum meruit* but none of them, with the exception of Iowa, allow it from a date previous to that of the commencement of the suit, in the absence of any statute, of course. In Missouri, we have an express statute covering the subject, R. S. Mo. 1919, sec. 6491, which provides that 6% interest per annum shall be allowed on all moneys when due and payable on written contracts and on accounts when they become due and after demand is made. Such a demand may be express; may be by personal service of process, *Wolff v. Matthews*, 98 Mo. 246, 11 S. W. 563; may be by institution of suit, *Evans v. Western Brass Mfg. Co.*, 118 Mo. 548, 24 S. W. 175; may be by filing of counterclaim, *First National Bank v. Laughlin*, 305 Mo. 8,264 S. W. 706, however, such interest must be demanded in the petition to recover it from a date prior to that of judgment, *Morley v. City of St. Joseph*, 112 Mo. App. 671, 87 S. W. 1013. Thus in Missouri a party is entitled to interest from date of demand if one is made; if not from date of service of process and if no proof of this from date of commencement of suit.

From this brief review it would seem that the Iowa court in following precedent in that state decided the case on principle directly opposed to those generally prevalent, and in the absence of any express statute sanctioning such action.

E. L. W. '28.

GAMING—GAMBLING CONTRACTS AND TRANSACTIONS—RIGHTS AND REMEDIES OF PARTIES—RECOVERY OF PAYMENTS.—Plaintiff in this case is suing to recover back money paid to the defendant on an agreement for the purchase and sale of cotton "on margin," commonly called dealing in futures, where plaintiff intended to receive or pay and paid the difference between the agreed price and the market price at the time of settlement; no delivery of the goods was contemplated by either party. Suit was under two statutes, one condemning transactions such as the above as unlawful and another authorizing the recovery contended for here when a gaming contract is involved. Held, that an agreement such as this is not a gaming contract within the statute and hence this cause of action is not good as against a general demurrer, *Lasseter v. O'Neill*, (Ga. 1926) 135 S. E. 78.

This case is of interest particularly because of a seemingly justifiable dissenting opinion by Judge Hines, in which he says in effect that in view of the great prevalence of gaming and gambling, this section of the code (the one providing for recovery of money) should not be emasculated by limiting it to the forms of gambling enumerated in the opinion of the majority, such as games with cards, dice, etc., but should be held applicable to all forms of gaming and gambling. Undoubtedly at common law, money or property lost in a gaming transaction and voluntarily paid over by the loser could not be recovered by him from the winner, *Davies v. Porter*, 248 F. 397, 160 C. C. A. 407; unless some fraud or unfairness was involved, *Morris v. Philpot*, 11 Ind. 447. But today we have statutes which materially change this old doctrine. That states may enact statutes for suppression of gambling and incidentally legislate against dealing in "futures" is well settled, *State v. Gritzer*, 134 Mo. 512, 36 S. W. 39. In line with this, it has also been held that statutes providing for recovery of money lost at gaming are constitutional, *Anderson v. Metropolitan Stock Exchange*, 191 Mass. 117, 77 N. E. 706. The only remaining question is the construction of these statutes. It is held that such statutes invalidating gambling transactions and providing for a recovery of money are remedial rather than penal in their nature and hence should be liberally construed, *Mendoza v. Levy*, 98 App. Div. 326, 90 N. Y. S. 748. In view of this statement it would seem that