

Washington University Law Review

Volume 12 | Issue 2

January 1927

Gaming—Gambling Contracts and Transactions—Rights and Remedies of Parties—Recovery of Payments

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law Commons](#)

Recommended Citation

Gaming—Gambling Contracts and Transactions—Rights and Remedies of Parties—Recovery of Payments,
12 ST. LOUIS L. REV. 152 (1927).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol12/iss2/15

This Comment on Recent Decisions is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

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

Judge Hines' dissenting opinion should be the weight of authority but such is not the case. That one may not recover margins deposited in buying futures although there are statutes similar to those in the instant case is held in *Isaacs v. Silverbery, Parry & Co.*, 87 Miss. 185, 39 So. 420; that a broker could not recover for winnings which he paid, though there were statutes which provided that transactions in futures were void, *Sawyers Grain Co. v. Teagarden*, (Ind.) 148 N. E. 205; that transactions in futures where there is a settlement based on difference in prices are not within meaning of "game" as used in the statutes, *Boyce v. Odell Comm. Co.*, (Ind.) 109 F. 758; but see, *Kruse v. Kennett*, 181 Ill. 199, 54 N. E. 965; *Williamson v. Majors*, (Tenn.) 169 F. 754. Missouri also has statutes on this subject providing that "any person who shall lose any money or property at any game or gambling device may recover the same by civil action," R. S. Mo. 1919, sec. 5742, that such action must be commenced within three (3) months is provided in R. S. Mo. 1919, sec. 5750. In construing the meaning of the former section, the Missouri courts have held that money lost on margins or dealing in futures is not lost at a game or gambling device within the meaning of the statute, *Connor v. Black*, 132 Mo. 150, 33 S. W. 783; See *v Runzi*, 105 Mo. App. 435, 79 S. W. 992.

From this short discussion, it would seem that the Georgia court was in line with the weight of authority when it held that the parties being *pari delicto* in the violation of a positive law and there being no express statute authorizing a recovery in this particular case, the legislature contemplated leaving the parties where it found them and there should be no relief granted to either party.

E. L. W. '28.

MASTER & SERVANT—WORKMEN'S COMPENSATION LAW—ACCIDENT ARISING OUT OF EMPLOYMENT—An employee, while at work, was shot in a holdup. His occupation was not one which made it peculiarly likely that he would come in contact with robbers, except for the fact that there was money on the premises. Held, the shooting was an accident arising out of the employment, compensable under the Workmen's Compensation Law of the State. The court took judicial notice of the prevalence of holdups at the present day as a factor making the danger one of the risks of the employment. *Willner v. Katz*, (N. J. 1926) 134 A. 611.

Heretofore the cases in which compensation has been allowed under the various Workmen's Compensation Laws for injuries caused by the criminal assaults of third persons have been cases in which the nature of the employee's occupation was such as to require his exposure in a peculiar degree to such risks, *Ohio Building Safety Vault Co., v. Industrial Board et al.*, 277 Ill. 96, 115 N. E. 149 (1917) (watchman), *Pinkerton National Detective Agency, v. Walker*, 157 Ga. 548, 122 S. E. 202 (1924) (private detective), *Spang v. Broadway Brewing & Malting Co.*, 182 App. Div. 443, 169 N. Y. S. 574 (1918) (collector); or the business was held to be one exposed to special risks from holdups, *General Accident, Fire & Life Assur. Corp. et al. v. Industrial Accident Commission et al.*, 186 Cal. 653, 200 P. 419 (1921) (garage); or the injury was sustained by the employee in an attempt to defend or recapture property of the employer from the criminals, *Nevich v. Delaware, L. & W. R. Co.*, 90 N. J. Law 228, 100 A. 234 (1917); or the assault was provoked by a justifiable act of the employee within the scope of his duties or reasonably connected therewith, *Emerick et al. v. Slavonian Roman Greek Catholic Union*, 93 N. J. Law 282, 108 A. 223 (1919) (bartender killed in dispute over price of drink), *Delasandro v. Industrial Commission of Ohio*, 110 Ohio St. 506, 144 N. E. 138 (1924) (street-cleaner assaulted for reproving a person for sweeping dirt into a street, in violation of a city ordinance); or the assault was made by a subordinate discharged by the injured employee, *San Bernardino County v. Industrial Acci-*