

**SPECULATION AND  
GAMBLING IN  
OPTIONS, FUTURES  
AND STOCKS IN ILLINOIS**

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Speculation and Gambling in Options, Futures and Stocks in Illinois by James C. McMath

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**JAMES C. MCMATH**

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# SPECULATION *and* GAMBLING

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*In Options, Futures and Stocks* †

IN

## ILLINOIS

By *mcMATH*  
JAMES C. McMATH  
Chicago

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LAW AND PROCEDURE  
HISTORY, ECONOMICS, LAW AND BROKERS  
ILLINOIS LAWS

Cases, References to Legal Periodicals, etc.  
In the Appendix

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## PREFACE.

This book is published with the hope and expectation that it will be of service to lawyers in the preparation and trial of cases in which the validity or invalidity of transactions in grain "futures" and stocks are in question. There are many references in the index—which is placed in the front of the book—not to be found elsewhere therein. The Illinois laws against gambling, the Illinois cases and a great number of annotations and references to legal periodicals, are in the appendix. These are, of course, for the use of lawyers and Courts. My investigations of the subject have covered a long period of time, but this book has been dictated and printed in a very short time, from my notes and from a collection of books purchased during the past few years. To go into the subject fully would require much time and the publication of a very large volume, so I prefer to give to the profession a reference book at small cost, and covering the subject from many standpoints. It is not my expectation that it will do more, so far as the public is concerned, than somewhat lessen the number of people who are committing financial suicide through the evils of speculation in commodities and corporate stocks, many of whom do not know that they are gambling and think they are trading on the Board of Trade when they are not. It is only the members of the Board of Trade who do the trading on the Board or in the pit. Outsiders are not allowed to trade. The first deal they make is with a broker and the con-

tract with him is almost always an implied contract. The next contract that is made is between brokers in the pit, so there are two contracts, one of which may be illegal. Speculation is legal, gambling or wagering is not. When all the facts are known, the line between speculation and gambling can be drawn without much difficulty.

In conclusion, I think it has been very truly said that a book is only to be esteemed, like a mirror, for the truth and accuracy with which its object is reflected. Some people, however, do not want either the truth, or an application of the law.

“No man 'ere felt the halter draw  
With good opinion of the law.”



[There are many citations in the index not cited elsewhere herein.]

## INDEX AND REFERENCES.

### **Actions:**

To recover money wrongfully taken by employes and others and lost in speculation or gambling may, in many instances, and under many circumstances, be maintained by the employer or others and this, whether the transactions were gambling transactions, or not. Page on Contracts, (1st Ed.) Sec. 520, 42 Ill. App. 287, 48 C. C. A., 726, 109 Fed. 926, 88 Fed. 868, 167 Pac. 202, 74 So. Rep. 610. See notice.

By losers in gambling transactions may be maintained if the loser sues within six months. 99 Ill. App. 171, and actions by others (if the loser does not sue within six months) to recover the penalty of treble the amount lost in gambling may be maintained. 181 Ill. 199, and the motive prompting the person to sue cannot be questioned. 96 Ill. App. 593. Actions to subject the premises of landlords to the payment of judgments obtained for money alleged to have been lost in a gambling house have been maintained. 184 Ill. App. 261. Criminal prosecutions for gambling in grain have also been successful. 186 Ill. 43.

By others, than the losers, to recover treble the amount lost under Sec. 132 of the Illinois Crim. Code may be maintained. See cases in the Appendix, Nos. 47, 55, 60, 61, 66, 69, 75, 97, 104.

Must be prosecuted in the County where the gambling was done, 103 Ill. App. 330, and the place where the office is kept, and the orders are given, is

the place where the offense is committed. 209 Ill. 528. See Limitations, Statute of.

A case that was well tried, before an able Judge, by able counsel, was that of *Tenney v. Foote*, 4 Ill. App. 594. The decision in that case makes the clear distinction between an "option" such as Sec. 130 Ill. Crim. Code prohibited, (a privilege) and a "future" —(sometimes called an option)—which is legal when it is a *bona fide* contract of purchase or sale, but which was illegal at Common Law (because contrary to public policy) when there was no intention of making a *bona fide* contract of purchase and sale and only an intention to settle on "differences." The English case of *Grizewood v. Blane*, E. C. L. Reports 538 is cited and explained. Prior to the act of 1874 (Sec. 130 Ill. Crim. Code) it was lawful in Illinois to contract to have or give an option to sell or buy, at a future time, grain or other commodity. Such contracts were neither void nor voidable at the Common Law, but the statute made them void in Illinois. *Schneider v. Turner*, 130 Ill. 28. They were, however, illegal at common law if it was not the intention to accept or deliver the commodity, and consequently illegal in Illinois. To get a clear understanding of the law relating to the subject of gambling in grain or other commodity, the reader should first understand what the word "option" means. See "Option." He should then understand what the word "futures" means. See "Futures." He should then understand that options are not dealt in during market hours, but that futures are. He should understand that dealing in futures is lawful when there is a *bona fide* intention to accept or deliver the grain or other commodity

and that when there is no such intention it is unlawful and that it is gambling, and that dealing in options when there is no such intention is also gambling.

**Accounts:**

In a broker's office are kept in a journal where the trades are entered and these accounts are posted to a customer's ledger. There is also a general ledger and a cash book. The customer's account shows his losses and gains, and the order given by him to buy or sell grain is first entered on a slip of paper or an order blank by the Order Clerk, and it is from these slips or order blanks, and from the memoranda that the entries are made in the books. The Bookkeeper's knowledge is obtained from the memoranda furnished him by others and books kept in this manner are not admissible in evidence until the man who furnishes the slips and memoranda first testifies to the correctness of the items, or there must be other proof of such fact to entitle the books to admission in evidence. 204 Ill. 616. For what may be regarded as a settlement of accounts, see *Pynchon v. Day*, 118 Ill. 10, and for the application of payments on account where some of the items are illegal, see *McCormick v. Nichols*, 19 Ill. App. 134. In a suit for balance due upon a series of transactions, some of which were gambling contracts and void under the statute, where the payments made amount to more than all the items that were legal or recoverable, the defendants are entitled to have their payments applied, first, to the charges that were legitimate, and to repudiate so much of the balance as remains unpaid. *Id.*