

SPECULATION *and* GAMBLING

In Options, Futures and Stocks

IN

ILLINOIS

By JAMES C. McMATH
Chicago

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

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

For Sale by
GEORGE I. JONES
202 South Clark St.
Chicago, Ill.

Econ S270.22.1
~~Econ S255.10~~ ✓



Walter R. Spofford,
Chicago

COPYRIGHT 1921

By

JAMES C. McMATH
CHICAGO

PRINTED BY
HAWKINS & LOOMIS CO.
CHICAGO

OPTIONS AND FUTURES

Grain "Futures" and Congressional Legislation.

The Tincher bill to regulate dealings in grain "futures" recently passed by the House of Representatives is a questionable exercise of congressional power. The power, or lack of power, was the subject of argument by Samuel Untermyer and John G. Milburn during the hearings before the Committee on Banking and Currency of the United States Senate on Senate Bill 3895 (1914). Congress has the power to tax, but the power to regulate under the guise of taxation is questionable. The only other constitutional provision under which Congress may regulate trading in "futures" is that relating to post offices and post roads, and that is also questionable. Dealing in "futures" is not interstate commerce, *Ware & Leland v. Mobile County*, 209 U. S. 405, and the question of the validity of the congressional legislation will be, if it becomes a law, an open question.

Grain "Futures" and State Legislation.

The general assembly of the State may regulate and, possibly, may prohibit dealings in "futures." To prohibit such dealings would be a calamity, but to regulate them is a necessity. The difficulty about regulation arises principally because of the great lack of knowledge on the subject by lawyers, legisla-

tors and the public. The subject is highly technical and requires much time and labor to master it. It must be studied from the standpoint of history, political economy, law and a practical knowledge of the brokerage business.

There are several classes to be seriously affected by legislation on this subject—the producers and consumers, the grain dealers and speculators, the brokers and the gamblers and last, but not least, the thousands of people who suffer by some of the nefarious practices carried on—not so much on the Board of Trade—but in the offices of some of the brokers. These practices bring about suicides, embezzlements and bankruptcies. They wreck homes and pauperize families. They augment the number of inmates in sanitariums and penitentiaries and they destroy manhood and create the disease of gambling, from which men seldom recover. This is strong language, but it is accepted as true by hundreds of the members of the Board of Trade who are not in sympathy with these practices and who will welcome the right kind of legislation.

What Is Gambling in “Futures?”

What is meant by “futures” is where one gives an order to a broker to buy or sell grain for future delivery, *e. g.*, an order in July to buy five thousand bushels of December wheat, corn or oats. That means it will be delivered some day in December. The seller usually has the option as to what day in December he will deliver it. What is meant by gambling in grain is wagering on the fluctuations of the market price of grain between the time when it is bought or sold and the time when the trade is closed. It is similar to a bet that the market price

will go up or that it will go down. The purchase or sale of grain by parties who have no intention of receiving or delivering the grain, but intend to settle by the payment of differences between the contract price of the grain and the market price when sold is a gambling transaction and cannot be enforced by law. It is often contended that it must be the intention of both parties to the contract that there is to be no acceptance or delivery before it will be a gambling transaction; but what parties? In transactions in grain "futures" put through a broker's office, there are at least two contracts—the first is a contract between the broker and the customer and the second is a contract executed by the broker with another broker in the pit on the Board of Trade. The first contract may be express or implied and the broker may have knowledge that it is not the intention of his customer to accept or deliver any grain.

The Illinois Appellate Court has held (201 Ill. App. 251) that:

"A pretended purchase or sale of grain made through a broker when neither the broker nor his client intends or expects that, as between them, the commodity will be delivered or received, but both of them do intend that the losses or profits on the transaction shall be determined by the difference between the market price of the grain when the deal is opened and when it is closed or, in other words, when the intention is that the client shall win or lose money on the fluctuations of the market, it is, as between them, a gambling contract and is not enforceable."

Also said that:

"The question whether a transaction between a broker on a grain exchange and his customer

is a gambling transaction in no wise depends upon the relation between the broker and the party with whom he deals in carrying out his customer's orders."

There are holdings of the Supreme Court of Illinois to the same effect. This is one form of gambling in grain in brokers' offices and it will be observed that the gambling is done in the broker's office and not on the Board of Trade. This form of gambling is more common than any other. It is like the pretended buying or selling of grain in a bucket shop and in effect there is no difference between a bucket shop and a broker's office when there is no intention of accepting or delivering the grain. There is bucket shopping in the offices of brokers, as well as in a bucket shop and when it is said that bucket shops have been closed, the statement may very well be challenged. There is another form of gambling in grain "futures" that was prohibited by statute in Illinois prior to 1913 when the attempt was made to legalize "puts and calls," "Privileges," "indemnities," "bids and offers," "ups and downs," "puts and calls" all mean the same thing. They are not dealt in during market hours, but they are dealt in for an hour after the close of the market each day. The method of dealing is this: One goes into a broker's office within the hour after the closing of the market and buys a bid or an offer on, say five thousand bushels of grain, good until the close of the market on the following day. If the market close on wheat that day was One Dollar per bushel he may purchase a bid at ninety-seven cents, or he may purchase an offer at One Dollar three cents. On the following day, if wheat does not go up to 1.03 and does not go down to 97, he has simply

been ordained for the suppression of this gigantic evil and blighting curse."

Speculation Is Not Illegal.

Speculation in grain "futures" has its advantages and its evils. Henry Crosby Emery, Ph. D., Columbia University, an acknowledged authority on the subject of speculation, published a few years ago a very able presentation of the business methods of the exchanges, the economic functions of speculation and the law. This, and the report of the committee of nine members appointed by Gov. Charles E. Hughes of New York (1909) on speculation in securities and commodities, may be read with interest and profit by people who desire reliable information on the subject. No well informed person will contend that there is anything wrong in buying or selling grain "futures" by people who have the ability to pay when there is a *bona fide* intention of accepting or delivering the grain, nor that there is anything wrong in hedging transactions, but what can be said of transactions when men warm the customers' chairs in brokers' offices every day "scalping" the market and closing their accounts daily? Are they betting on the figures on the blackboard, and wherein is the place different from the bucket shop—a horse race, a card game or an electrically controlled roulette wheel? "Manipulation" and "making a market" are some of the practices to be condemned. Allowing men to get up and make announcements on the Board of Trade to the detriment of bears or bulls, through which one side "skins" the other out of their money in a few minutes' time is also to be condemned. This is what has been done and it cannot be successfully denied.

It is doubtful, however, if the Board of Trade is any worse in this respect than the stock or cotton exchanges. The records of the daily transactions on the Board and on the Exchanges are available for years that are gone and there is living evidence of what caused the financial ruin of many men by the practices referred to. Some of the customers, such as bank cashiers and others, are in Joliet. Speculation, however, should not be condemned because of the practices indulged in by some of the brokers and members of the Board of Trade or of the Exchanges. Speculation in grain is just as legitimate as speculation in real estate and merchandise and millions of dollars of merchandise is continually being sold for future delivery before it is in existence. "Short selling" is no more illegal than buying and to interfere with men selling what they intend to acquire or manufacture would be to upset the business of the country.

Gambling Transactions May Be Proven By Circumstantial Evidence.

The difficulty in establishing the fact that the transactions were gambling transactions is because it is often difficult to get the evidence. The Bucket Shop Act shows how to get the facts as to what was done and the Supreme Court has said (215 Ills. 348) that "the intention or understanding of the parties may be proven by circumstances, as well as by positive proof. It is not indispensable that declarations or statements of the parties showing such intention or understanding should be proven. The intent and purpose of the parties may be established by all of the attending circumstances of the transactions."