interest at a later date, even if the plaintiff has withdrawn from the public eye.

J. J. E.

UNAUTHORIZED PRACTICE OF LAW—LAY PRACTICE BEFORE INTERSTATE COMMERCE COMMISSION — ENFORCEMENT OF EMPLOYMENT CONTRACT — [Missouri].—Plaintiff, a duly authorized and licensed layman practitioner before the Interstate Commerce Commission, sued the defendant corporation in Missouri for fees for services rendered under a contract of employment made in Illinois. By the terms of the contract plaintiff was to represent defendant on a contingent fee basis in certain rate reduction cases before the Interstate Commerce Commission. Defendant demurred to plaintiff's petition, alleging that the contract was contrary to the public policy of Missouri, since it called for services amounting to the practice of law as defined by statute in Missouri. The demurrer was sustained and plaintiff appealed to the supreme court. *Held*, that the lower court erred in sustaining the demurrer to plaintiff's petition.[1] The contract was valid according to federal law, which was binding on the State of Missouri under the "supreme law of the land" clause of the Federal Constitution,[2] and the Missouri statute defining and regulating the practice of law does not declare a policy against any right accorded by federal law. *De Pass v. Harris Wool Co.*[3]

The Missouri statute defines the practice of law as, *inter alia*, "the appearance as an advocate in a representative capacity * * * before * * * any body, board, committee or commission constituted by law or having authority to settle controversies * * *."[4] Thus in Missouri only a licensed lawyer can appear and practice before an administrative agency. The Supreme Court of Missouri has held, for example, that this statute, as a valid exercise of the police power, confines the practice of law before the State Public Service Commission to duly licensed attorneys.[5] Plaintiff, therefore, could not have entered into a valid contract to appear as an advocate before any state agency.[6]

With the rapid growth of administrative agencies in recent years, practice before state and federal agencies has been much discussed by legal writers.[7] There is no uniformity among the forty-eight states as to the rights of laymen to appear before the various state agencies.[8] There is

1. Defendant thereupon appealed to the Supreme Court of Missouri *en banc*.
2. Art. 6, cl. 2.
3. (Mo. 1940) Div. 1, May Term, No. 36,559 (unpublished).
4. R. S. Mo. (1929) sec. 11692.
5. Clark v. Austin (1937) 340 Mo. 467, 101 S. W. (2d) 977.
6. See Howard, Control of Unauthorized Practice Before Administrative Tribunals in Missouri (1937) 2 Mo. L. Rev. 313.
7. See Gambrell, Lay Encroachment on the Legal Profession (1931) 29 Mich. L. Rev. 989; Hicks and Katz, The Practice of Law by Laymen and Lay Agencies (1931) 41 Yale L. Rev. 69; Howard, supra note 6.
8. In response to questionnaires sent to the attorney generals of the forty-eight states by Professor Ralph Fuchs of Washington University Law

similar lack of uniformity concerning the right to appear before the many federal administrative agencies. The problem is complicated by the fact that federal agencies do not get their power to regulate proceedings before them from any one statute.[9] For any federal agency the provisions for admission to practice are dependent upon the Congressional act creating the agency. The right to appear before some agencies is given to lawyers and laymen by express statutory provisions.[10] Some agencies within executive departments have admitted laymen to appear before them under a general statutory provision authorizing the executive departments to prescribe their own rules of procedure, not inconsistent with law, for the government of the departments.[11] Similarly, some "independent" agencies have admitted laymen to appear before them under authority inferred from their general power, granted by the statutes creating them, to prescribe their own rules of procedure.[12]

In 1929, pursuant to its power to make its own "general rules or orders" for the regulation of proceedings before it,[13] the Interstate Commerce Commission issued its present Rules of Practice.[14] Thus the Rules of Practice can be considered as having the force of a federal statute upon the regulation of commerce between the states. Rule I provides for the admission to practice before the commission of attorneys and laymen who possess the "necessary legal and technical qualifications."[15] Here it is to be remembered

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School, for the American Bar Association's Special Committee on Administrative Law, thirty-eight states replied to the following question, *inter alia:* "Before which important State administrative agencies, if any, may non-lawyers represent interested parties?" In only nine of the answering states could laymen not practice before state agencies. (Okla., Idaho, Va., W. Va., Tenn., Nev., Ark., Mass., and Neb., did not reply.)

In People ex rel. The Chicago Bar Ass'n v. Goodman (1937) 366 Ill. 346, 8 N. E. (2d) 941, the court held that the rule of the Illinois Industrial Commission, purporting to allow the right to practice law to one not a duly licensed attorney, was void. In State ex rel. Daniel v. Wells (1939) 191 S. C. 468, 5 S. E. (2d) 181, a layman appearing before the South Carolina Industrial Commission was held to be engaging in the practice of law.

9. See Committee on Administrative Practive of the Bar Association of The District of Columbia, Admission To and Control Over Practice Before Federal Administrative Agencies (Pamphlet, 1938) 5.

10. See: (1884) 23 Stat. 258, 5 U. S. C. A. (1927) sec. 261 (Treasury Department); (1884) 23 Stat. 101, 5 U. S. C. A. (1927) sec. 493 (Department of Interior).

11. R. S. (2d ed. 1878) sec. 161, 5 U. S. C. A. (1927) sec. 22.

12. (1917) 40 Stat. 270, 49 U. S. C. A. (1929) sec. 17(1) (Interstate Commerce Commission); (1939) 53 Stat. 160, 26 U. S. C. A. (1940) sec. 1111 (United State Board of Tax Appeals). This was construed by the Supreme Court, in Goldsmith v. United States Board of Tax Appeals (1926) 270 U. S. 117.

13. (1917) 40 Stat. 270, 49 U. S. C. A. (1927) sec. 17(1).

14. Adopted July 1, 1929. See 10A F. C. A. (1938) 755.

15. In Public Service Traffic Bureau, Inc. v. Harworth Marble Co. (1931) 40 Ohio App. 255, 178 N. E. 703, plaintiff sued on a contract of employment whereby plaintiff was to "prepare, file, prosecute and adjust all claims arising out of defendant's freight bills." The court held that plaintiff could appear before the Interstate Commerce Commission. But it denied

that plaintiff did not hold himself out to the public as an attorney in general practice, or in practice before state agencies, but that he entered into his contract to represent defendant before the Interstate Commerce Commission only. Granting that the Missouri statute defines the practice of law before Missouri agencies, the enforcement of a right under this statute was not the question here. Even if plaintiff's contract had been made in Missouri, the Missouri statute would not be a paramount declaration as to plaintiff's right to appear before the Interstate Commerce Commission, in view of the rule of that body made under its general power to prescribe its own rules of practice and procedure. Just as a state law regulating a national bank must give way to a federal statute regulating the same problem in a different manner,[16] so here it should be clear that the policy expressed by the Missouri statute must give way to the Interstate Commerce Commission's Rules of Practice.

It should be noted that the decision in the instant case leaves open the question whether the Missouri courts would enforce a similar contract to appear before the administrative tribunals of a sister state where such appearance would be legal. In such a case, of course, the decision could not be based upon the "supreme law of the land" clause.[17]

E. A. D.

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recovery to plaintiff, interpreting the word "prosecute" as contemplating the practice of law before the courts, which would have been necessary if the plaintiff were to take all steps necessary to obtain recoveries. The court pointed out that an award by the Interstate Commerce Commission did not constitute a "recovery," since there could be an appeal from such award.

16. The analogy between the problem raised in the principal case and the regulation of national banks, which are controlled in part by federal statute and in part by state law, is suggested by the following cases: Louisville First Nat'l Bank v. Kentucky (1869) 76 U. S. 353, 362; Waite v. Dowley (1876) 94 U. S. 527, 532; Davis v. Elmira Savings Bank (1896) 161 U. S. 275, 283; McCellan v. Chipman (1896) 164 U. S. 347, 357.

17. Art. 6, cl. 2.