the place where the purchases were executed. In a leading Missouri case the defendant had ordered stock with no intention of accepting actual delivery; the plaintiff broker, confined to no particular market, purchased on the New York Exchange; the court held the contract of purchase executed in New York and governed by the laws of that state. *Edwards Brokerage Co. v. Stevenson* (1901) 160 Mo. 516, 61 S. W. 617. Affirmed by *Atwater v. Edwards Brokerage Co.* (1910) 147 Mo. App. 436, 126 S. W. 823; *Hood & Co. v. McCune* (Mo. App. 1921) 235 S. W. 158; *Claiborne Comm. Co. v. Stirlen* (Mo. App. 1924) 262 S. W. 387; *Gordon v. Andrews* (Mo. App. 1927) 2 S. W. (2d) 809. Since in the principal case the defendant knew the orders were to be executed outside the state it is difficult to distinguish the facts from those in the leading Missouri case. Missouri courts have, however, made an apparent exception in cases of criminal prosecution for violation of the "bucket shop" statutes. R. S. Mo. (1929) secs. 4316-4323. So in *State v. Christopher* 1927) 318 Mo. 225, 2 S. W. (2d) 621 it was held that the "place" of the bucket shop transactions was the place where the orders were given, despite their being executed elsewhere. See also *State v. Kentner* (1903) 178 Mo. 487, 77 S. W. 522. The principal case might be construed as extending this exception to civil actions on contract. In view of the somewhat exceptional Missouri rule permitting either party's undisclosed intention of gambling to avoid the contract it is perhaps unfortunate that the scope of its effects has been thus enlarged. *Edwards Brokerage Co. v. Stevenson* above. Generally, in other jurisdictions, although the guilty party cannot recover, the defendant cannot avoid the contract by pleading his secret intention. *Higgins v. McCrea* (1886) 116 U. S. 671; *Scanlon v. Warren* (1897) 169 Ill. 142, 48 N. E. 410; *Amsden v. Jacobs* (1894) 75 Hun 311, 26 N. Y. S. 1000, affirmed in 148 N. Y. 762, 43 N. E. 985.

The ruling that the Federal Grain Futures Act is merely in addition to and does not supersede state statutes not inconsistent therewith is in accordance with the broad principle laid down in *Savage v. Jones* (1912) 225 U. S. 501, at 533, "the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field." See also *Merchants Exchange v. Missouri* (1918) 248 U. S. 365; *Sligh v. Kirkwood* (1915) 237 U. S. 52; *Reid v. Colorado* (1902) 187 U. S. 137. C. B. P., '35.

HOMICIDE—FIRST DEGREE MURDER—CONSTRUCTIVE INTENT.—By the authority of R. S. Mo. (1929) sec. 3982, every homicide committed in the perpetration of arson is murder in the first degree. Formerly this Missouri statute read in part: ". . . and every murder which shall be committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, shall be deemed murder in the first degree." However, in 1885 the legislature saw fit to alter this enactment by substituting the word *homicide* for the word *murder*. This change was induced by the decision in *State v. Hopkirk* (1884) 84 Mo. 278, 287, in which the court remarked: "The phrase 'every murder', with which the section begins is only used as a means of classification of the crime of murder, i. e., the section makes no homicide mur-

der that was not murder at common law." Though the alteration the legislature made in the statute seems at first glance to purport a decided change, the new enactment really effected no great difference, since the Missouri courts before this had considered homicides which were committed in the perpetration of any of the felonies listed in the statute first degree murder.

Despite the fact that this statute in its revised and explicit form has been on the books for approximately fifty years, in recent Missouri arson cases defendants have ventured to contend that in the absence of specific premeditation and deliberation to consummate the homicide, a conviction of first degree murder is improper. Thus, in *State v. Glover*, (1932) 50 S. W. (2d) 1049, where the defendant deliberately set fire to a drug store to collect the insurance, and a fireman was killed while fighting the flames, the defendant averred that there could be no conviction of first degree murder unless the state could show specific intent on his part to inflict bodily harm. The court, however, rejected the contention: "Even though the homicide is unintentional, yet if it be committed in the course of perpetrating the felony, and is a natural and probable result thereof, such as the defendant was reasonably bound to anticipate—and therefore especially where the felony is dangerous and betokens a reckless disregard of human life—the homicide will be murder under the first degree murder statute." *State v. Glover* (1932) 50 S. W. (2d) 1049, 1053.

Of course in all cases of this nature, the necessary causal relationship, to which the court alludes in the above statement, is indispensable. The classic English case of *Regina v. Horsey*, (1862) 3 Foster & Finlason's Reports 287, enunciates this important feature. In that case there was doubt as to whether the person burned had entered the dwelling before or after the inception of the fire. Naturally if he had made his entry after the fire was started, the defendant would not have been answerable for the death since it was not the natural and probable result of the arson, the deceased's own act being the proximate cause of his death.

In the later Missouri case of *State v. Meadows* (1932) 51 S. W. (2d) 1033, concerning the destruction by fire of the Buckingham Hotel Annex in St. Louis, the defendant also argued that the state would have to prove premeditation before any conviction of first degree murder could be effected. The indictment here was couched in words charging that the defendants "feloniously, wilfully, deliberately, premeditatedly, and with malice aforethought" set fire to the building and burned the deceased causing her death. Relying on a strict interpretation and adherence to the letter of the indictment, the defendant maintained that the proof of premeditation on his part was absolutely necessary before he could be convicted. However, under the statute such proof was obviously not required. Proof that the death occurred in the commission of the felony is "tantamount to that premeditation, deliberation, etc., which otherwise are necessary to be proven in order to constitute murder in the first degree." *State v. Daly* (1908) 210 Mo. 664, 679, 109 S. W. 53, 57. *State v. Meyers*, 99 Mo. 107, 12 S. W. 516. *State v. Donnelly*, 130 Mo. 642, 32 S. W. 1124.

Convictions of first degree murder under the Missouri statute seem entirely proper. The felonies enumerated in the statute are aggravated and danger-

ous to society. In such instances there should be no necessity for inquiry into the deliberation or premeditation in the accused's mind. The mere fact that he committed the homicide in the perpetration of a felony should suffice.

R. M., '35.

CONTRACTS—ILLEGALITY OF CONSIDERATION—COMPOUNDING A CRIME.—Plaintiff insurance company indemnified the defendant for the loss by robbery of bonds which were kept in safety deposit vaults. Agents of both parties negotiated with the "underworld" and effected the return of the bonds after the payment of a ransom by the defendant. The plaintiff sought to recover the amount of the loss paid by it. The defendant filed a counterclaim asserting that the bankers' bond obligated the plaintiff to pay the cost and expenses of making a recovery of the property. *Held:* The implied agreement which the agents of the parties made with the "underworld" against criminal prosecution, although not necessarily a compounding of a felony, was decidedly against public policy to such a degree as to be insufficient to support a claim by either of the parties to this action. *Fidelity & Deposit Co. of Maryland v. Grand National Bank* (D. C. E. D. Mo., 1933) 2 Fed. Supp. 666.

Compounding a crime, an agreement not to prosecute when the party so agreeing knows the crime has been committed, is itself an indictable offense. The underlying principle is that the prerogative of prosecution belongs exclusively to the state and it is a criminal offense for an individual to appropriate this prerogative to his private uses. *Case v. Smith* (1895) 107 Mich. 416, 65 N. W. 279.

It is an equally established principle that no contract is enforceable so long as it interferes or tends to interfere with the public interest and duty respecting the apprehension and conviction of a criminal. 6 R. C. L. 765; 2 Restatement of Contracts (1932) sec. 548. The limitation is usually added that a crime must have actually been committed or prosecution begun. *Columbia Lodge v. Manning* (1895) 57 N. J. E. 338, 38 Atl. 444; 3 Williston, Contracts (1931) 3006; *contra, Koons et ux. v. Vauconsant* (1902) 129 Mich. 260, 88 N. W. 630. This unenforceability does not extend to agreements involving offenses that are not strictly against the public when a settlement between the parties is less injurious to the public than the litigation. *Jangraw v. Perkins* (1905) 77 Vt. 375, 60 Atl. 385; 2 Wharton's Criminal Law 12th ed., (1932) 2221 et seq. It has also been held that the mere hope that criminal prosecution will be suppressed is not sufficient to render the contract void. 3 Williston, Contracts (1931) sec. 1718. The principle has been extended to include the suppression of evidence or the securing of the absence of witnesses from the trial. *Josephs v. Briant* (1913) 108 Ark. 171, 157 S. W. 136; *Small v. Lowrey* (1912) 166 Mo. App. 108, 148 S. W. 132. Even an agreement to intercede with the court or prosecutor for the accused will not sustain an obligation. *Aycock v. Gill* (1922) 183 N. C. 27, 111 S. E. 342, 24 A. L. R. 1449. The agreement to conceal the crime need not be express; if the circumstances are such that it may reasonably be implied it can be used as a successful defense to an action on a contract of which it is the consideration. *Schirm v. Wieman* (1906) 103 Md. 541, 63 Atl. 1056; *Mississippi Valley Trust Co. v. Begley et al.* (1923) 298 Mo. 684, 252 S. W. 76.