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Validity of Contracts Executed On Sunday

By WILLIAM LEE O'MALLEY

At the outset it may be well to adopt a good working definition of the term "Sunday." Sunday, as defined in "cyc," "is the first day of the week; a day of rest; a holy day."¹ Legally considered, however, Sunday is merely "a day of rest."

To fully appreciate the reason for Sunday legislation we must momentarily consider the importance of Sunday as a religious institution. Sunday is one of the most sacred religious institutions of the Christian religion. So sacred, in fact, was Sunday that the Supreme Legislator positively directed, when He gave the commandments to Moses on Mount Sinai, abstention from labor on that day. With these few prefatory remarks in mind we can close the Bible and better proceed to a consideration of Sunday as a legal institution.

We are not required to go back so far to reach the source of civil legislation concerning Sunday. "Sunday legislation is more than fifteen centuries old. It originated in Rome in A. D. 321 when Constantine the Great passed an edict commanding all judges and inhabitants of cities to rest on the venerable day of the sun. Sunday statutes were at an early day in England, and 29 Chas. L1, c. 7, has been made the basis of similar legislation in the United States."²

Since legislation designation Sunday as a day of rest, and prohibiting the doing of certain acts on that day has for its purpose the promotion of the health, peace and good order of society it has been upheld as constitutional as being within the domain of police power. The few instances in which such legislation has been held to be invalid are where a single class of persons have been legislated against, and the classification was so arbitrary and the discrimination so unreasonable as to fall under the head of class legisla-

¹ 37 Cyc 539.

² 7 Cyc 540.

tion.³ Statutes of this classification have been upheld not to abridge the privileges and immunities of citizens;⁴ deny equal protection of the law;⁵ or to deny a person of liberty or property without due process of law.⁶ However in *Elden v. People*, (161 Ill. 293) the Supreme Court of Illinois held that the act of June 26, 1895, forbidding barbers to keep open their shops or work at their trades on Sunday to be a taking of property without due process of law, within the meaning of Const. art. 2, Sec. 2.

Thus far we have been dealing with the history and validity of Sunday legislation in general, We now take up the particular purpose of this paper—The Validity of Contracts Executed on Sunday.

At common law, a contract made on Sunday was as good as if made on any other day. The doctrine that contracts made on Sunday are void depends therefore alone on statutory enactment. No citation of authority is necessary for the proposition that a contract which violates a statute is void for illegality. It is quite evident therefore that it is most essential when executing a contract on Sunday that the statute, if any, in the jurisdiction in which the contract is being made be thoroughly examined and understood. This would not be a difficult task if the statutes provided in so many words that contracts executed on Sunday were void. But such is not the case. For the most part, the statutes are most comprehensive and open to innumerable equally plausible constructions. As a result there are few jurisdictions in which there is a judicial settlement of this question.

There is certainly no judicial settlement of this question among the Illinois decisions. The only Illinois statute bearing on the subject declares: "Whoever disturbs the peace and good order of society by labor (works of necessity and charity excepted), or by any amusement or diversion of Sunday shall be fined not exceeding \$25."⁷ This statute has been construed by the Missouri court of appeals

3 44 Pac. (Calif.) 808.

4 8 Cyc 1046, Note 80.

5 69 Pac. 372.

6 69 Pac. (Wash.) 372.

7 Hurds Rev. Stats. 316 Sec. 261.

in a case where it was alleged that a promissory note executed on Sunday was void as contravening the Illinois statute.⁸ Judge Lewis showed the absurdity of this contention by putting the following case: "A meets B and says to him, 'I will give you fifty dollars for your horse.' B replies, 'agreed.' Here is a contract made in ten seconds and in ten words. But where is there any labor or breach of the peace?" The court then rightly ruled that a promissory note made on Sunday was not in contravention of the Illinois statute as it did not require labor to make a contract, nor did it breach the peace.

In Massachusetts, Maine and Michigan the statutory words are: "No person shall do any manner of labor, business, or work, except only works of necessity and charity, on the Lord's day."

In New Hampshire, Vermont, Connecticut, Pennsylvania, and Kentucky the prohibitions are variously expressed, but in all of them the word "business" is used to indicate the things forbidden. In these states where the term "business" is set out in the body of the statute contracts made on Sunday are void, unless within some statutory exception; for example, works of necessity or charity. In *Pattie v. Greely* (13 Metc. 284), Chief Justice Shaw said: "The statement of facts admits that there is nothing to show that the execution of the bond was a work of necessity or charity. Was its execution 'any manner of labor,' 'business,' or 'work,' within the meaning of the statute? Certainly it was. The legislator intended to prohibit secular work on the Lord's day, and did not confine the prohibition to manual labor, but extended it to the making of bargains, and all kinds of trafficking." This process of reasoning with its fitting application of the term business, forms the basis of adjudications in the other states above mentioned, where the same words appear in their statutes, and where their courts hold that contracts made on Sunday are void. For similar constructions of statutes substantially the same see; *Heston v. Houghton*, 5 Me. 143; *Adams v. Hamell*, 2 Doug. 73; *Allen v. Deming*, 14 N. H. 133; *Adams v. Hay*, 19 Vt.

⁸ 12 Missouri Appeals 11.

358; *Johnston v. The Commonwealth*, 22 Pa. St. 102; *Raney v. Capps*, 22 Ala. 288; . . .

The statutes in Illinois and Missouri do not contain the word "business." In Ohio the statute provides that: "If any person shall be found, on the first day of the week, commonly called Sunday, at "common labor, works of necessity and charity excepted he shall be fined," etc. In *Bloom v. Richards*, (2 Oh. St. 387) Judge Thrumman said, in substance, "that the making of a contract is reasonably construed to be business, but by nothing short of the most strained and unreasonable construction could the making of a contract be brought within the phrase "*common labor*."

In California the statute provides "against keeping on Sunday *any store, work shop, banking house, or any other place of business*," etc. In *Moore v. Murdock* (26 Calif. 514), it was held that the prohibition did not cover the making of contracts and that a contract for the sale of sheep, made on Sunday was valid.

Indiana is the only jurisdiction where there are adjudications running to the contrary. In Indiana where the statute is precisely like that of Ohio, (above set out) the decisions hold that contracts made on Sunday are void. In *Link v. Clemens*, (7 Black. 479) it was held that the execution of a bond on Sunday came within the condemnation of the statute inhibiting *common labor* on Sunday and was consequently void. This case has been followed in 87 Ind. 162, 144 Ind. 188, and has been cited as controlling authority as late as 1916 at (Ann. Cas. 1916B notes).

A review of the authorities therefore reveals Indiana standing alone in her position that contracts made on Sunday are void as contravening a statute prohibiting *common labor*. Lined up against Indiana are Illinois and the rest of the states holding that the term *labor* as set forth in the statute has no reference to the making of contracts, unless perhaps the consideration be some work or labor to be performed on Sunday.