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Sunday Laws—Acts of Necessity or Charity—Gasoline Not “Necessity”

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COMMENT ON RECENT DECISIONS

ordinance which prohibited the erection within the municipality of all billboards designed for advertising purposes, except signs of certain dimensions advertising realty for sale, or for rent. The county court convicted the defendant for a violation of the ordinance sustaining the validity of the ordinance on aesthetic grounds alone. On appeal, held, that the ordinance was invalid as being an unwarranted exercise of police power, as depriving the owner of the free use of his property, and as not tending to promote public safety, health, or general welfare, People v. Wolf, (1926) 127 Misc., 382, 216 N. Y. S., 241.

In the United States, the courts have held almost uniformly that the police power cannot be exercised solely for aesthetic purposes. Curran v. Denver, 47 Colo., 221, 107 Pac., 261; Commonwealth v. Boston Advertising Company, 188 Mass., 348, 74 N. E., 601; Passaic v. Patterson Bill Posting Company, 72 N. J. L., 285, 62 Atl. 267; State v. Whitlock, 149 N. C., 542, 63 S. E., 123. Ordinances prohibiting the erection of advertising signs near public parks and boulevards have been held invalid as the unwarranted confiscation of private property to promote beauty alone, rather than to protect public rights which are imperiled. Chicago v. Gunning System, 214 Ill., 628, 73 N. E., 1035; Haller Sign Works v. Training School, 249 Ill., 436, 94 N. E., 920. In Isenbanth v. Bartnett, 206 App. Div., 546, the court held, “the aesthetic is a matter to be secured so far as it may by private covenant without the backing of police power,” and quoting from the Haller Sign Works v. Training School, supra, the court said, “advancement along these lines (speaking of the aesthetic) has so far been left to schools and colleges, and under the influence of social intercourse.” Ordinances prohibiting the erection of billboards in particular localities have been upheld as being within the police power. Cusack v. Chicago, 242 U. S., 526; Gunning v. St. Louis, 235 Mo., 99, 137 S. W., 929; St. Louis Poster Company v. St. Louis, 249 U. S., 269. Such ordinances do not bar billboards, however, by reason of their offensiveness to the aesthetic senses, but primarily because signboards afford increased hazards from fires, high winds, and interfere with the passage of sunlight and air, thereby jeopardizing public interest. Within recent years, increased population in urban districts has warranted an extension of the police power as evidenced by zoning regulations. Wulson v. Burden, 241 N. Y., 288, 150 N. E., 120; Bacon v. Walker, 204 U. S., 311. The courts in upholding the zoning laws have been inclined to recognize, as incidental to the dominant factors of public health and safety, the auxiliary element of beauty. Welsh v. Swasey, 193 Mass., 364, 79 N. E., 745; Cinello v. New Orleans, 154 La. 271, 97 So., 440; State v. Haughton, 144 Minn., 1, 174 N. W., 885. Possibly the furtherest extreme yet mentioned by any court is seen in the dissenting opinion of Judge Holt in State v. Haughton, supra, where he said, “it is time the courts recognized the aesthetic as a factor in life. Who will dispute that the general welfare of dwellers in our congested cities is promoted if they be allowed to have their homes in fit and harmonious or beautiful surroundings?” J. R. B. '28.

SUNDAY LAWS—ACTS OF NECESSITY OR CHARITY—GASOLINE NOT “NECESSITY.”

—Defendant was indicted for violating a city ordinance which prohibited, under penalty, the sale of goods, wares and merchandise on Sunday, and provided that “charity or necessity on the part of the customer may be shown in justification of the violation of this ordinance.” Defendant opened his filling station on the Sabbath day to dispense gasoline to physicians, officers of the law, tourists, and patrons of his garage which he ran in connection with the filling station. Although defendant sold gasoline only to those who signed statements that it was necessary for them to have it, the particular circumstances under which the sales were made did not appear in the record. The circuit judge instructed the jury to return a verdict of guilty and defendant appeals on ground that this being the motor age, the sale of gasoline on Sunday is an inherent, essential, and
vital necessity. *Held,* that the sale of gasoline is not such a “necessity” as to be permissible on Sunday within the meaning of this law. The sales to physicians, officers, tourists, and persons who kept automobiles in defendant’s garage were not within the exception of the necessity clause contained in the ordinance, and no such emergency was shown by the testimony as brought them within the exception. The burden was on the defendant to bring himself within the exception. *Affirmed.*

*Rhodes v. City of Hope,* (Ark. 1926), 286 S. W., 877.

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On the other hand, the following acts have been held not to have been acts of charity or necessity in the operation of Sunday laws: keeping open of a place of business where it tends to prevent disorder or indecent exposures by persons along streams, Lakeside Inn Corp. v. Com., 134 Va., 696, 114 S. E., 769.

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In comparing the construction of the Sunday laws it must be remembered that the alleged and actual violations above enumerated have occurred under statutes and ordinances varying in their wording, and in different states, and at different times in the history of our country. It is also important to know that in some states the question whether a certain act or labor is a work of necessity or charity is one of fact to be determined by the jury from the circumstances of each case, whereas in a few states the question is purely a question of law for the court. The rule in Missouri (State v. Schatt, 128 Mo. App. 622, 107 S. W. 10) and some other states is that where reasonable minds differ, it is a question for the jury, but where the nature of the work is such that no reasonable minds would differ, the court may treat the question as one of law. See exhaustive note in 29 A. L. R., 1298.

C. S. N. '27.

**Book Reviews**

A TREATMENT OF THE FUNDAMENTAL PRINCIPLES OF THE LAW OF CONTRACTS; WITH DIGEST OF CASES CONTAINED IN THE SECOND EDITION OF KEENER'S AND WILLISTON'S CASEBOOK, AND LEADING CASES IN OTHER CASEBOOKS ON CONTRACTS. By Carl Helm, LL.B., Member of the New York Bar, pp. xxiv and 580. New York City: Central Book Company, 1926.

This is a well manufactured book of 580 pages of thin paper in limp leather cover. In his preface the author states that the purpose of the book is to assist teachers and "as an aid to students in their study" of contracts "by the case system." The author says also that the book will "afford a thorough, concise review for graduates and practitioners." It is not likely that practicing lawyers will find much of value in the book. To practicing lawyers law is a reality, something which actually exists in human experience whereby human disputes are settled,—most of them out of court. In the language of the Supreme Court of the United States: "Law is a statement of the circumstances in

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