

Criminal Law--Sunday Laws--Carrying on of a Public Traffic (People v. Friedman, People v. Praska, 302 N.Y. 75 (1950))

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is no reason to believe that the law in New York is not as expressed by the holding in the principal case. It would seem that any other conclusion would hamper the administration of justice.



CRIMINAL LAW—SUNDAY LAWS—CARRYING ON OF A PUBLIC TRAFFIC.—Two Jewish merchants offered for sale and sold uncooked meats on a Sunday. They were convicted for a violation of Section 2147 of the New York Penal Law, which forbids all manner of public selling or offering for sale of any property on a Sunday. On appeal the Appellate Division, First Department affirmed the conviction. The Court of Appeals sustained the Appellate Division, holding that the exemption of Section 2144 allowing work or labor to be performed by those who uniformly keep a day other than the first day of the week as a holy time and do not work on that day cannot be interposed as a defense to a prosecution for the carrying on of a public traffic on Sunday, and that Section 2147 is not unconstitutional because it imposes a hardship on merchants who keep a day other than Sunday as a day of rest and holy time. *People v. Friedman, People v. Praska*, 302 N. Y. 75, 96 N. E. 2d 184 (1950).

The basis of the present Sunday laws is found in the Act of October 22, 1695.¹ As the present law, although it required no affirmative religious act, it specifically enumerated the acts forbidden: “. . . travelling servile Labouring and working shooting fishing sporting playing horse Racing hunting or frequenting Tipling houses” With the exception of travelling and frequenting tippling houses, the activities restricted by the Act of 1695 are still prohibited by the present law, while the acts which have since been constituted offenses are all occupations which have been developed since 1695. Exemptions under the Act of 1695 were very limited; primarily free Indians, works of necessity and travelling to church.

This act gradually evolved into our present system of Sunday regulation and now constitutes Article 192 of the Penal Law.

Jury investigation. In such an event the relator might be held both as a defendant and as a witness.” *People ex rel. Gross v. Sheriff of City of N. Y.*, 277 App. Div. 546, 552, 101 N. Y. S. 2d 271, 276 (2d Dep’t 1950).

¹ Colonial Laws of New York 356 (1894). The earliest law of New York providing for the observance of religion is contained in the Conditions of Burgomasters of Amsterdam of 1656. It required that the city send a schoolmaster to a place established by the colonists where he would read the Holy Scriptures and set the Psalms. See *People v. Hoym*, 20 How. Pr. 76 (N. Y. 1860). Subsequently, under English rule, by the Duke of York’s Laws of 1665 public preaching on Sunday was established and Sabbath breaking was prohibited. Colonial Laws of New York 25 (1894). The same laws express the colonist’s religious feeling and toleration by providing that, “If any person within this Government shall by direct, exprest, impious or presumptuous ways, deny the true God and his Attributes, he shall be put to death.” Colonial Laws of New York 20 (1894).

The purpose of Article 192 is set forth in its first section: "The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community."²

Although the various sections specifically prohibit the performance of various acts, they, nevertheless, provide exemptions. First, Section 2143,³ which expressly prohibits all work or labor on Sunday, excepts works of necessity and charity. The leisure of Sunday would not be furthered by prohibiting works of necessity or charity. Secondly, Section 2147,⁴ which prohibits all manner of public selling, enumerates certain sales that may be effected on a Sunday. The discrimination is reasonable and valid because these exempted sales, from their very nature, provide the community with comforts consistent with the purpose of providing a day of rest, and do not interrupt the religious observance of that day. The third exemption, Section 2144,⁵ provides a sufficient defense to a prosecution for work or labor to those who observe a day other than Sunday as a holy time. The justice of this exemption is apparent. If his work or labor does not interfere with those observing Sunday and if he does not work on the other day of the week, he should not be subjected to the statutory prohibition in the same manner as those who keep Sunday as a holy time.

In the instant case the appellants were accused of selling uncooked meats on a Sunday. It is clear that they could not defend on the ground that such was a work of necessity or charity nor could the sale complained of be brought within one of the exempted sales mentioned in Section 2147 because that statute also provides that it ". . . shall not be construed . . . to permit the public sale . . . of uncooked flesh foods or meats. . . ." Since the appellants observed a day other than Sunday as a holy time the issue to be determined is whether their public selling comes within the exemption of Section 2144, allowing work or labor to be performed.

² N. Y. PENAL LAW § 2140.

³ "All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community."

⁴ "All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows: . . . [Articles of food may be sold before 10 a.m., restaurants and caterers may serve meals all day, newspapers, tobacco, flowers, bread or milk, gasoline and oil may be sold all day, delicatessens and bakeries may be open all day in cities of over 40,000, beer may be sold for off-premise consumption until 3 a.m. and after 1 p.m.] The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods or meats, fresh or salt, at any hour or time of the day. . . ."

⁵ "It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day as a holy time, and does not labor on that day, and that the labor complained of was done in such a manner as not to interrupt or disturb other persons in observing the first day of the week as a holy time."

The same issue arose in a Missouri case where a defendant accused of Sunday selling contended that he observed a day other than Sunday as a holy time. The court in construing similar statutes said, ". . . the keeping open of a store or the selling of goods on a Sunday is a thing separate and apart from the performance of Sunday labor. This is evidenced by the fact that they are prohibited by different statutes. . . ." ⁶ The contention was denied since the exemption applied only to work or labor, not to public selling.⁷

In a New York case ⁸ a defendant who had operated a factory on a Sunday contended that as he uniformly kept a day other than Sunday as a holy time he came within the exemption of Section 2144 which allows work or labor by such a person. The court held that the exemption applied only to Section 2143 which forbids work or labor and not Section 2146 which forbids the operation of a factory.⁹ In another decision ¹⁰ the Appellate Division held under facts similar to the present case that Section 2144 provided no defense to public selling on a Sunday. Since the court must give effect to the statute as it was written,¹¹ they must strive to protect the religious observance and leisure intended for Sunday.¹² This is particularly true where the activity requires the employment of men who would otherwise have the day for their families and recreation.¹³ The exemption for work or labor has not been extended to public selling. Such an activity requires the employment of a number of men and results in the congregation of purchasers. Consequently, traffic to and from the markets would be increased, and it would also tend to tempt others who do not keep any other day holy to violate the Sunday laws.¹⁴ On the other hand, work or labor which does not involve public selling does not have such a tendency.¹⁵

The appellants raised the issue of the statute's constitutionality as a law respecting the establishment of religion ¹⁶ because it estab-

⁶ *Komen v. St. Louis*, 316 Mo. 9, 17, 289 S. W. 838, 841 (1926).

⁷ *Ibid.*

⁸ *People v. Adler*, 174 App. Div. 301, 160 N. Y. Supp. 539 (2d Dep't 1916).

⁹ N. Y. PENAL LAW § 2146 provides: "All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community."

¹⁰ *People v. Rudnick*, 259 App. Div. 922, 20 N. Y. S. 2d 996 (2d Dep't 1940).

¹¹ *Matter of Russo v. Valentine*, 294 N. Y. 338, 62 N. E. 2d 221 (1945); *Lawrence Const. Corp. v. State of New York*, 293 N. Y. 634, 59 N. E. 2d 630 (1944).

¹² *Smith v. Wilcox*, 24 N. Y. 353 (1862); *People ex rel. Bender v. Joyce*, 174 App. Div. 574, 161 N. Y. Supp. 771 (3d Dep't 1916).

¹³ *Ibid.*

¹⁴ See *Anonymous*, 12 Abb. N. C. 455, 456 (N. Y. Super. Ct. 1882).

¹⁵ See *People v. Dunford*, 207 N. Y. 17, 21, 100 N. E. 433, 434 (1912).

¹⁶ U. S. CONST. AMEND. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

lishes the Christian Sabbath as a civil institution. The Sunday laws are not an attempt by the legislature to establish or enforce a religion but represent an endeavor to protect the social customs of the community.¹⁷ Sunday occupations are regulated to prevent the moral and physical debasement that comes of uninterrupted labor, and to prevent competition in man-hours of labor.¹⁸ The validity of the statute is neither strengthened nor weakened by the fact that the day set aside is the Christian Sabbath.¹⁹

They also contended that the Sunday laws are unconstitutional in that they prevent the free exercise of religion.²⁰ These laws, however, are not operative on any day other than Sunday and as a result do not prevent persons such as the appellant from exercising their religion.²¹ The inconvenience caused to the appellants by their having to close their shops on two days, one day in conformity with their religion and another in conformity with the statute, is only an incidental result of the operation of the statute. Inconvenience is incident to all legislation and such inconvenience cannot be said to be inconsistent with freedom of conscience, or a valid ground for declaring the statute unconstitutional.²²

The third constitutional objection was that the appellants were deprived of their property and right to carry on their Sunday business without due process of law and without the equal protection of the laws.²³

Such a contention overlooks the principle that our constitutional rights are subject to the reasonable exercise of the police power of the state.²⁴ The police power of the state embraces regulation not only to suppress that which is disorderly and unsanitary but also to promote the public convenience, general prosperity and greatest welfare of the state.²⁵ It can be readily seen that the statute by providing the community with one day a week to be by law free from

¹⁷ Commonwealth v. Nesbit, 34 Pa. 398 (1859).

¹⁸ Soon Hing v. Crowley, 113 U. S. 703 (1885).

¹⁹ See Bloom v. Richards, 2 Ohio St. 387, 392 (1852), *opinion quoted in* Hennington v. Georgia, 163 U. S. 299, 304 (1896).

²⁰ See note 15 *supra*.

²¹ Silverberg Bros. v. Douglass, 62 Misc. 340, 114 N. Y. Supp. 824 (Sup. Ct. 1909).

²² People v. Havnor, 149 N. Y. 195, 43 N. E. 541 (1896), *writ of error dismissed*, 170 U. S. 408 (1898); Fougera v. New York City, 178 App. Div. 824, 166 N. Y. Supp. 248 (1st Dep't 1917), *aff'd*, 224 N. Y. 269, 120 N. E. 642 (1918).

²³ U. S. CONST. AMEND. XIV, § 1. "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

²⁴ Schenck v. United States, 249 U. S. 47 (1919); United Public Workers of America (C.I.O.) v. Mitchell, 330 U. S. 75 (1947); American Communications Assn., C.I.O. v. Douds, 339 U. S. 382 (1949).

²⁵ Bacon v. Walker, 204 U. S. 311 (1907).

the cares and problems of labor, traffic and competition is not an abuse of this police power.²⁶

It is for the legislature to determine what occupations should be restrained as interfering with the rest and leisure of the first day of the week.²⁷ It may direct its police power against what it deems the evil of non-observance of Sunday laws without necessarily covering the entire field of possible abuse.²⁸ "The lack of abstract symmetry does not matter."²⁹ The statute cannot be set aside because it incidentally injures a particular business while it permits certain others to remain open provided that the discrimination is consistent with the purpose of the statute.³⁰

"The legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose. The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made."³¹ General public selling on Sunday is a particular abuse of the customs of the community and inherently different from laboring on Sunday or the selling of the particular commodities permitted by Section 2147.

It is submitted that the conclusion of the court was consistent with the legislature's intent and with prior interpretations of the statute. While it is customary to think of the Sunday laws as obsolete "blue laws", a reasonable consideration of their benefits will reveal that it is necessary for a well-ordered and refined society to abstain from labor and business one day a week.



DOMESTIC RELATIONS—SECOND MARRIAGE INVALID WHEN CONTRACTED BEFORE FINALITY OF INTERLOCUTORY DECREE TO EARLIER MARRIAGE.—Plaintiff married defendant prior to the finality of an interlocutory decree of annulment of the defendant's previous marriage. Plaintiff sought an annulment upon these facts.¹ Defendant asked judgment for a decree of separation on the ground that plaintiff deceived her as to the effectiveness of her interlocutory decree and the validity of their marriage. *Held*, judgment for de-

²⁶ *Hennington v. Georgia*, 163 U. S. 299 (1896).

²⁷ *Petit v. Minnesota*, 177 U. S. 164 (1900); *Neuendorff v. Duryea*, 69 N. Y. 557 (1877).

²⁸ *Central Lumber Co. v. South Dakota*, 226 U. S. 157 (1912).

²⁹ *Patson v. Pennsylvania*, 232 U. S. 133, 144 (1914).

³⁰ *Asbury Hospital v. Cass County*, 326 U. S. 207 (1945); *accord*, *Patson v. Pennsylvania*, 232 U. S. 133 (1914).

³¹ *Asbury Hospital v. Cass County*, 326 U. S. 207, 214 (1945).

¹ N. Y. CIV. PRAC. ACT § 1134. "An action to annul a marriage upon the ground that . . . the former marriage [was] . . . in force, may be maintained . . ."