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The Law of Sunday

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The Law of Sunday

--By--

Sidney Jay Kelly

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C o r n e l l   U n i v e r s i t y

School of Law

1892.

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The original Constitution of the United States contains no provision regarding religion. But by the first amendment it was provided that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof". As Congress has only such powers as are expressly delegated to it, this inhibition would seem to be entirely unnecessary, and must have been intended merely as an additional security to the liberty of conscience. This clause of the Amendment being general merely prohibits Congress, from interferring with religion, and forms no inhibition upon the state. So the entire control and regulation of religion, and incidentally the power to regulate Sunday observance was left entirely with the states. For this reason we must examine the state constitutions to find the boundaries within which Sunday legislation can be upheld; and the decisions of the various state courts to find the extent and grounds upon which they are supported.

The original constitution of New York contains no

provision respecting religion or the observance of Sunday. But the first amendment providesthat "The free exercise and enjoyment of religious worship, without discrimination or preference, shall forever be allowed in this state to all mankind-------but the liberty of conscience hereby secured shall not be construed so as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safty of the state".

Special regulations for the conduct of citizens on Sunday are found among the earliest statutes of England. Similar provisions were enacted by the colonies, and statutes of greater or less severity are found in all the states. The constitutionality of these enactments have been denied in some of the states. By far the most important and well considered case holding inhibitions of work on Sunday unconstitutional was a California case: Ex Parte Newman, 9 California, 502, decided in 1858.

The case contains two able and lengthy opinions denying the constitutionality of the Sunday law, and a strong dissenting opinion by Judge Field, now of the United States Supreme Court in which he upheld the statute. His dissenting opinion was followed in a later decision and is now the law of California. Newman was a Jew and had been tried and convicted of selling clothing on Sunday in violation of the statute

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The majority of the court held the act in violation of the constitution, in that it was a "discrimination" between religions and that it gave a preference to one belief over another. The court denied the proposition that Sunday laws were a necessity to the citizen, and declared the assumption to be without foundation, and a matter entirely outside the province of legislation. And further that the act infringed upon the liberty of the citizen by restraining his right to acquire property.

Judge Field in his dissenting opinion contended that the act was merely a civil regulation, limited entirely to secular pursuits and left religious profession and worship entirely free; that the legislature had the right to pass laws for the preservation of health and the promotion of good morals. Judge Field declared the fact that the law operated with inconvenience to some was no argument against its constitutionality; as inconvenience was incident to all general laws. And lastly that the right to acquire property may be regulated for the benefit of the public good and to promote the general welfare.

An Indiana case (Thommasson's Case, 15 Indiana, 449.) followed the holding of the majority of the court ex parte Newman; and a South Carolina Case held the conviction of a Jew for selling on Sunday to be a "discrimi

nation" and unconstitutional. Outside of these decisions, the leading one of which has been overruled, the overwhelming weight of authorities is against the view taken in these cases.

The leading case in New York is Lindlemuller v. The People, 33 Barber, 548, which placed the Sunday laws upon the solid foundation upon which they now rest. The laws were upheld not as religious regulations but were supported entirely as sanitary and civil regulations. Lindlemuller was convicted of giving theatrical exhibitiions on Sunday. It was argued that the statute was a "discrimination" in favor of those who kept the first day of the week; and that it also worked a destruction of the defendants property. The court in delivering its opinion declared it to be immaterial whether Christianity was a part of the common law of the state. But placed the decision entirely upon sanitary grounds, and the promotion of public morals and good order. The court saying that "As a civil and political institution the establishment and regulation of a Sabbath is within the just powers of civil government. It is our law of nature that one day in seven must be observed as a day of relaxation and refreshment; if not public worship, and experience has shown that one day in seven as a day of rest "is of

admirable service to the state, considered merely as a civil institution" (4 Blackstone Com., 63). As a civil regulation the selection of the day is at the option of the legislature; but for a christian people it is highly fit and proper that the Christian Sabbath should be observed, as that day is recognized by the great majority of the people". The reasoning and principles established in this case have been often approved by the Court of Appeals and has been followed in all subsequent decisions. It has also met the approval of the courts of other states and is a good example of the judicial reasoning by which the Sunday laws are held constitutional. The courts of the different states all reach the conclusion that inhibitions of work on Sunday.

First
Do not violate the constitution of the United States.

Second
That they do not "interfere"with the rights of property.

Third
That Sunday laws do not infringe religious liberty, nor do they give any preference to one religion over another.

It is upon one or more of these grounds that they

have been most stongly attacked, and almost without exception the courts have sustained them. So strong has been the desire of the courts to uphold the Sunday laws that, in some cases it would seem, they have extended the police power beyond its legitimate sphere, and ignored the strict legal interpretation of the constitution.

The true rule I believe to be is whether the act prohibited by the Sunday law, would if not prohibited, work a trespass upon the rights of others. If the doing of the thing prohibited would not be a trespass upon the rights of others, then the prohibatory statute must be unconstitutional. A statute which prohibits a man working on Sunday, when his work in no way interferes with the repose and "quiet" of the community is unconstitutional. The argument that the rest to him is a physical necessity is of no avail. Even assuming that one day of rest in every seven is a physical necessity leaves the matter no better. The state cannot prevent a man from overworking any more than it can compel him to work for the benefit of his health. The overworking is a mere personal vice as distinguished from a trespass or crime, and entirely outside ~~of~~ the control of the state. The state might as well attempt to prevent a man smoking in his own room, and justify it as a sanatary regulation

intended for the benefit and health of a single individual. But let the smoking interfere with others, in short become a trespass and the state has undoubted power to prevent it.

Throughout the United States Christianity is the prevailing religion and its teachings are more or less practiced by the great majority. Sunday is the day adopted especially for its observance and as a day of rest and "quiet". It is found from experience and is almost unanimously agreed that one day in seven should be set apart as a day of rest and repose. Not for religious observance unless the individual chooses so to do. But he must submit to the rights of the majority who have selected this day as one of quiet and repose. No law can compel him to refrain from work merely because he endangers his health or debases his own morals; but when his acts endanger or interfere with the health or debase the morals of another then only can the state prohibit his act. What is an interference with the rest and repose of the community must be determined by the facts of each particular case. The general rule may be stated to be: that any statute which prohibits the doing of an act on Sunday , the doing of which would work a trespass upon the community and interfere with their repose and quiet, is perfectly con-

stitutional. While those which go beyond and prohibit acts simply because they are a moral debasement and an injury to the individuals health, but do not work a tres,-pass upon the rights of others are beyond the police power and in direct violation of the constitution.

Sunday Contracts.

The common law with all its dignity did not prohibit Sunday contracts, but the aid of the courts was given to enforce them the same as other contracts. So all contract made on Sunday, however much they may seem to violate the moral law, are valid and binding unless they are prohibited by statute. This doctrine was laid down in Story v. Elliot, 8 Cowen, 27, and was again affirmed in 1865 in Bottsford v. Every, 44 Barber, 618. The common law being adopted by nearly all the states all contracts made on Sunday are valid, except, in so far as they are not directly or indirectly prohibited by the statutes of the various states. The statutes of the different states are nearly all moulded after the one passed during the reign of Charles the II in 1676. But the terms of the statute differ to a large extent in different states and, therefore, render the decisions of one state of little value except where the statutes are found to be similar. From this fact it is impossible to do more than state the general principles governing Sunday contracts.

It is a general principle of the law that where a statute prohibits the doing of an act, all acts and transactions in violation of the statute are void and

uninforceable. (Story on Contracts, Sec. 614). So a contract made on Sunday the making or executing of which in any way violates the statute in regard to Sunday observance must be void. Thus in a state where the statute prohibits the buying and selling of property; if "A" sells property to "B", no matter how quiet and peaceful the transaction may be the sale will be void by reason of the statute. "A" will have no standing in court and will not be permitted to maintain an action for the purchase price. In the case of Pike vKing, 16 Iowa, 49, the plaintiff sold and delivered to the defendant on Sunday 18,000 willow cuttings. The statute of Iowa prohibited the buying and selling of property on the Lord's Day. The court said "A contract made in violation of the statute or founded upon an unlawful act in subversion to the policy of the state, whether it be malum prohibitum or malum in se, is void and cannot be enforced." And the court held the plaintiff to have been properly non-suited. This is the general view taken by the great majority of the courts, viz.,that the courts will not lend their aid to either party who has entered into an agreement in violation of the statute; but will rather leave both parties where they stand. The vendor cannot recover his property, nor a vendee cannot recover back money he has paid on Sun-

Sunday, nor the pawnor of a plege the property he has pawned on Sunday.

So if the sale or contract is wholly executed on both sides, and the property is delivered, and the consideration is paid both parties will be bound; or rather the law will not permit either party to seek redress in its courts. The vendor will not be permitted to recover his property nor the vendee his purchase money. The rule seems to be founded on the maxim of equity, "that he who comes into equity must come with clean hands". The vendor is not even permitted to maintain replevin for the article delivered on Sunday. Neither can he maintain an action in assumpsit for the value of the article delivered The strict rule is enforced, that the courts will not interfere, but will leave the parties where they stood at the termination of the illegal transaction.

A Sunday contract in order to be void must be completed on Sunday. Thus where a contract is only partially made on Sunday and is completed on a week day, it will not be void. This principle was laid down in 1860 in Merrill v. Downs, 41 N.H., 72, the court saying "If anything remains to be done on some other day the contract will not be void. It is not sufficient to void a contract that it grows out of a transaction commenced on

Sunday. To render it void it must be closed or perfected on that day". A deed signed and acknowledged on Sunday but not delivered until afterwards was held valid. Love v. Wells, 25 Indiana, 503, and the same was held in the case of a bond made and executed on Sunday but not deliver ed until the next day. Hall v. Parker, 37 Michigan, 594. This line of cases may all be reconciled under the theory that the contract was not in fact made on Sunday. That what the parties really did was to comtemplate or negociate on Sunday, and that the real contract was made on a future week day. A careful perusal of the cases will demonstrate this distinction.

Where the terms of the contract are formulated on a week day but the contract is consumated upon a Sunday it is void. As in the case where a farmer agreed on Saturday to purchase land but was unwilling to leave his work to execute the papers, and it was agreed that they should execute it on Sunday. In an action on the note for the purchase price the court refused to enforce its collection but left the parties where it found them. Lamore v. Frisbie, 42 Mich., 182. Yet in this particular case the agreement made on Saturday was valid; but the necessary papers to complete the contract which were executed on Sunday were void. The contract being for the sale of

lands the valid part was rendered unenforceable by the statute of frauds, otherwise the part of the agreement made on Saturday could have been enforced.

Some of the text writers and many of the cases hold that a contract void, by reason of its being made on Sunday, may be ratified on a subsequent week day. And that any act done by the parties on a week day, which recognizes the contract as an existing one between the parties is a ratification. These cases must be sustained rather on authority than principle. For it is an elementary principle that an illegal contract is void and in fact nothing more than a nullity, and therefore, incapable of ratification. The best considered cases lay down the principle that a void Sunday contract is incapable of ratification. In Ryno v. Darby, 5 Gr. (N. J.), 231, the court said "A contract made on Sunday is void and no subsequent ratification, short of a new bargain can give it validity".

As a general rule the cases cited as holding that a contract made on Sunday can be ratified, have been cases where the parties have practically made an entirely new agreement on a week day. And a recovery has been had in these cases upon quantum valebat, rather than upon the original contract made on Sunday. In an Iowa case ,

Harrison v. Colton, 31 Iowa, 16, a contract for the purchase of pigs had been made on Sunday and was void under the Iowa statute. But on a subsequent Monday the ~~defendet~~ pltff agreed that the defendent should have the pigs and a memorandum of the average size, quality and price was made and agreed to by the defendent. The court held the defendent bound and laid down the principle that where the parties had entered into a void Sunday contract, this did not prevent them making a valid contract with reference to the same subject matter on a subsequent week day. This was strictly speaking not a ratification but an entirely new contract. There can be no good reason why parties cannot make a valid contract on a week day, merely because they have ineffectually tried to make one in respect to the same subject matter on Sunday.

Where a bargain is merely negociated, and a sale agreed upon on Sunday, and the property delivered on a subsequent week day, the buyer or acceptor of the goods will be liable on an implied agreement to pay their market value. For the vendor can make out a prima facie case by merely proving delivery of the goods and acceptance by the vendee. And need show nothing in regard to the Sunday contract. The defendent being a party to the illegal Sunday contract will not be permitted to offer

that in defense or show its terms. The plaintiff is only entitled to recover the market value of the goods delivered and not necessarily the price agreed upon in the Sunday contract.

Whenever a Sunday contract is void, like other contracts it is void for all purposes, and the court will not lend its aid to assist either party. The buyer cannot maintain an action for deceit or breach of warranty. If the contract is made and executed on Sunday then the vendee can have no remedy for fraud or breach of warranty practiced upon him. The courts look upon both of the parties as guilty and will leave both of them wherever they stood after the illegal transaction.

The interesting question has arisen whether a payment on Sunday of a part due on a contract would take the debt out of the statute of limitations. In a Massachusetts case, Clapp v. Hale, 112 Mass., 368, it was held that it would not, the court saying "When any act essential to constitute or complete the right to recover is in violatio of that statute (Sunday statute) the plaintiff cannot demand the assistance of the judiciary to defeat the will of the legislature. The court will not assist either party to avoid or take advantage of the illegal act, but

will leave both parties as it finds them. The court will generally refuse to assist one party to recover back what he has thus paid or transferred, and the other party to deny that he has received it or assert any new right by reason of such payment or transfer founded thereon."

This case is undoubtedly sound in principle, but its application in other states will depend entirely upon the similarity of the statutes. The statute of Massachusetts is very broad and prohibits "Any manner of labor, business or work". In a state where the statute is not so broad and its object is only to prohibit open and notorious contracts; part payment on Sunday in a quiet and orderly manner, would probably not be held contrary to the statute. And for this reason would take the contract out of the statute of limitations.

In New York state nearly all the statutory provisions in regard to the observance of Sunday are contained in the Penal Code. (Title 10, Chapter 1, Sec. 259 to 277 inclusive). The general object and intent of the statute is obtained from the first section (Sec. 259) which reads "The law prohibits the doing on that day (Sunday) of certain acts hereinafter specified which are serious interuptions of the repose and religious liberty of the community". It is evident from the terms of the statute that the legislature never intended to make unlawful quiet and

orderly transactions. But only to prohibit the transacting of such business as would seriously interupt the religious repose and rest of the community. There are but few decisions in New York in regard to Sunday contracts, and these are among the earlier reports. The statutes on which these decisions rest differ considerably from our present statutes, and so must necessarily vary from the present law. Private contracts made on Sunday between individuals in their own homes or offices, the making of which does not interfere with the repose and good order of the community cannot be said to be prohibited by the New York Statute. In Eberle v. Mahrbach, 55 N.Y., 682, a case not reported in full, the Court of Appeals affirmed the finding of a referee, that the sale of a horse on Sunday, made privately, was not within the meaning of the statute and was a valid and enforceable contract. This holding was in 1874 and it may well be presumed that the Court of Appeals, in accordance with the present tendency towards liberality in Sunday observance, would lay down fully as broad and liberal a doctrine.

Sunday Traveling.

The extent to which a person traveling on Sunday, in violation of the statutes regulating Sunday observance is protected from injury by the negligence of another, forms a good illustration of the adaptability of the common law to meet existing circumstances. In the case of the Sunday traveler injured by the negligence of the common carrier, no recovery can be had on the contract of carriage. For the contract is void and neither party will be permitted to claim any rights under the illegal contract. But the liability is placed rather upon the ground of public policy. The common carrier having once accepted the passenger cannot plead that the passenger was illegally traveling and thus escape liability. The law will not permit the negligent party to escape from that duty and care which he is bound to exercise for the protection of the life and property of the public. A few early cases in Mass. Vt. and Me. denied the right of the injured party to recover. holding that both parties had been guilty of a wrong and the court would lend its aid to neither party. But this holding has been modified to a large extent in these states and has not been followed

in other states.

The leading case in this state on the liability of common carriers to Sunday travelers is Caroll v. Staten Island R.R. C., 58 N.Y., 126. The plaintiff paid the regular fare and took passage upon the defendent's steamer, with the intention of going to Staten Island "For the purpose of recreation and enjoyment of the sea air". He was injured by the explosion of the boiler and sued the Company. The defendent insisted that the contract was illegal, and that the plaintiff was violating the statute and was equally guilty with defendent and therefore not entitled to a recovery. Judge Andrews writing the opinion after assuming that the plaintiff was violating the statute said "We deem it unnecessary to decide the question treating it as founded upon a contract between the parties. The gravamen of the action ~~was~~ is the breach of duty imposed by law upon the carrier of passengers, to carry safely, so far as human skill and foresight can foresee, the persons it undertakes to carry. This duty exists independant of contract and although there is no contract, in a legal sense between the parties. The law raises the duty out of a regard for human life. The policy of the law, moreover, has always been to protect life and limb, by the severest penalties, against injur-

injuries from the wrongful acts of others. A wrong doer is not without the protection of the law. The negligence of defendant was as wrongful on Sunday as on any other day and was as likely to be followed by injurious effects or fatal consequences. The plaintiff's unlawful act did not in any sense contribute to the explosion. To hold the carrier exempt from liability because the plaintifff was violating the Sunday statutes would be creating a species of judicial outlawry, to shield a wrong-doer from a just responsibility for his wrongful acts". The same rule was applied in 89 N.Y.,(Platz v. City of Cohoes, 219) to the liability of the city for its negligence, which resulted in injury to a Sunday traveler. The liability was placed upon the the general principles of negligence and it was held that the plaintiff's illegal traveling upon Sunday would not prevent a recovery, unless it could be shown to be the immediate cause of the injury. "It may doubtless be said that if the plaintiff had not traveled he would not have been injured. This will apply to nearly every case of collision or personal injury from the negligence or wilful act of another. Had the injured party not have been present he would not have been hurt. But the act of traveling is not one which usually results in injury. It therefore cannot be regarded as the imme-

immediate cause of the injury, and of such only the law takes notice".

A few Mass. cases hold traveling on Sunday to be a contributory cause of the injury, and therefore prevent a recovery. A late case, White v. Lang, 128 Mass., 598, which states the rule in Massachusetts very clearly limits this doctrine to a large extent and adopts practically the New York theory.

The New York rule may be briefly stated to be, that the illegal traveling of the plaintiff on Sunday is not deemed a contributory cause and therefore will not prevent a recovery for negligence of the common carrier; or for defects in the highway whereby the plaintiff is injured. The New York rule is followed in Pa., Wis., Minn., Ind. and in a majority of the western states. The same doctrine is established in England. (Skinner v. Railway, 5 Exch 787).

The principle upon which these cases rest is recognized by all courts, though not clearly drawn in the cases. The courts of the different states differ only in their application of the principle. The principle is the general one, that to deprive a party of redress because of his illegal conduct, this illegality must have contributed to the injury. The immediate and not the remote cause is regarded

the law being concerned only with the direct and immediate cause of the injury. So the proposition is simply narrowed down to the question; was the illegal traveling on Sunday the immediate cause of the injury. The New York courts together with a majority of the states hold illegal Sunday traveling to be a mere condition and not the immediate cause of the injury. While the Massachusetts courts hold the traveling on Sunday to be the immediate cause and therefore to defeat a recovery. This view reconciles the apparent inconsistent holding of the New York and Massachusetts courts, and shows them to be both based upon the same principhe. The only difference being the holding of the court as to whether the illegal traveling on Sunday was the immediate cause of the injury.

Whatever may be said regarding the logic of either holding; The New York rule operates as a safeguard to the public by placing upon common carriers, towns and cities a responsibility for their negligence which might otherwise result in serious consequences to the property and lives of the community.

The Sunday Bailment of a Horse.

A very interesting part of the law of Sunday bailments is presented in the case of the letter and hirer of a horse on Sunday. In states where the statute prevents driving on Sunday, except in cases of necessity and charity, all contracts for the letting of horses are void. In states where the statutes make driving on Sunday a crime, contracts in violation of the statute are illegal. neither party can claim any rights or be bound by any of the obligations of the illegal contract. The letter of the horse will not be permitted to recover compensation for the use of the conveyance. Nevertheless the illegal act of the letter will not excuse the bailee for his negligence and willful acts. The courts in their desire to protect property and prevent negligence and willful acts of the bailee place upon him certain duties or responsibilities from which they will not permit him to escape. And as a general rule he will be bound to answer for negligent and willful acts.

The courts of the different states vary somewhat as to the liability of the bailee of a horse in Sunday bailments; but all may be collected under two different doc-

trines. All agree that the contract of hiring is void and that neither will be entitled to any rights under the Sunday contract. A comparatively recent Maine case (Parker v. Lather, 60 Me., 528) states one doctrine very clearly. The plaintiff let his horse and carriage to defendent, on Sunday, for a pleasure drive to a certain town. The injuries complained of arose from the negligence and over-driving of the defendent in going and returning to the place to which he hired the conveyance. The defendent kept within the terms of the bailment and did not go outside the route for which he hired the carriage. The plaintiff was non-suited on the trial and the appellate Court held him not entitled to recovery, the courts saying "The contract was illegal and had the plaintiff sued for the hire of the article he could not have recovered. Suing for damages arising from violation of the contract, he can be in no better condition". The case was distinguished from an earlier one in the same court, where the injury occured when the plaintif was outside and driving beyond the terms of the bailment. Here the injury arose during the continuence of the bailment, and in carrying out the very purpose for which the property injured was bailed. The plaintiff's right to recovery was denied upon the ground that he had consented and was in fact a

party to the illegal driving. While had the injury occured while driving without the terms of the bailment he would have been permitted to recover. The same doctrine is laid down in a well considered case in Massachusetts (Hall v. Corcoran, 107 Mass., 251), though it is not clearly drawn in the opinion. The earlier Mass. cases are considered and the doctrine that a recovery could not be had even where the bailee went beyond the terms of the bailment, were overruled and the Maine doctrine established; that any deviation or violation of the terms of the bailment by the bailee would entitle the letter to a recovery.

The opposite doctrine was held in Frank v. Plumb, 40 Conn., 111, which was reported in full in the American Law Register and approved. In this case the defendent hired a horse on Sunday to drive to S and return. He drove several miles beyond S and by reason of his negligence and over driving caused the death of the horse. The general rule was laid down that the plaintiff cannot recover whenever it is necessary for him to prove as part of his cause of action his own illegal contract, or other illegal transaction; but if he can show a complete cause of action without being obliged to prove his own illegal act, although such act may incidentally appear he may

recover. It is essential if his cause of action is not founded upon something legal. And it was also held that the plaintiff was entitled to give evidence of negligence in driving and was entitled to recover, for injuries accruing to the horse within the terms of the bailment. The court saying" A party who hires and drives a horse upon Sunday, and while so driving causes its death, either willfully or negligently is liable to the owner in damages". The illegal letting of the horse it was held does not deprive the owner of his general property in the horse, nor place him or his property outside the protection of the law. Nor will it in any sense operate to justify or excuse the other party in the commission of any wrongful act not contemplated by the agreement. The same doctrine was established in New York in Nodine v. Doherty, 46 Barber, 59. The court holding that the owner did not forfeit or become divested of his property and that the defendent could not after obtaining possession of the horse willfully injure it or suffer it to become injured. The same conclusion was reached in an Arkansaw case (Stewart v. Davis, 31 Ark. , 326) and in Sutton v. Town, 29 Wis. , 21, and is believed to be the general holding outside of the New England states.

By the best text writers on negligence this class of

cases is treated under the head of contributory negligence. This I believe to be the true doctrine on which these cases should rest. And that the question for the courts is, whether the illegal letting was negligence and if so, was it such as would be called a contributory cause of the injury and thus prevent a recovery. From a logical view the illegal letting of the horse might be considered a contributory cause, yet it could not be said to be the proximate cause of the injury to the horse. This is the reasoning of the New York courts in placing liability upon common carriers for injuries to Sunday travelers. And this reasoning can be equally well applied to the liability of a bailee for injury to a horse in the case of a Sunday bailment.

But there is another reason why the New York and Connecticut rule should be adopted, and a negligent hirer not permitted to escape from wrong merely because the other party has violated the statute. The duty of the citizen to observe the Sunday law is one which he owes not to the individual, but to the state alone. And for any violation should be punished by the state only. The private citizen should never be allowed, even in an

indirect way, to punsih him for his violation. To allow the private citizen to escape from liability for damages which he has wrongfully caused, merely because the other has violated the statute, is illogical and wrong in principle. It not only permits the negligent party to escape; but allows him, in an indirect way to punish the other party for a crime for which the state alone has the right to punish. The negligent bailee should never be permitted to plead in his defense the illegal act of the bailor.