

## VAN HOVEN v. IRISH.

(Circuit Court, D. Minnesota. January, 1882.)

**I. CONTRACT MADE ON SUNDAY—AFFIRMANCE ON A WEEK DAY.**

Affirmance on a week day of a contract of bargain and sale entered into on Sunday, and void for that reason, makes it valid.

The plaintiff and defendant, on May 8, 1880, entered into a contract for the sale and delivery of cattle, and \$100 was paid the defendant on the contract. Subsequently this contract was rescinded, and another one entered into, varying somewhat in its terms, and the \$100 retained by defendant as part performance. The defendant claims this latter contract was made on Sunday and is void. The plaintiff brings this action to recover damages for a failure to perform a contract alleged to have been made on July 6th, a week day, which is substantially the contract claimed by defendant to have been made on Sunday. The defendant denies that any other contract was made except the one on Sunday. The case was tried by a jury, and verdict rendered for the plaintiff. A motion for a new trial is made by the defendant.

*W. P. Warner*, for plaintiff.

*Lamprey & James*, for defendant.

NELSON, D. J. Two vital questions were submitted for the determination of the jury:

(1) Was the contract, for breach of which damages are claimed, entered into on Sunday?

(2) If the contract was entered into on Sunday, and void by the laws of Minnesota, was it afterwards reaffirmed on a week day?

The court stated to the jury "that by the laws of Minnesota contracts of a secular character, and which are not works of necessity and charity, if finally consummated on Sunday, are void, and no action can be maintained, either on the contract or for the recovery of whatever may have been done under the contract;" also, "that contracts entered into on Sunday could be reaffirmed afterwards." The case was fairly put to the jury, and the two controlling issues left for them to pass upon.

The counsel for the defendant presented several instructions and requested the court to embrace them in its charge to the jury. They were all, with two exceptions, given in the language of counsel. The language of the other two was changed so as to permit the jury

to consider and determine whether the evidence showed a reaffirmance on a week-day of the contract, in case they should find the agreement was first entered into on Sunday. The court also instructed the jury that the delivery of the cattle was evidence to be considered by them tending to show reaffirmance, as claimed by the plaintiff. Counsel in his brief states that defendant testified that the cattle were delivered under no contract. He is mistaken. The defendant testified that he delivered the cattle under a contract made Sunday, July 4th.

The Vermont supreme court and the later authorities sustain the view taken in respect of the reaffirmance of Sunday contracts, in order, as said by Judge Redfield, to secure parties from fraud and over-reaching practiced on Sunday by those who know their contracts are void and cannot be enforced. *Adams v. Gay*, 19 Vt. 358; *Harrison v. Colton*, 31 Iowa, 16. In this case the evidence showed that the quality of cattle delivered by the defendant was inferior, and not up to the average of the herd he had contracted to deliver.

If the jury had determined the contract was completed and final on Sunday, and there had been no subsequent legal reaffirmance, the law would leave the plaintiff to suffer from his own wrong, and would not aid him; but if the jury came to the conclusion from the evidence that the contract had been reaffirmed on a subsequent week day, it became valid from the date of the reaffirmance, and plaintiff was entitled to recover damages for a breach. His success in such case does not depend on his own violation of law.

The jury sustained the latter view of the case. *Durant v. Rhener*, 26 Minn. 362, does not touch one vital point upon which this case turned, provided the jury came to the conclusion that the contract was affirmed on a week day. In the opinion of the supreme court in that case the conclusion of the referee did not agree with his finding of facts, and the facts as he found them showed in its opinion the agreement was entered into on Sunday, and was so considered by both parties.

There was no evidence in that case tending to show a reaffirmance of the contract by the parties on a subsequent day. The evidence clearly established "the agreement for the formation of a partnership, then and there," on Sunday.

The evidence here tended to show a reaffirmance, and justified the verdict of the jury. Motion denied.

## SECOR and others v. TOLEDO, PEORIA &amp; WARSAW R. Co. and others.

*(Circuit Court, N. D. Illinois. January 9, 1882.)*

## 1. RAILROADS—INJURY TO PASSENGER—CONTRIBUTORY NEGLIGENCE.

A passenger, on a train that had approached a station and was still moving slowly, stood on the lower step of a car, in the act of stepping to the platform of the station, when, in consequence of the car being moved forward with a jerk, he was thrown upon the platform and injured. *Held*, that he was guilty of contributory negligence in attempting to alight from the train while it was in motion.

On the Intervening Petition of John Rawls.

*John Lyle King and Sanders & McKinney*, for petitioners.

*John M. Jewett and Tenny, Flower & Cratty*, for defendants.

DRUMMOND, C. J. The property of the railroad was sold under a decree of the court. Certain funds were paid into court, and upon the reorganization of the company by the purchasers under the sale a bond was filed in court for the purpose of meeting all claims which might be sustained by the court while the property was in the possession of, and operated by, the receiver under its order. This is a petition asking compensation for an injury which the petitioner sustained in consequence of a fall while attempting to get off the train when it was operated by the receiver. On the fifth day of March, 1878, the petitioner took passage on the train at Bushnell, in this state, for Scottsburg. The speed of the train on arriving at Scottsburg station was lessened for the purpose of stopping at that station. While the train was still slowly moving, three passengers left it, reaching the platform at the station in safety; but while the train was still in motion the petitioner went out upon the rear end of the forward car of the train and was standing on the lower step, the train having apparently almost ceased to move; and while he was in the act of stepping from the car to the platform of the station, the car was moved forward with a jerk, in consequence of which the petitioner was suddenly thrown with violence upon the platform of the station and injured.

Admitting these to be the material facts established by the evidence, the question is whether the petitioner is entitled to recover, waiving all other questions which have been made and argued in the case. The principal difficulty in this case arises from what the evidence shows, and in fact what all our experience proves, that the passengers who intend to leave a train at a particular station where