EDITORIAL NOTES.

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SUNDAY OPENING OF THE WORLD'S FAIR—SOME LEGAL ASPECTS OF THE QUESTION.[1]

THE question of a Sunday fair has at last been taken to the courts. Unlike most similar controversies of interest to the public, this one may involve legal questions of no inconsiderable difficulty, and of great importance to the future development of law. In this note we shall discuss two questions which, among many others, the facts of the case seem to present.

In the last days of the first session of the Fifty-second Congress, Congress passed an Act[2] appropriating two and one-half millions worth of one-half dollar coins, stamped in a manner emblematic of the Exposition and Columbus, to the World's Columbian Exposition, a corporation of the State of Illinois. Section 4 of the Act provides that the appropriation is made on condition that the Fair will be closed on Sunday. "That it is hereby declared that all appropriations herein made for, or pertaining to, the World's Columbian Exposition, are made upon the condition that the said Exposition shall not be open to the public on the first day of the week, commonly called Sunday; and if the said appropriations be accepted by the corporation of the State of Illinois, known as the World's Columbian Exposition, upon that condition, it shall be, and it is hereby made the duty of the World's Columbian Commission created by the Act of Congress of April twenty-fifth, eighteen hundred and ninety, to make such rules or modification of the rules of said corporation as shall require the closing of the Exposition on the first day of the week, commonly called Sunday."

[1] The following note was written before the decision of the court. The text of the opinion has not reached us, and, therefore, we are unable to state the reasons given by the court for its reversal.

[2] Statutes. Vol. XXVII, p. 389, chap. 381.

The thing which naturally first impressed the country was that the Exposition Corporation, having received a benefit under the appropriation, are now trying to evade one of the conditions upon which that benefit was conferred.

But there is, in reality, a prior question of interest, not only in this connection, but in all disputes between the Commissioners and the Managers of the Columbian Exposition Corporation.

Irrespective of the appropriation, has Congress the control of the regulations in relation to the operation of the Fair to any extent, and if so, would a law closing the Fair on Sunday be a legal exercise of power on the part of Congress?

In answer to this question, it may first be admitted that Congress has the right to hold, under its sole direction, a national fair. Again, it may be admitted that Congress could constitutionally aid a private fair, *i. e.*, one created by private enterprise and subscription, and under private control. Also, Congress, since it can create a national fair, can employ a corporation of its own creation, or confer upon a State corporation the power to create a national fair.

But the power to aid, because the private enterprise is also a national public purpose, is not the power to *regulate* the private enterprise. For instance, it may, for the purpose of illustration, be admitted that Congress has the right to run a manufacturing establishment of its own, or give a bounty to the manufacturer of certain goods. Probably the majority of constitutional lawyers would admit that the Federal government has this power. But none would contend that Congress could regulate the process of manufacture or the rates of wages all over the country. Again, the admission that Congress, to encourage marriages, can give a bounty to all persons who are married at a certain age, does not imply that Congress can pass divorce or succession laws for the United States. Because Congress, therefore, may run its own fair, or has the right to aid fairs, it does not follow that Congress can regulate such fairs when managed by private individuals.

On the other hand, there is no doubt that Congress can aid on conditions; can grant bounties, if they can grant them at all, or aid fairs, coupled with the condition that the recipient of the favor should thereafter submit to Federal regulations in certain directions. How far this species of legislation can be carried is a matter of doubt.

Had, therefore, the World's Columbian Exposition, the corporation of the State of Illinois, accepted favors from the United States prior to the Act of August 5, 1892, on the express or implied condition of submitting to future legislation on the part of Congress?

The main Act relating to the World's Fair is that of April 25, 1890.[1] The Act declares that there shall be an Exposition in Chicago. A commission is provided, to be called the World's Columbian Commission. This Commission, among other things, has the right to accept or reject the site offered by the Exposition Corporation of Illinois, but can only accept the same if the Corporation of Illinois has a certain portion of its capital stock paid in, and a larger portion subscribed. It is further provided that the Commission "shall allot space for exhibitors, prepare a classification of exhibits, determine the plan and scope of the work, etc., etc." Section 7 reads: "That after the plans for said exposition shall be prepared by said Corporation, and approved by said Commission, all the rules for governing rates for entrance and admission fees, or otherwise affecting the rights, privileges or interests of exhibitors, or of the public, shall be fixed or established by said corporation, *subject, however, to such modification*, if any, as may be imposed by a majority of said commissioners." The remainder of the Act is taken up with provisions concerning official notice to foreign governments as soon as the Corporation of Illinois shall be in solvent financial condition, the government exhibit at the Fair, etc. The sum and substance of this Act of 1890 is that if a certain corporation of the State of Illinois is in a good financial condition to carry on a World's Fair, then the United States

[1] Statutes, Vol. XXVI, p. 62, chap. 156.

would exhibit at the Fair, give it a national aspect before foreign nations, provided always the regulation in regard to scope of the Fair and its management should be supervised by a commission created by the Federal government. The Corporation of Illinois by co-operation with the commissioners accepted these conditions.

There are two questions in regard to the nature of these conditions. The first is whether valid regulations to be made by the government are confined to the Commission, provision for the creation of which is made by the Act, or whether Congress can dictate to its own commission the regulations which it desires enforced. This question, should the Court discuss it, will be probably answered in favor of Congress. The Commission is the creation of the Federal government. Its members do not form a separate corporation. They are part of the administrative or executive force of the government. Their acts are the acts of the government of the United States. Since it was impossible that Congress should superintend the arrangements of the Fair they delegated that executive work to the Commission; but it seems reasonable to assume that Congress can change the personnel of the Commission, or direct its work, or correct or add to its regulations for the conduct of the Fair, and that when the Corporation of Illinois, in return for the official patronage of the government, allowed the government to superintend the regulations of the Fair they did not confine themselves to regulations imposed by the particular people first chosen by the President to act on the Commission, or even to the Commission at all, but to the government of the United States.

Granting, therefore, for the purpose of discussion, that Congress has power to superintend the rules enacted by the Corporation, because of the acceptance of the Act of April 25, 1890, let us examine for a moment the second and more difficult question: "Whether closing the Fair on Sunday is such a regulation as was contemplated by the government or the corporation when the Fair commenced?"

This is a question whose answer at most can only be guessed at, before a decision by the court. There is no doubt that, while the United States can regulate the running of the Fair, they cannot destroy it. The only regulations which the Corporation could have had in view, when they submitted to the provisions of the Act of 1890, were regulations which should be enacted by the United States in good faith. Was the Sunday closing section of the Act of 1892 passed for the benefit of the Fair? This is a question on which two opinions can be held. On one side it can be contended that the Act was not for the benefit of the Fair, but in obedience to the religious sentiment of the people; that the success or failure of the Fair as such had nothing to do with it. On the other hand, it can be urged that this very religious sentiment was proof to Congress that the Fair could not be a success unless this sentiment was deferred to; that acting against the sentiment would cause many people to stay away from the Fair. Besides, giving the employees one day's rest in seven may well be considered necessary to enable them to perform their duties on the other six.

From a legal standpoint, we should say that the first was a more convincing argument. Whatever the merits of "Sunday closing," all must admit the Act was passed regardless of the interest of the World's Columbian Corporation, as a corporation, for the making of money by conducting a fair.

Granting, then, for a moment that the United States government could not, without the consent of the Fair corporation, close the same on Sunday, *has the government acquired the right to have the Fair closed as a result of the appropriation of 1892 and the acceptance of the benefit of that appropriation by the corporation?* If the Fair had received the whole appropriation we should say unhesitatingly, Yes. As it is, however, it is at least a debatable question. The United States, by withholding part of the appropriation, has, it seems to us, placed herself in the position of a plaintiff who asks for the enforcement of a contract with-

out being able to allege that her own part has been fulfilled. Besides, there may be a question that those who donated money to the Fair corporation before Congress appropriated the money, did so with the understanding that the Fair should not be closed. Grant, however, for the sake of discussing the really interesting point in the case, that Congress has so far lived up to its part of the agreement and the benefit has been received on the express condition that the Fair should be closed. The commission was directed to make such a regulation. The corporation could have refused the benefit. They did not do so. The ambiguity which would arise from the terms "if the said appropriation be accepted . . . upon that condition," which, if standing alone, might mean that the condition was not obligatory, is dispelled by the positive words in the rest of the section. Granting, then, that the United States government has a right to have the Fair closed, can it enforce this right in the courts by injunction compelling specific performance of the condition? or is the government relegated to a common law action for damages?

From a purely legal standpoint the interest in the case lies mainly in the proper answer to this question. If our remedial and our substantive law had not been the result of slow growth and development, but had sprung perfect from the brain of some lawgiver, the law would probably provide that every right capable of being enforced by a court would be enforced—and what so easy to enforce as negative covenants? But our law has been a progressive growth, and we wisely sacrifice some improvements which legislature could make to its preservation as a growing and developing science. Be that as it may, the common law never pretended to secure persons in rights which had vested, but only to vest the right to money, *i. e.*, give pecuniary damages to one deprived of a right. This was, at best, but a crude administration of justice, and was one of the causes of the growth of the Court of Chancery. Wherever damages for the loss of a vested right were manifestly inadequate compensation to the person whose

right was taken away, then the Court of Chancery enforced the revesting of the right. But, on the other hand, wherever damages were sufficient compensation, then the mere existence of a right, and the ability of the Court if it choose to secure the right, would not be sufficient to call forth action on the part of the Court of Equity.

The specific performance of a contract to sell a particular piece of real estate is constantly enjoined, originally, perhaps, because the particular land may have a peculiar value to the vendee not to be compensated for in damages.[1] On the other hand, the specific performance of a contract to convey personal property is not always enforced when the property in question, like a share of stock, is similar to any other of the same kind which may be bought with money damages on the market.[2]

In Phillips *v.* Berger,[3] EDMONDS, J., places the whole question in a very clear light. Speaking of the distinction between contracts to convey personal property and those to convey real estate, he says: "The reason of the distinction between the two classes of cases has long since passed away. Yet the distinction still in a great measure remains. Judge STORY, with great propriety, in his "Commentaries on Equity Jurisprudence," remarks that there is no reasonable objection to allowing the party who is injured by the breach to have an election either to take damages at law, or to have a specific performance in equity. The courts have not gone that length, but when they do they will relieve the subject of specific performance of

[1] Judge HARE, in his note to White & Tudor's Leading Cases in Equity, p. 1095 says: Specific Performance of, "Contracts for real estate will generally be decreed, because there is nothing of special value in every piece of land."

[2] Cuddee *v.* Rutter, 5 Vin. Ab., 538, W. & T. Lead. Cas., Hare, 1063. There is considerable difference between the United States and England in this respect. In the latter country the development of the powers of equity by the courts has been much more rapid, especially in relation to the power to issue injunctions, than with us. The development, in this respect, being considerably assisted by the Act of 21 and 22 Vict., c. 27, commonly known as Lord CAIRNS' Act.

[3] 2 Barbour, S. Ct., 609. See also 8 Id., 527.

many of its embarrassments and remove from this branch of equity jurisprudence many of the artificial distinctions to which the courts are compelled to have recourse in order to justify their advance toward a sound general rule."

There are some cases, as that of Cuddee *v.* Rutter, where damages are completely compensatory. But the right reason for refusing the request for specific performance seems to us to be that the payment of the money *is a performance of the contract*, it being implied in all contracts for the conveyance of stock which can be bought on the market that the payment of the money value of the stock fulfills the contract. In fact, it was first thought that the conveyance of personal property to the rightful owner would only be enforced when there was some peculiar value which might be attached to the particular property. Slowly, but surely, however, and, as is stated in the note, more rapidly in England than with us, the position of equity is changing, until, let us hope, it will soon be able to be said of the administration of law that the specific vesting of rights to chattels, as well as rights to land, except in the case of money, will be enforced in equity. Money, of course, is an exception. If A owes B money, damages to the full amount of the debt, with interest, and further damages if the circumstances warrant it, is always amply compensatory for non-payment of the money on a particular day.

The rights of individuals are not confined to the physical possession of land or goods. If A. B. promises C. D., on a sufficient consideration, not to enter into a certain trade in a certain town, provided the contract is not against public policy, the right of C. D. not to have A. B. in the business is as much a right as the right to do with his tangible property what he will. It is a right whose vesting will be enforced in a court of equity, because the loss of the vested right cannot be properly estimated in damages.

In this case the Exposition Corporation has denied to the United States Government a right which, on our