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Ranger Rogers

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SERVICE OF PROCESS ON SUNDAY

By RANGER ROGERS, of the Denver Bar

SHOULD it be of any interest to the readers of *DICTA*, a law clerk's research on Saturday afternoon indicates that service of summons on Sunday in Colorado is perfectly valid. However, a motion to quash could be based upon the dictum in *Schwed v. Hartwitz*, 23 Colo. 187, 1896, in which it is held that a notice of tax sale published only in the Sunday edition of a newspaper was invalid on the analogy that it was like service of process which was said to be void if made on Sunday.

The *Schwed* case has never been followed in Colorado.¹ The dictum that service of process on Sunday is invalid is not based upon the law of Colorado.

Although the Code provides that no judicial business shall be transacted on Sunday² the service of summons has not been held to be judicial business. On the other hand, it has been regarded as a personal or ministerial act³ not included within the prohibition against judicial business on non-judicial days.⁴ Until the statute of 29 Charles II, passed in 1676, ministerial acts were not prohibited at common law.⁵ Colorado, of course, adopts the common law as of 1607,⁶ therefore the statute of 29 Charles II never became common law of Colorado.

In some states service of summons on Sunday is invalid because of specific statutes (which we do not have) or because of the interpretation of the frequently found statutes prohibit-

¹*Dumars v. City of Denver*, 16 Colo. App. 375, 1901; *City of Denver v. Dumars*, 33 Colo. 94, 1905; *City of Denver v. Londoner*, 33 Colo. 104, 1905; *Hallett v. U. S.*, 40 Colo. 281, 1907; *Pelton v. Muntzing*, 24 Colo. App. 1, 1913.

²Sec. 453, Vol. 1, '35 C. S. A.

³60 C. J. *Sunday*, Sec. 89; 25 R. C. L. *Sundays and Holidays*, Sec. 46; *Ann. Cas.* 1916 B 17; *Ann. Cas.* 1916 E 850; *Hauswirth v. Sullivan*, 9 Pac. 798, *Mont.*, 1886. See note 9, *Pac.* 806.

⁴*Haneus v. Stiles*, 56 L. R. A. 736, *Idaho*, 1902; note 3, *supra*.

⁵Notes 3 and 4, *supra*.

⁶Sec. 1, Ch. 159, Vol. 4, '35 C. S. A.

ing Sunday labor that disturbs the peace.⁷ The statute in Colorado prohibiting such labor⁸ was taken from the law of Illinois,⁹ where it was held only to prohibit labor or amusement that actually disturbs the peace.¹⁰ The validity of service of summons on Sunday in Colorado is strengthened by our statute on holidays¹¹ which, after providing for Sundays and holidays, states that nothing in that section shall prohibit the service of process on Sunday. This statute would appear to be limited to its terms. In any event, a summons issued by an attorney has been held not to be within the constitutional term "process" although, of course, valid for the purpose of notice.¹²

The law clerk concludes that service of summons on Sunday in Colorado is valid but should be avoided because of the necessity of arguing a possible motion to quash based upon the dictum in the Schwed case.

⁷60 C. J. *Sunday*, Sec. 89; note 3, *supra*.

⁸Sec. 269, Ch. 48, Vol. 2, '35 C. S. A.

⁹*Dumars v. City of Denver*, 16 Colo. App., at p. 397.

¹⁰*Richmond v. Moore*, 107 Ill. 429, 1883.

¹¹Sec. 1, Ch. 79, Vol. 3, '35 C. S. A.

¹²*Comet Consolidated Min. Co. v. Frost*, 15 Colo. 310, 1890.

Have you heard from "Moises?" "Moises," who is also named Garza Ramos purports to be an attorney and counselor at law of Juarez, Mexico. He recently wrote a Denver firm stating that during the past year he had had the pleasure of corresponding on the subject of divorces and regretted that it had not been possible to "make business" then but that during the coming year he hoped "we could do a few ones."

We find the business card of Louise M. Carmer, justice of the peace, Castle Rock, who alleges that she is a "Maryin' Justice," and "Secret Marriages My Specialty."

In *Tinglof v. Askerlund*, 96 Colo. 27 at 31, we find the following refreshment: Says the Court: * * * Considering the record, and the genius of our decisions * * *.