The Philadelphia Decision

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The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII NEW YORK, APRIL 16, 1903 NO. 16

The act of 1794, but for the exception "works of necessity and charity," dooms every citizen of this Commonwealth to absolute idleness on the first day of the week. The act applies to all men and to all forms of work, public and private, mercenary or purely personal. The scholar pursuing his studies in his closet, the astronomer gazing at the heavenly bodies from his observatory, the artist before his canvas, the musician with his bow and viol, are just as much under the ban of this statute as the blacksmith at his forge, or the farmer in his fields, the mother plying her needle and thread, or the husband mending chair, table or cradle. Whether the work be silent or noisy, in the privacy of the home or the publicity of the streets, it is indiscriminately prohibited, except it come within the indefinite protection of a word with such an elusive meaning as that of "necessity." The act, therefore, is a prohibition of natural right—the right to use the body and mind in work and occupation, industry and activity. . . . If such an enactment were made as to another day of the week I presume there would be no question whatever as to the unconstitutionality of the statute. THE RADICAL AND EXCEPTIONAL NATURE OF THE LEGISLATION IS NOT CHANGED BY THE FACT THAT THE PROHIBITION RELATES TO SUNDAY.

—From argument of Ex-Judge James G. Gordon at Philadelphia on March 23.

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The Sentinel

OF CHRISTIAN LIBERTY

Set for the defense of human rights, especially the rights of conscience. The only periodical in the United States especially devoted to the maintenance of the Christian and American principle of complete separation of church and state. The Sentinel is not a periodical of abstractions and speculation; it discusses live issues that deeply concern every individual.

JOHN D. ERADLEY, Editor.

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A. T. JONES, A. G. DANIELLS, M. C. WILCOX,
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We believe in the religion taught and lived by Jesus Christ.

We believe in temperance, and regard the liquor traffic as a curse to society.

We believe in supporting civil government and submitting to its authority.

We believe that human rights are sacred, and that they indissolubly inhere in the moral nature of the individual.

We deny the right of any human authority to invade and violate these inalienable rights in any individual.

Therefore we deny the right of any civil government to legislate on matters of religion and conscience.

We believe it is the right, and should be the privilege, of every individual to worship God according to the dictates of his own conscience, free from all dictation, interference, or control on the part of civil government or any other external authority; or not to worship at all if he so chooses.

We also believe it to be our duty, and no less the duty of all others, to oppose religious legislation and all movements tending toward the same, to the end that all the people may freely enjoy the inestimable blessing of liberty, which is theirs by virtue of the unbounded wisdom and beneficence of the Author of their being.

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❖

WE have been obliged to print a fourth edition of the "Love of Power and Power of Love" number of THE SENTINEL, and now have a few copies on hand. If any of our readers still wish to use extra copies of that issue, we will be glad to supply them. It would be well to order at once, as we cannot tell how long they will last.

❖

DOES the date on your label read "April, 1903," or some particular date in the month of April? If so, please send in your renewal at once, so that no numbers of THE SENTINEL will be missed. We cannot agree to furnish back numbers, as we do not print extra copies unless they are ordered in advance. Be on the safe side, so let your renewal reach our office before the close of this month.

❖

AGAIN it is necessary to call attention to the risk of sending coin through the mails, unless in a registered letter. Several instances have come to our notice the last few weeks of letters containing money being sent us, but which have never reached our office. The safest way to send small amounts is to purchase a money-order or an express order. If neither of these is obtainable, register the letter. Do not send coin or bills through the common mails.

The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII NEW YORK, THURSDAY, APRIL 16, 1903 NO. 16

The old Pennsylvania Sunday law is no different in principle from any of the other Sunday laws.

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"All history shows that the more men are inclined to tinker with the Sabbath day, and add to it their own traditions and restrictions, the more formal and oppressive is their religion."

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The argument of "social necessity" in justification of measures compelling men to "rest" from labor on the "Lord's day" would be equally good in justification of measures compelling them to go to church.

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The hopeless tangle in which lawmakers and judges become involved when they attempt to enforce what God has left to the conscience is brought very clearly to view in the common-sense Sunday-law decision that is presented elsewhere.

❖

A Sunday law is essentially arbitrary in character, and therefore it is not to be wondered at that its enforcement calls for the assumption and exercise of arbitrary authority by magistrates, as is clearly shown to be the case in the recent decision regarding the Pennsylvania statute.

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If, as we are told in a quotation presented elsewhere, "Christian men" should be allowed differences of opinion as to *how* the "Lord's day" shall be observed, then Christian men and all other men should be allowed differences of opinion as to whether it shall be observed at all or not. There is no more reason or justice in enforcing uniformity of opinion and practise in the matter of whether or not the day shall be observed than there would be in enforcing uniformity in the manner of its observance. One of these things is as much a matter to be determined by the conscience of the individual for himself as is the other.

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There is but one thing that explains the "worldly employment or business" and "works of necessity and charity" phrases of the Sunday law, and that is the nature and character of the law itself. And when this is recognized and there is a willingness to deal with the law as its nature and character warrant, there will be no necessity for lengthy inquiries as to the meaning of these terms. All that will be necessary will be to say that the law, being religious, being in support of a religious observance and in the interests of a religious class, is altogether out of place on the statute books of an American State, and by virtue of its very nature is void as a civil statute.

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"It is a radical reflection upon the customs and traditions of the past," declares a Massachusetts Sunday-enforcement advocate with reference to an attempt to se-

cure the repeal of the law of that State which enforces "Lord's day" observance. Yes, and every step that has ever been taken in human progress has been about the same thing. Every step that has been taken in the long but glorious struggle for civil and religious freedom and the separation of church and state has been "a radical reflection upon the customs and traditions of the past." And every step of this sort has been opposed by, and been taken in spite of, men who were hugging "the customs and traditions of the past" in disregard of human rights and the duties of the present.

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"The day is recognized in the statutes of all States as properly one of rest; its religious character is not taken into account except so far as the rights of those who desire to worship in peace and quiet are recognized," says an exchange in approving Sunday legislation. A careful analysis of Sunday legislation shows that it is only the rights of those who desire to worship on Sunday that are recognized in such legislation. Therefore, to say that the religious character of the day is not taken into account except so far as the rights of those who desire to worship are recognized, is simply to say that such legislation takes into account nothing else but the religious character of the day. It is only because of its religious character that "the day is recognized in the statutes of all States as properly one of rest."

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"The appointment of two Americans, one to the archbishopric of Manila and the other to one of the minor sees in the islands, indicates that the Vatican is not going to put anything in the way of Governor Taft," remarked the New York *Evening Sun* of April 8. Did the *Sun* suspect that the Vatican was going to put something in the way of Governor Taft? It can be depended upon that in these appointments the Vatican has had an eye solely for the interests of the Papacy, and that any accommodation that may have been made to the desires of the civil authorities of the islands is but a shrewd move for gaining advantage that could not be obtained otherwise. And why should appointments from the Vatican have anything to do with Governor Taft and the civil government of the islands? The fact that in this country it is taken so much as a matter of course that its appointments have something to do with Governor Taft and the civil government of the islands no doubt pleases the Vatican immensely.

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The tyrannical character of the "protection" afforded by Sunday "rest-day" or "holiday" legislation was very aptly, though no doubt unconsciously, set forth by a North Dakota newspaper recently in this item:

> The barbers of this State are assured now of this, that they can have a holiday every Sunday or go to jail, as the new law provides that penalty for Sunday shaving.

So the barbers are assured by the new law that "they can have a holiday every Sunday *or go to jail*"! That is, they no longer have freedom in the matter. They not only can, but *must*, "have a holiday every Sunday." If any of them should choose not to have a holiday on any Sunday and should exercise their choice, as they certainly have a right to do, why then they would have to "go to jail." It is difficult to see how such legislation protects anybody's rights.

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A newspaper says "it is beginning to dawn on the Christian world that the Sabbath of the decalogue is not a specific twenty-four hours, but 'one day for rest following six days of labor,'" and quotes *The Interior* (Presbyterian) as saying:

> If any writer or reader thinks that the Almighty is insistent upon the particular observance of certain particular hours, which can

never be the same all around the world, he is past arguing with.

It must be, then, that the advocates of Sunday observance and enforcement are past arguing with, for they do most decidely insist upon the "observance of certain particular hours." If Sunday legislation were made to square with this doctrine it would be practically annihilated, for it undertakes to, and does, prescribe exactly the "certain particular hours" during which the "Sabbath" or "Lord's day" shall be observed by refraining from the things prohibited. So it would seem, even granting that Sabbath observance is a proper subject for civil legislation, that all the "civil" laws that we have on the subject go further than the Almighty Himself has gone. These laws assume to make definite what we are told God has left indefinite; they are "insistent upon the particular observance of certain particular hours," whereas we are told that God is insistent upon no such thing. Has man the right to do what the Almighty has left undone in this matter? Let those advocates of "Lord's day" legislation and enforcement who hold to (and there are many of them who do) the doctrine avowed by this leading Presbyterian journal answer this. Those who hold this doctrine and still insist upon Sunday enforcement are certainly "past arguing with."

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"It is strange to note what ignorance prevails on the subject of Sunday legislation," remarks the Grand Forks (N. Dak.) *Herald* in commenting on the declaration of the Bismarck *Palladium*, that if the law were strictly enforced, as was proposed in that city, newsboys, milkmen, hackmen, barbers, and the employees of livery barns, bathrooms, telephone systems, electric-light plants, etc., would all have "to lay off and rest on the Sabbath day." The *Herald* undertakes to dispel the darkness of this ignorance, and says:

> It is true that there are some occupations which may come within the doubtful class, but these are very few. In the majority of cases there can be no doubt as to the manner in which the law affects them. There is absolutely no question as to the right of individuals to carry on certain lines of employment. It is unlawful for a man to sell groceries on Sunday; it is not unlawful for him to sell milk. It is unlawful for him to keep his dry-goods store open on that day, but it is lawful for him to run his electric-light system if he has one. The difference between the classes of employment named are too obvious to require elucidation.

It is to be regretted that it was so readily taken for granted that the difference between the classes of employment named is perfectly obvious, as it would have been interesting to have had the difference pointed out. What difference there can be from the standpoint of civil law, or for that matter from the standpoint of moral and divine law, between keeping open a dry goods store and operating an electric light plant, we confess that we do not know. These distinctions that are made in Sunday laws are wholly arbitrary. It is not ignorance regarding these irrational distinctions that needs to be dispelled, but ignorance regarding the really important matter of the essential meaning and character of Sunday legislation itself.

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"The Seventh-day Adventists and others at Philadelphia have started in to make the laws ["respecting Sunday observance"] odious by enforcing them to the letter," said the Dubuque (Iowa) *Globe-Journal* of March 23 in an editorial on "Sabbath Laws." This is a mistake so far as it relates to the Seventh-day Adventists. They never seek to make Sunday laws odious by enforcing them. They believe such laws to be unjust, and they believe unjust laws should be repealed, not enforced. This

is the only mistake, however, in the *Globe-Journal's* editorial. It calls attention to the statement of the secretary of the Philadelphia Sabbath (Sunday) Association that when he opposed Sunday newspapers and favored the Monday morning issue instead he did not know that more Sunday work was involved in the latter than in the former, and makes the very pertinent observation that "if this is true, which it probably is not, that secretary is quite unfit to guide the legislature's judgment respecting laws for Sunday observance." These very worthy and truthful observations are made with regard to Sunday laws:

All such laws are survivals of an earlier period in our history when the state imposed on the personal liberty of the individual such restrictions as the church might direct. They represent the efforts of well-meaning but narrow men to control the conscience of the individual in matters in which he may be allowed liberty without endangering the peace, order or happiness of society. The pretense is that the purpose of these laws and ordinances is to secure a day of rest to the toilers, and the courts maintain the pretense. Yet everybody knows that Sunday would be no less a day of rest if we had no Sunday-rest laws, and that their real purpose is to maintain the American Sabbath, as it is called to distinguish it from the continental Sunday. The church may prescribe such discipline for its own members as it pleases, but a government which professes to be independent of the church and to allow freedom of conscience in matters of religion belies its own professions when it enacts statutes conforming to the prejudices of church members respecting the observance of the Sabbath. A systematic effort to enforce the blue laws of Pennsylvania will demonstrate that they do not represent public sentiment and therefore have no proper place in the statutes of a republican government.

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The "Clerical Union" of St. Cloud, Minn., recently published "a declaration of warning to the people of St. Cloud against the desecration of the Lord's day." The action seems to have been caused by the proximity of the baseball season. This declaration differs from most warnings of this sort in that it is more in the nature of an appeal to individuals than of a threat of an appeal to the law, though this latter feature is not entirely absent. After stating that the declaration was not intended to apply to "those whose religious convictions lead them to observe the seventh instead of the first day of the week," it is said:

We have no desire to dictate to Christian men (among whom there must be differences of opinion), by planning for them how each hour of the Lord's day should be occupied. To those who believe that Sunday is the Lord's day, it is sufficient to say that the day must be rendered unto the Lord in acts of worship and of service to God and our fellow-men. The day belongs not to ourselves, and cannot honestly be used for selfish purposes. If there be any one who does not acknowledge himself bound by any law of God, we would appeal to his love for his home and family, and his interest, as a citizen, in the honor and welfare of the community.

But of course it is hard to keep off improper ground in this matter, and so the above is followed by the declaration that "we have State laws and city ordinances relating to the observance of Sunday that are set at naught among us," and that "these law-breakers are not only not punished, but are smiled upon as they proceed in their defamation of both God and man." Although it is not demanded in express terms, the evident implication is that the authorities should put a stop to this "defamation of both God and man" by calling to account those who "set at naught" the "State laws and city ordinances relating to the observance of Sunday." The same principle which requires that "Christian men" shall not be dictated to as to "how each hour of the Lord's day should be occupied," requires that there should be no laws and ordinances "relating to the *observance* of Sunday," for such laws and ordinances are a most decided and unwarrantable dictation as to how each hour of that day shall *not* be occupied, and, therefore, as to how each hour of it *shall be* occupied.

The Philadelphia Decision

Pennsylvania Magistrate Declares Sunday Law of that State to be too Indefinite for Enforcement

A SUNDAY law decision that has attracted wide attention throughout the country was rendered by Magistrate Gorman in Philadelphia on March 31. Though quite noteworthy in itself, its fame is due chiefly to the unusual character of the prosecutions which called it forth, and to the fact that it affects the old statute of 1794, which has itself been an object of considerable attention of late because of the effort to secure its partial repeal.

It seems that a considerable number of the smaller dealers in Philadelphia, growing tired of the continual annoyance and oppression to which they were subjected through the instrumentality of the old Sunday law and the activity of the agents of the Philadelphia Sabbath (Sunday) Association, determined to make the law odious and to cause its validity to be tested by enforcing it in other directions. For this purpose they formed an organization which seems to have been called the "Sunday Observance Association." On Sunday, March 15, agents of this organization went to the offices of the Philadelphia *Press, Public Ledger,* and *North American,* and after purchasing over their counters copies of their Sunday issues and paying for small advertisements to be published, swore out warrants for the clerks who had waited on them, charging them with violation of the Sunday law. They also made purchases at the stands of the Union News Company, and followed delivery wagons of the Crane Ice-Cream Company until they had secured evidence showing that ice-cream was being delivered and business transacted by this company. Warrants were then sworn out against the managers of these concerns, charging them with "performing worldly employment or business on the Lord's day, commonly called Sunday, by directing and causing to be sold and delivered" ice-cream and newspapers.

The cases were heard before Magistrate Gorman on March 23. The defendants were represented by able counsel, the newspapers having assumed all responsibility for the acts of their employees. Ex-Judge James G. Gordon, representing the *North American,* made a most able argument against the law under which the prosecutions were brought, and when he had concluded the representatives of the other papers agreed to let their cases rest upon his argument. In an early issue of THE SENTINEL we will present portions of Judge Gordon's argument. After hearing the other cases the magistrate reserved his decision until the date already given. The cases against the managers of the ice-cream company and the Union News Company were discharged on the ground that "the Commonwealth failed to connect the defendant in either case with the act complained of." We quote from the decision rendered in the cases of the newspapers, taking the liberty to place in italics some statements that are worthy of emphasis:

> Although the warrants were issued for the arrest of the clerks in the employ of the newspapers mentioned for the violation of the act of April 22, 1794, the latter assumed full responsibility for said acts and defended on the broad ground that the act of April 22, 1794 (under which the prosecution is brought), is unconstitutional because it violates Section 3 of Article 1 of the Declaration of Rights of the Constitution of Pennsylvania (which reads: "All men have a natural and indefeasable right to worship Almighty God according to the dictates of their own conscience. No man can of right be compelled to attend,

erect or support any place of worship, or to maintain any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given by law to any religious establishments or modes of worship") by compulsory enforcement of the observance of a day which a large part or a majority of the community observe as the "Lord's day," and, in deference to their religious sentiment, by a total prohibition of the natural right to work and labor by all other persons of the same community.

Because it is indefinite and uncertain in its description of the acts punishable thereunder, and that the acts intended to be affected by it are not defined or enumerated in it; that no crime is charged or exists except as may be conceived in the mind and born of the varying opinions of the magistrates before whom the hearings take place.

Because the work performed by the defendants, to wit, the publishing of a newspaper on Sunday, is a necessity, and, therefore, within the exception of the act.

Because the information is defective in that it does not set out that the work alleged to be done by defendants was not a "necessity or charity," and that no evidence of this fact was offered at the hearing.

The act of Assembly upon which these proceedings are founded is an act approved April 22, 1794 (3 Smith Laws, 177), and reads:

"If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday, works of necessity and charity only excepted, or shall use, or practise any unlawful game, hunting, shooting, sport or diversion whatsoever, on the same day, and be convicted thereof, every person so offending shall for every such offense forfeit and pay $4, to be levied by distress; or in case he or she shall refuse or neglect to pay the said sum, or goods and chattels cannot be found whereof to levy the same by distress, he or she shall suffer six days' imprisonment in the house of correction of the proper county, etc., etc.

It will be observed that it is a criminal statute, and therefore is to be strictly construed. The Supreme Court [of Pennsylvania] has decided that "the act considers a breach of the Sabbath as a crime injurious to society; terms the complaint to the magistrate as accusation, and calls the establishment of the truth of the offense a conviction."

It is admitted that on Sunday, March 15, 1903, at the County of Philadelphia, the *North American*, the *Press* and the *Public Ledger*, newspapers of general circulation, were published and sold, and the Commonwealth contends that this act was a violation of the act of April 22, 1794, and that defendants should be convicted for such violation.

Ordinarily a magistrate would find justification, if in his opinion evidence warranted it, in convicting a defendant and imposing the statutory fine, or committing the defendant to prison in default thereof, for any violation of the act of 1794, from the fact that for over one hundred years convictions made by magistrates have been approved and sustained in the Court of Quarter Sessions and Supreme Court. The learned, voluminous, new and, in many respects, novel argument in defense of the defendants in the cases before me excuses what might seem like presumption in now giving them careful and due consideration, especially so since the objections to the validity, constitutionality and enforcement of the act have never heretofore been presented or passed upon by any court upon the same grounds and in the manner as presented to me. In every case heretofore construed and adjudicated the point raised was as to the necessity of the work done, except in four or five cases, where the constitutionality of the act was attacked by reason of the violation of the spirit of the Bill of Rights, guaranteeing freedom of worship and liberty of conscience.

The magistrate here considered at some length the first, and what is of course the most important, point raised by the defense, and to us this portion of the decision is the most interesting and important. But inasmuch as it is impossible to present the entire decision at this time we will give here only that portion which dealt with the points that were decided in favor of the defendants, and will reserve for another time the portion in which the magistrate, "applying the principle of '*Stare decisis*,'" and evidently against his own personal judgment and opinion, ruled that "as a matter of law ["laid down by the highest judicial authority in the State"] the act does not contravene the third section of Article I of the Constitution." Having ruled thus, the decision continued:

We now pass to the other points of defense submitted, viz.: That the act as a criminal statute fails to possess those requirements neces-

sary to give it validity or make it susceptible of enforcement, and that the definition of the acts intended to be affected or excepted by the act were indefinite, shifting and uncertain; that the first interdict of the act is against the doing or performing of "any worldly employment or business whatsoever on Sunday," and this is the foundation of and only descriptive portion of the enacting clause of the statute. In short, that no crime is committed, no offense described, except when and as the magistrate may so consider it; that no definition of any act which if done would constitute a crime in itself is set forth in the act, but, on the contrary, that no crime can possibly be committed or is committed unless in the judgment of the magistrate it is a crime.

The determination of what is worldly work is left to the varying opinions of the magistrates, which may be no better, or perhaps worse, than the opinion of the person (at least so far as the intelligent ascertainment of what constitutes worldly employment is concerned) charged with the offense. In every other criminal statute it will be found that the act which constitutes the crime is specifically and often most carefully and minutely defined and described. It is not left to the magistrate or judge's opinion of what acts make it a crime, but the acts having been specifically stated, the commission or omission of them is a crime, and the only responsibility cast upon the magistrate or judge is to determine from the evidence if the acts so specifically stated in the statute have been committed or omitted.

It seems to me that the weakness and impossibility, at least the uncertainty, of construction in this matter is that the magistrate's opinion of what constitutes "worldly" employment is what must govern in determining whether a crime has been committed or not. The statute itself does not describe or designate "worldly" employment, and *any criminal enactment which leaves the description of crime to the private judgment of the magistrate is wanting in validity*, because it is no definite standard for the guidance of the citizens. What does "worldly employment" mean?

Chief Justice Lowrie, in Commonwealth *vs.* Nesbitt, 34 Pa., 398, said: "Very evidently, worldly is contrasted with religious, and the worldly employments are prohibited for the sake of the religious ones." Therefore, the meaning of the word "worldly" may be assumed to be that all employment and occupations of men in this world are worldly. And yet the opinions of men as to what constitutes "worldly" employment will be as varying as their habits, dispositions or religious views. What would seem "worldly" to one, to another would seem religious and devout. And it has been held in our own State that the question of what constitutes "worldly" employment under this act depends upon the sentiments and customs of the particular community where the alleged crime was committed. Numerous and varying constructions have been placed upon the meaning of the word "worldly" by our highest judicial tribunal, and work and employment approved which were not of charity and necessity and certainly not religious.

What guide is a person to have of what constitutes "worldly" employment when in Commonwealth *vs.* Nesbitt (*supra*) it was held not a "worldly employment" to drive a carriage on Sunday in which were certain persons, not travelers, while in Johnston *vs.* Commonwealth, 22 Pa., 102, the conviction for running an omnibus on Sunday was affirmed. It is true that in the latter case the work was for hire, but this should not make any difference, since the act of 1794 prohibits *any worldly employment or business, irrespective of whether for hire or not.* Our State reports contain many cases where the courts of superior jurisdiction have been called upon to determine whether acts —not religious, or of necessity or charity— were worldly employment, and hence a violation of the act. *Surely any statute which requires judicial help to define its enacting clause can scarcely be such a definite and certain description of what constitutes an offense as to make it susceptible of enforcement*, and this is specially true when we consider that *even these judicial constructions have not always been uniform* and have been from time to time, for various reasons, changed and extended.

Since the judicial construction of what constitutes "worldly employment" is not always the same, and this construction varies at different times, how is it possible that the opinion of the magistrate upon the same subject may be infallible, and if not so then a person is liable to be convicted of an act which may or may not be a crime, but which one magistrate believes to be a crime and which another may not. Surely there must be a more definite standard and more explicit enactment than that which leaves, not the innocence or guilt of the person to be determined, but whether the magistrate—not the law—declares an act to be a crime.

However uncertain and indeterminate the statute may be with respect to the word "worldly," it is still more so in the phraseology it adopts in excluding from its prohibition

certain "worldly" work. The act provides that "works of necessity and charity" shall be excepted from its prohibition. Then, again, the description of the crime hangs upon the meaning of the words "necessity" and "charity," and these words are left to the construction of the respective magistrates throughout the Commonwealth. Could any words be more indefinite and less certain as a guide to the citizens? What necessity and whose necessity does it mean? Is it the necessity of the year 1794, or the year 1903? Is it the necessity of the one who does the work, or the necessity of the one for whom the work is done? Does the necessity change with time, or with the development of particular communities? Is the necessity physical, mental, moral, or the necessities of comfort, of the preservation of life, of health or of property, or what must be the nature of the work that will admit it within the protective sphere of a work of necessity? Whose opinion is to govern this important question of necessity? A trial by jury to determine this question of fact—necessity—is denied the citizen, and it is left to the construction of magistrates, and its determination may be as varied as there are dispositions, beliefs and prejudices among the magistrates. Whose necessity is referred to?

As above stated, is it the necessity of him who does the work, or the necessity of him or them for whom the work is done? Both constructions have been held in this State. In the case of Sparhawk *vs.* The Railway Company, Judge Strong held that it meant "necessity" on the part of him who performed the "worldly employment," while Judge Woodward and others on the final determination of the case held that it meant "necessity" on the part of the community for whom the work is done. It is under this latter view that the running of street railways has been held not to be a violation of the statute, though the work is "worldly." It is needless to determine which of these two views is correct; they forcefully illustrate the uncertainty and indefiniteness of the act under discussion.

Again, in the case of Johnston *vs.* Commonwealth, 22 Pa., 108, Justice Woodward held:

"It is impossible to lay down any general rule as to works of necessity and charity. If the works enumerated in the proviso of the statute be taken as a legislative sample of works of necessity it might be said in general that supplying the ordinary demands of our physical natures and relieving from situations of peril and exposure are necessary acts which incur no blame. . . . Still, the exigencies of human life which demand works of charity and necessity are so numerous, and so diversified by attending circumstances, as to defy classification and to forbid the attempt to prescribe a general rule. The best we can do is to judge of cases as they arise and to treat them as within the prohibition or the saving clauses of the statute according to the specific features which each presents."

If the courts cannot define a general rule, what standard or guide have the citizens to measure their acts? And how is a man having no guide to know whether he is violating the act if it cannot be determined that his act is a crime until the magistrate says as a matter of fact? Is it not practically placing the law-making power in the hands of the judiciary by delegating to the judges the power to say what may in their opinion be a crime, for be it remembered it is impossible of determining whether one's act is a crime or not until the magistrate passes upon it.

Again, in Commonwealth *vs.* Nesbitt (*supra*), Chief Justice Lowrie, in discussing the question of necessity under the act of 1794, held:

"Necessity itself is totally incapable of any sharp definition. What is a mere luxury, or perhaps entirely useless or burdensome to a savage may be a matter of necessity to a civilized man. What may be a mere luxury or pleasure to a poor man may be a necessity when he grows rich. Necessity, therefore, can itself be only approximately defined. The law regards that as necessary which the common sense of the country, in its ordinary modes of doing its business, regards as necessary. Law, therefore, does not condemn those employments which society regards as necessary, even when they encroach on the Sabbath, if, according to the ordinary skill of the business, it is necessary to do so. And then, the business being recognized as necessary, it may be performed by means of the services of others, and by all the ordinary means of the business, so far as it is necessary."

How, then, are the citizens to know what is a "necessity" if there can be no classification or general rule for their guidance, and if, according to the Supreme Court, changed social conditions may make that a "necessity" to-day which was not a "necessity" when the act was passed? So far as the public requirements are concerned how are the citizens to know when the conditions of a community have so changed that what was a crime is no longer such?

Justice Read, in his opinion (in Sparhawk *vs.* Union Pass. R. R. Co.) in favor of considering the running of street-cars a work of necessity, delivered in 1867, said:

"When the act of 1794 was passed the population of the city of Philadelphia was under 30,000, whereas at present we have within the area of Philadelphia many times that number of people that constituted the entire population

of the State in 1794, and in that year we had no water works, no iron pipes, no steamboats, no canals, no railroads, no gas, no telegraph, no Atlantic cable and only one stone turnpike, all of which are matters of indispensable necessity and coming clearly within the necessity exception of the Sunday law."

This statement was made in 1867; what might the learned judge have said if he were living in the year 1903. This city, with a population of 1,300,000, with steam railroads leading to every known point of the United States, water-works, two lines of telegraph encircling the globe, steamboats, gas, telephones that bring millions within speaking distance of one's library, thousands of cars propelled by electricity, electric lighting that is fast becoming generally used; with over 250,000 dwellings, and business buildings that reach in height almost that of the Tower of Babel, with streets paved with asphalt, then an unknown commodity; with industries such as locomotive works, shipbuilding yards and textile industries, the largest of their kind in the world, yet none of these were in existence in 1794, when this act was passed. There were but a few newspapers, and their circulation must of necessity have been very limited, and only one of which, the *North American*, has continued its publication to the present time. Now there are at least six newspapers whose combined circulation on Sunday, together with those from other cities, numbers at least 500,000 copies. The growth and development of the State has been equally marvelous, and in some places, like Pittsburg, especially so in particular ways, such as the manufacture of steel. To say, therefore, that this development and wonderful growth of State and city did not make many things a necessity to-day which were not a necessity when the act was passed would be to ignore an obvious and patent truth. How uncertain then is that act of Assembly called a criminal statute which has the fact of crime changing from day to day, or year to year, or decade to decade, and how shall the citizen know when the social conditions have so changed and the social customs so altered as that an act once criminal has become "necessary"?

I am quite sure, from the conflicting opinions of the judges of the Supreme Court, and the absolute impossibility to fix a classification or fixed rule as to what constitutes a "worldly employment" or "necessary work" on Sunday, that it would be an assumption of power and authority for me to impose my individual construction upon the act of any one brought before me by determining according to my opinion whether such act was or was not a "necessity" to him or the community, and therefore a crime; and especially in this case I am quite unwilling to say that my opinion of whether the publication of the newspapers by defendants was a work of necessity is better than the 400,000 people who purchased them.

I am asked to find that the publication on Sunday of the newspapers of defendants is a "necessity," and therefore within the exception of the act; and, furthermore, that the information must aver that the act charged against the defendants as a crime was not one of the excepted works of the statute, and this being material averment it must be established by evidence. I have no hesitation in finding the latter contention of defendants to be sound. . . . In the case of Omit *vs.* Commonwealth, 21 Pa., 431, Woodward, J., held:

"Some of our number are of the opinion that the conviction is defective in that it does not act out that the selling the liquor was not a work of charity or necessity."

I am, therefore, of opinion that the defect in the information by the omission to so aver that the publication and sale of the newspapers on Sunday was not a "necessity" and "charity" is fatal, and such an averment being material proof that such publication was not a work of "necessity" or "charity" was indispensable, and its omission is fatal to the prosecution, and if for no other reason I should be compelled to discharge the defendants.

Whether the publication of a newspaper of general circulation on a Sunday is a work of "necessity" seems at least in the cases now before me to be unnecessary, as the defendants are discharged and the proceedings dismissed upon other grounds and for other reasons as above stated. *If it were necessary, however, to determine this question I should certainly be inclined to decide it as a matter of fact only in the affirmative.*

At this point the magistrate called attention to the marvelous development of the public press, and its great usefulness and service to society as shown in a number of particulars. Following this it was declared:

For many other and equally good reasons, which it seems useless to mention, the press is a necessity, and I should so consider it, even if I was not aware that at least 400,000 persons buy, and perhaps equally as many more read, newspapers [on Sunday].

Following this, however, it was pointed out that in a comparatively recent case

(Commonwealth *vs.* Matthews, 152 Pa., 168, 1893) the Supreme Court of the State had passed upon this very point and come to a different conclusion. The essential point in the quotation from the Supreme Court's decision is contained in this paragraph:

While the Sunday newspaper may be a great convenience to a large portion, perhaps a large majority, of the people, it does not in our opinion come within the exemptions of the act of 1794. No one pretends that it is a charity, and we cannot say as a matter of law that it is a necessity. It is a convenience, nothing more.

Magistrate Gorman then concluded his decision thus:

I may say with Judge Read, in his opinion in Sparhawk *vs.* Passenger Railway Company: "I am deeply impressed with the necessity of a proper observance of Sunday as a day of worship and prayer, and of rest from labor; but living under the new dispensation, and not under the old, I feel no inclination to turn the Lord's day into a Mosaic Sabbath."

For the reasons before given I discharge the defendants.

This decision is certainly a blow to the old Sunday law, but perhaps not as serious a blow as is supposed. We will comment on the decision when the other portion, dealing with the question of the constitutionality of the law, is presented.

Although a report of the Sunday-law hearing at Harrisburg, Pa., on February 10, was given in these columns several weeks ago, we deem it worth while to present the following extracts from the report which appeared in the *Sabbath Recorder* (Plainfield, N. J.), the editor of which paper, Dr. A. H. Lewis, spoke at the hearing. Our report was gathered from the newspapers:

The hearing began at two o'clock in the afternoon, and continued until six. Large delegations were present from Philadelphia and from other cities in the State, and the gathering was the largest, and was said to be the most representative one ever held in Pennsylvania for the consideration of the Sunday question. The clergymen and representatives of the churches, including the "Philadelphia Sabbath Association," opposed the bill under the general argument that the law of 1794 was necessary to the best interests of the State, and of good order and morality. The representatives of many business associations pleaded for the passage of the Berklebach amendment on the ground that the people demanded such minor forms of business, and that it was both unjust and productive of hypocrisy when larger businessess went forward unchallenged, while those less able to defend themselves through financial and political influence were subjected to prosecution under the ancient law. The hearing along these lines, for both sides, was extended and earnest.

The editor of the *Recorder* reached Harrisburg on the afternoon of the 10th after the hearing had begun in the large assembly room of the lower house, into which it was said 1,500 people were crowded. He was fortunate, through the courtesy of Senator Cox, chairman of the committee having the bill in charge, and Senator Berklebach, the author of the bill under consideration, to secure the privilege of speaking for a period of thirty minutes more or less. He announced himself as appearing in behalf of the Seventh-Day Baptists of Pennsylvania and the United States, and as asking for the repeal of the law of 1794, because, in spite of repeated efforts to secure some recognition of the rights of conscience in behalf of the Sabbath-keeping Christians, of Jews, and of all men, Pennsylvania had persistently refused such recognition, until the demand for the repeal of the ancient and oppressive law was the only remaining alternative. He also urged the repeal in view of the fact that all Sunday legislation, at the beginning, was the direct product of the ancient pagan state-church system, and that throughout the history of the Christian church such legislation had fostered holidayism, and that compulsory idleness on Sunday at the present time fosters the liquor traffic and encourages the worst forms of evil of which the friends of Sunday complain. He deprecated the fact that the friends of Sunday, instead of appealing to the law of God and to high religious standards, attempt to secure reform by reliance upon effete laws, and by entering the lists in contention over such minor features as the sale of candy, cigars, etc., when the true issue is infinitely above such superficial "peanut

politics." His remarks were listened to with intense eagerness, and he was several times compelled to desist because of the applause, notably when he announced that the people whom he represented, and the plea which he made, were farthest away from any sympathy with saloons and Sunday rioting, or any other form of evil, and that his plea for the repeal of the ancient law was in favor of a better state of things by doing away with compulsory idleness.

The deep interest which was awakened in the general question concerning Sunday was shown when the speaker made reference to the fact that he is the author of a book on "Swift Decadence of Sunday," a copy of which would be sent to any member of the legislature who might desire it. At the close of the address he was besieged by scores of men who commended the position taken, and nearly half a hundred names were sent in from those who desired a copy of the book referred to.

Writing as one interested in real, genuine Sabbath reform, Dr. Lewis says:

Through many experiences in similar hearings before State legislatures and the Congress of the United States, on no occasion has the writer addressed so many people, nor witnessed such deep enthusiasm and thoughtfulness in connection with the presentation of the high religious views touching Sabbath reform for which the Seventh-day Baptists have always stood. Each year's experience and observation strengthens the conviction in the mind of the writer that Sabbath reform, in the future, must deal more definitely and pointedly with the question of Sunday legislation than it has ever done.

SUNDAY ENFORCEMENT

This department is designed to record what is being done throughout the United States and elsewhere in the way of Sunday enforcement. Necessarily the items in most instances must be a bare recital of the facts. The principles involved are discussed elsewhere in the paper.

It was recently reported from Palmyra, N. J., that "the Law and Order League has ordered the closing of all places of business, including cigar stores and barber shops, on Sundays."

❖

Enos Roby and Charles Levesque, citizens of Taunton, Mass., were arrested by a deputy sheriff near that place on March 22, "the charge being fishing on Sunday." They were to have a hearing before Judge Fox at Taunton the next day.

❖

On April 6 the New York Methodist Episcopal Conference, in session in New York City, adopted a resolution condemning the effort with which District Attorney Jerome has been identified for "bringing about an act legalizing the sale of liquors on the Lord's day."

❖

"The game wardens are determined to break up Sabbath gaming in Somerset County," reported the Plainfield (N. J.) *Courier-News* of March 24. On the Sunday preceding three Italians had been "caught hunting rabbits" in the country near Bernardsville, and had been fined $20 and costs each.

❖

The manager of the Bowling Green, Ohio, baseball club having refused to accede to the request of the ministerial association of the place "to refrain from Sunday exhibitions this season," a meeting of the clergymen of the entire county, sixty in number, was called for March 26 "to formulate plans for preventing the playing of Sunday baseball this season." "A positive stand" was to be taken "to invoke the law against Sunday baseball."

❖

The barbers of North Dakota have been successful in their effort to obtain the enactment of a Sunday-closing law. The bill was signed by Governor White late in March, "the emergency clause

making it operative at once." As a result everywhere throughout the State notices similar to the following from the Northwood *Gleaner* of March 27 are appearing in the local papers:

The barber shops will be closed up tight hereafter on Sundays, the legislature having passed a law to the effect that no barber shop in the State shall operate on Sunday under penalty of a fine or imprisonment.

❖

On Sunday evening, April 5, "a full form materializing séance" in progress at the "Spiritual Science Institute" at 331 W. 57th Street, New York, at which some one hundred and fifty persons were in attendance, was interrupted by the police, who claimed that those in charge of it were "giving a theatrical performance on Sunday" at an admission price of $1.00. But, although complaint and application was made by the captain of the precinct, Police Magistrate Cornell refused the next morning to issue warrants for the arrest of the persons in charge of the séance.

The Paducah (Ky.) *Sun* of March 21 reported that "an effort is being made to have enforced in Paducah as far as possible a general observance of the Sunday law." Strict enforcement against the saloons was already in effect, and the following "resolved" petition from the retail clerks' association had just been placed in the hands of the mayor:

To the Honorable Mayor and Board of Police Commissioners:

Whereas, There is a law prohibiting the sale of merchandise on Sunday, and

Whereas, There are many complaints from merchants who observe this law that some of their competitors on Broadway and many on Second street throw their doors open on Sunday, the same as on week-days, and sell goods, thereby desecrating the Sabbath, and at the same time defying the law,

Therefore, Be it resolved, that we, the Retail Clerks' Association, in regular session, do hereby petition you, the protectors and guardians of the law and rights of the people whom you represent, to see that these offenders of said law cease such offense; or that you proceed to prosecute them at once according to law.

The State of Pennsylvania retains without modification her ancient Sunday law passed in 1794. Some modifications in its administration have been made through decisions of the courts, but hitherto all attempts to secure a change in the body of the law have failed. As a result very many things are done in the State on Sundays which are illegal, but which are demanded by the choices and customs of the people. The larger interests, such as railroads and similar forms of business, go unchallenged when they transgress the law; but lesser interests, especially in the larger cities, and notably in the city of Philadelphia, are subject to much annoyance, and to what is claimed to be persecution, under the existing statute. Hence it has come about that for several years efforts have been made to modify or repeal the existing law.—*Sabbath Recorder.*

Since so much space is required for the Philadelphia decision and much of the other matter was already in type, it is necessary to leave over until the next number what we expected to present this week in confirmation of the idea that the campaign in behalf of the "rights" of "the Church" in the Philippines that has been prosecuted by papal organs and representatives in the United States has proved and is proving effective with the Government, so that the Papacy is bending and bringing things her way in the matter. It is also necessary to omit the article on "The Supremacy of the Papacy." In last week's article under that heading occurred three typographical errors, due to lack of care by compositor when making corrections in the respective lines. In the ninth line from the bottom in the second column on page 232 the word "his" should have been "these"; in twelfth line from top of first column on page 234 the word "unquestionable" should have been "unquestionably," and of course the last word in the third line below that one should have been spelled with two p's and one l instead of just the reverse.—EDITOR.

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