

The Sentinel

OF CHRISTIAN LIBERTY

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NO. 19



The growth of the Roman Church in the United States is one of the most striking facts in history. What makes it all the more noteworthy is its unexpectedness. . . . That a new country, openly sworn to the principle of personal liberty, should have proved to be the most favorable ground on earth for the growth of a church openly sworn to the principle of authority is surely a notable thing. It is probably true that during the nineteenth century the actual gain to the Roman Church in numbers, wealth, influence, and prestige has been greater in the United States than in all the rest of the world together. And the gain is not only or chiefly in the particulars mentioned. She has gained the popular good-will, or at least a favorable prepossession, and she has conquered respect. . . . Whether or not Rome is gaining from or losing to Protestantism in the aggregate is a question to which it is very difficult to give a reply. . . . What can with certainty be said at present is that THE PEOPLE OF THIS COUNTRY GENERALLY ARE MUCH BETTER DISPOSED THAN THEY WERE AT AN EARLIER DATE TO SUBMIT TO A CHURCH WHICH DEMANDS OBEDIENCE. The self-assertive habit of personal independence in every relation of life has been greatly weakened, and promises to grow still feebler in our more highly organized life, where the individual continually counts for less and the organization for more.

—Dr. S. D. McConnell in the *Booklover's Magazine* for March.

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NEW YORK, THURSDAY, MAY 7, 1903

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While there may be "works of necessity" and works that are not of necessity, all honest employment and business should be held to be necessary in construing a statute which undertakes to limit the activities of people to "works of necessity."



If it is true, as declared by Ex-Judge Gordon, that the present practical non-enforcement of Sunday legislation is due to a change in the *religious* views and customs of the great majority of the people, then of course it is true, as he says, that the Sunday law is a religious law, and that its enforcement is the use of force in a matter of religion.



Constantly on every hand her agents are repeating and inculcating the idea that "the Church" is the bulwark and mainstay of civilization. "Rev. Father Murphy" recently declared at the "Church of St. Paul the Apostle" in this city that "the world owes the Catholic Church a debt of gratitude for giving it high standards in marriage relations," and that "if we are civilized in America to-day, we owe it to Europe, and if Europe is civilized, she owes it to the Catholic Church"! Such quotations might be multiplied indefinitely. In all this the Papacy is aiming at and laying the foundation for supremacy.

In holding the "eight-hour law" to be unconstitutional the New York State Court of Appeals has just declared that while "the State has a right to protect women and children or adults from unwholesome or dangerous occupations," "fixing hours of labor or wages is not a proper exercise of the police power of the State." This reminds us that there is on the statute book of this State a law which in effect fixes not the hours, but the *days* of labor, and which, when all other excuses fail, is commonly defended on the ground that it is a legitimate exercise of the police power. We refer to the Sunday law, which prohibits "all labor on Sunday, . . . excepting works of necessity or charity." Now even granting that this law is a wholly civil measure, is indeed a "rest-day" law, how can it be constitutional if the eight-hour law is unconstitutional? How can it be a legitimate exercise of the police power when an eight-hour law "is *not* a proper exercise of the police power of the State?" What difference is there in principle between an eight-hour law and what is in effect a six-day law?



A very significant dispatch from Rome, which escaped our attention at the time, appeared in the papers on April 17. It read:

To the invitation sent by the St. Louis Exposition authorities to the Vatican to partici-

pate in the Exposition, Cardinal Rampolla has replied that it is *above all indispensable* that the same procedure be followed as in the case of the Chicago World's Fair, and that the invitation come directly and officially from the United States government.

That is the Papacy for you. The one thing upon which her heart is set with regard to America is the gaining of influence and power over "the United States government." And she proposes that no opportunity for bringing the government into communication and relation with her shall pass unimproved. And she proposes also that there shall be no backing down from the precedents she has already, in the prosecution of her scheme with regard to the United States, succeeded in having established.

In speaking of the Philippine "Church" question *The Independent* says:

The Vatican is in kindly relations with our Government, and is anxious to do what it can to foster sentiments of loyalty, while properly sedulous to maintain the strength of the Catholic Church under the new and difficult, but improved, conditions. Some of our leading American Catholics have been active in bringing about these relations, and they deserve great praise, as do President Roosevelt and his cabinet.

Yes, yes, "the Vatican is in kindly relations with our Government," and so was the spider with the fly. And it is true, too, that "leading American Catholics have been active in bringing about these relations"; in fact, most of the activity in the whole business has been on the part of themselves and the Vatican. Whether or not they and the President and his cabinet are deserving of great praise in the matter depends upon whether or not it is an exceedingly praiseworthy thing to institute and establish relations between the American government and the Vatican. Or perhaps it depends upon the viewpoint. From the standpoint of the Vatican all

who had a hand in bringing about this condition of affairs no doubt "deserve great praise." We hardly think, however, that such is the case from the standpoint of true Americanism.

It seems that the two important appointments mentioned elsewhere are not the only "results" of that sort that are to be credited to the activity of that religious class whose demands we are told "no administration dare ignore." *Dominicana*, a Roman Catholic periodical, in setting forth the benefits of the Federation of Catholic Societies, which we have been told a number of times was formed for no political purpose, says:

It is needless to assert that since the inception of the Federation movement, Archbishop Ryan, of Philadelphia, and Mr. Bonaparte, of Baltimore, have been appointed the first Catholic members of the Board of Indian Commissioners; that a Catholic has been appointed for the office of Assistant Postmaster-General; that a graduate of Georgetown Catholic University has been appointed one of the private secretaries of President Roosevelt; that several Catholic chaplains have been appointed in our army, and that other notable personages have deservedly received positions of trust. Do not these results, speaking louder than words, tell us what united action, what a Federation of Catholic Societies, can accomplish?

They do, indeed. "We venture to say," says *The Independent*, "that not one of these appointments is due to that Federation. They take themselves too seriously, and if their purpose is political, too mischievously." We are not so sure that this Catholic paper was making an empty boast for the Federation. But whether it be the Federation or not, it is to be believed that there is something behind this significant list of appointments that it credits to the Federation. If it is not the Federation, what is it?

The principle of the decision by the New York magistrate quoted elsewhere seems to be that whatever does not interfere "with the repose and religious

liberty of the day," or rather of the community where the thing takes place, is not a violation of the New York Sunday law, and that therefore the playing of baseball without such interference is not illegal. That would indeed seem to be a common-sense judgment under a statute which is professedly intended to guard against "serious interruptions of the repose and religious liberty of the community." But the fact is that notwithstanding this decision Sunday ball playing, and most of the other things cited by the magistrate that "are now tolerated as inoffensive," are violations of the law as it stands. Fishing is specifically prohibited, and while baseball and other things cited are not named, they must be regarded as included in the prohibition against "playing," "public sports" and "exercises." They belong in the class of things prohibited in Section 265 of the code. The Sunday law assumes, and in fact declares, that the things prohibited by it, the "certain acts hereinafter specified," "ARE serious interruptions of the repose and religious liberty of the community." It leaves no latitude whatever to communities; community sentiment and practise makes not a particle of difference in the matter. An entire community may be out fishing or engaging in and witnessing baseball playing or other "public sports" and never dreaming of being disturbed, but nevertheless, no matter what the community may think, according to the law their repose and religious liberty is being seriously interrupted. They may be enjoying the recreation immensely, but nevertheless in the eye of the law they are committing "crimes against religious liberty and conscience"—yes, against their own religious liberty and their own consciences! Of course this is absurd, but nevertheless it is the law. However, we welcome the application of common sense in the enforcement of the law. It means

at present non-enforcement or nullification of provisions of the law, for such decisions as that to which we have referred simply amount to judicial refusal to enforce certain provisions of the law. In the end the application of common sense will mean the abolition of the law itself, for common sense will hardly uphold a statute which rests upon the assumption that the protection of religious liberty requires the enforcement of religious conformity, and the equally preposterous notion that religious liberty should be guaranteed and protected only on one day of the week. The New York Sunday law virtually says on its face that the citizens of New York State are protected in their religious liberty only one day in the week. The law prohibits "serious interruptions" of their "repose and religious liberty" on Sunday. The logical inference is that "serious interruptions" of their "repose and religious liberty" are permitted without hindrance on other days. And if the things the Sunday law prohibits are indeed "serious interruptions of the repose and religious liberty of the community," the inference is indubitably correct. Of course, though, this pretension of protecting religious liberty is but a subterfuge upon which to rest the religious law against "Sabbath-breaking." When once the repose and religious liberty of the community are given the place that the Sunday law pretends to give them, and such decisions as that we have mentioned tend in this direction, the "Sabbath-breaking" law will be in a rather precarious condition.



A few weeks ago we stated that we need not have dismissed as so much "prejudice" the idea which came to us when a Roman Catholic was placed at the head of the department of public instruction in the government of the Philippine Islands, namely, that the clamorous campaign in behalf of the

"rights" of "the Church" in the Philippines that was waged by papal organs and representatives in the United States last year was proving effective with those in authority. In substantiation of this it is only necessary to call attention to a later appointment and to give certain quotations bearing upon it and the matter of the Government's policy with regard to "the Church" question in the Philippines. A very important quotation, and one that describes this later appointment, is this from an editorial which appeared in *The Independent* of February 5 (italics supplied by us):

The meaning of the nomination of the Hon. John T. McDonough, of Albany, to be Chief Justice of the Supreme Court of the Philippine Islands is not difficult to discover. He is a lawyer of fair repute, was Secretary of State for New York when Mr. Roosevelt was governor, and was reelected in 1900. *But that is not all his qualification.* He is a native of Ireland, and *was educated in a Catholic college. The Philippines are Catholic, and it was thought wise to put a Catholic into this office, especially as the decision of the question of Church property will come before that court.* The Philippine Catholics are divided over the matter, the Church orders claiming the property, while the Catholic people claim it for themselves, as they erected the buildings. *Decision either way by a court presided over by an American Catholic would excite less criticism.* It is well that the President has made such a choice.

This, coming as it does from a periodical which assumes to speak with authority in such matters, and which has no reason for misrepresenting the Government, but which on the contrary desires to have everything that the Government does in the matter considered to be all right, would seem to be sufficient to confirm what we have said. Here we have it declared with astonishing plainness and frankness that the President has appointed a man to be Chief Justice of the Supreme Court of the Philippine Islands *because he is a Roman Catholic, because he "was educated in a Catholic college."*

That is "*his qualification,*" as it "is not difficult to discover," we are informed. And "it was thought wise to put a Catholic into this office [of the Chief Justiceship of the Supreme Court of the Philippines]," because "the Philippines are Catholic," and because "the decision of the question of Church property will come before that court," and because decision "by a court presided over by an American Catholic would excite less criticism [by Roman Catholics in the United States]"! Now does anybody have any doubt that the clamorous campaign in behalf of the "rights" of "the Church" in the Philippines that has been waged by Roman Catholics in the United States is proving and has proved effective with the high authorities of the American government?

To the above quotation may be added some to the same effect from Catholic sources. The *Catholic Standard and Times* (Philadelphia), which has been one of the most rabid organs in the campaign to which we have referred, regarded the announcement of Mr. McDonough's appointment as "an agreeable piece of news for all who sincerely desire the welfare and pacification of that distracted and victimized country [the Philippines]," and among other things said:

Mr. McDonough is one of the most prominent men in his profession, and his Catholic standing is no less high. It is creditable to the President's sense of justice, *as well as to his acumen,* that he is able to comprehend the desirability, *if not the necessity, of removing the anomaly of a bench manned entirely by non-Catholics ruling the interests of an entirely Catholic people.* Had the same consideration and foresight prevailed at the outset of the American occupation, much trouble that has arisen might have been avoided. But it is never too late to mend.

Of course the people of the Philippines are not "entirely Catholic" and the bench of the Philippine Supreme Court has not been "manned entirely by non-Catholics." It was the vacancy caused

by the advancement of Roman Catholic Justice Smith to be a "member of the Philippine Commission and Secretary of Public Instruction in the government of the Philippine Islands," that gave opportunity for the appointment of Mr. McDonough; and besides himself three of the other six members of the court are Roman Catholics. But the thing to be noted is that in the estimation of this Catholic paper that has been so dissatisfied with the way "the Church" was faring in the Philippines, the appointment of Mr. McDonough to be Chief Justice of the Supreme Court is the result of "consideration and foresight" on the part of the President, and is an important step toward mending the "trouble" that has been brought on by lack of "consideration and foresight." Talking of mending matters, here is what the *Catholic Transcript* (Providence, R. I.), another rabid organ of the class referred to, remarked shortly after Mr. McDonough's appointment:

President Roosevelt has mended up several weak spots in the Philippine machine. For all of this we Catholics are measurably grateful—grateful not because we are favored, but because we have an Executive who is not afraid and, apparently, not averse to doing what is just. He seems to be making the best of a bad job.

Oh, no, of course there has been no favor to "we Catholics"—we "fifteen millions of American Catholics," whose "demand" in this very matter of "recognizing American Catholics in the Philippines," *Church Progress*, of St. Louis, declared last summer, when the campaign was at its height, "is one which NO ADMINISTRATION DARE IGNORE"! Oh, no, "we Catholics," who have been howling so with regard to this matter, are grateful merely because "we have an Executive who is not afraid," who is "not averse to doing what is just"! That's all!

More directly to the point is a quota-

tion which appeared among the "Federation Notes" in the *Catholic Standard and Times* of March 7. These notes were "by the National Secretary" of the Federation of Catholic Societies, which organization was of course the most powerful force in the campaign to which we have referred. The secretary stated that "in a recent address" Bishop McFaul, the leader of that organization, "had this to say of President Roosevelt":

What shall I say of our young President? Well, we are all proud of him! We admire his courage and his love of justice. We cannot forget that *he listened to the voice of the Federation*, and that he not only promised to mitigate the conditions in the Philippines, but that *he has kept that promise by accepting the resignation of important officials, and by appointing desirable men upon the Philippine and Indian Commissions.*

That is sufficiently plain for anybody, and all that can be observed seems to bear out exactly what the bishop has declared. And all of it confirms and establishes the idea that the Papacy is bending and bringing things her way in the Philippines entanglement and through that matter is entangling the United States government in her meshes.

As was indicated in the article on "The Supremacy of the Papacy" two weeks ago, the next step in this papal program with regard to the Philippines will be the placing of some one in the position now held by Governor-General Taft, who, "if he shall not be dictated [as an appointee] by the Papacy," "will have to be a person entirely acceptable to the Papacy." And it is by no means certain that steps in this direction have not already been taken. But that must be left for another time.



In this issue appears the last of the series of articles on "The Supremacy of the Papacy." Do not fail to give it a careful reading.

The Supremacy of the Papacy

By Alonzo T. Jones

XVII*

The Coming Supremacy and Its Culmination

IT cannot be denied that on every hand evidence is open and plain to all that the Papacy has secured and is securing power over the United States. It cannot be denied that the elements are at work that make it certain that this thing will certainly grow until her power is complete here for all that she will ever want to do.

And when this shall have been satisfactorily gained, we have her own words that what she has done for other nations in the past she will now do for the United States. And we have given the plain historical record that when she had the power over other nations which she is now aiming at over the United States, she proved "an unmitigated curse, politically, socially, and morally"; and that is what she will prove here.

This story does not stop with her gaining power over the United States only. In the event of the success of her design here, it does not stop here; for we are given her own words that from the beginning the success of her design with regard to the United States is intended only as a means of gaining Europe.

And that thing will be gained with respect to Europe as certainly as she gains this with respect to the United States. The same machinery precisely is in Europe to bring this about there, that is being worked assiduously in the United States to bring it about here. The elements of discord, strike, and riot are as prevalent and as strong there as they are here. These will be more and more disturbing and more and more prevalent until the nations shall be so distressed,

as in the coal strike here last fall, that they shall face dangers that will require fairly desperate remedies. And in these crises she will kindly set herself forth and present herself as the great source of peace; as a kind mediator and arbitrator of all difficulties and all troubles between the discontented people and distressed and perplexed governments.

And the governments will accept her offers. They will recognize her and will accept her as their hope of peace. And this will exalt her again in Europe to the place that she occupied before, as the recognized head of the nations. And even so says the Scripture:

The ten horns that you saw are ten kings, who have not yet received their kingdoms; but for an hour they receive the authority of kings, in conjunction with the Beast. These kings are of one mind *in surrendering their power and authority to the Beast.* Rev. 17: 12-13.

Then it is that she will congratulate herself, and in her heart say: "I sit here a queen; no widow am I; I shall never know misery." The nations have separated from her in the late centuries past. The United States by its principles of religious liberty, of separation of church and state, has been one of the chief means of these nations separating from her. She wants to bring them back. She must gain possession of power in the United States before she can bring them back. And through the difficulties largely created by herself in the United States, she can bring about such a condition of things as she desires, and compel the recognition of the Church by the government as essential to government. Then she can proclaim to all the nations of

* This is the concluding article of the series.

Europe: "The 'great principle' that the United States proclaimed for all the world is found to be insufficient. It has failed. The state cannot get along without the Church. Now in the face of this demonstration, do you return to the fold of the Church; do you recognize the Papacy again; then your troubles will cease." The circumstances as well as her own offers will cause this to appear the most acceptable thing to the European nations, and they will recognize her and her power as essential to peace in their governments. Thus will she stand again recognized by the nations of the world as essential to government on the earth.

And when that comes what will be the consequences? Just what they were before—more trouble, more violence and more anarchy than ever could be otherwise. And this will so swiftly appear that the nations will find themselves so disappointed in their hopes, and so humiliated in their feelings, that, just as the nations did before, they will take to themselves again this power, which with the hope of peace they surrendered to the Papacy. And the consequence will be that—

The ten horns that you saw, and the Beast—they will hate the Prostitute, and cause her to become deserted and strip her bare; they will eat her very flesh and destroy her with fire. For God put it into their minds to carry out His purpose, in carrying out their common purpose and surrendering their kingdoms to the Beast, until God's decrees should be executed. Rev. 17:16-17.

And whereas she, in her exaltation, congratulates herself that she is queen, and no widow, and shall see no sorrow: "Therefore in one day shall these Curses befall her—death, misery and famine, and she shall be utterly destroyed by fire. For mighty is the Lord God who condemned her." Rev. 18:8.

And this is in brief the course and outcome of the things that are occurring

in the United States, and that will continue to occur and grow in abundance and in desperation until this outcome is truthfully realized not only in the United States, but in Europe and all the world. And just now, because of these things, and at this time, there is heard that voice from heaven, crying to every nation, and kindred, and tongue, and people:

Come out of her, my people, so that you may not participate in her sins and suffer from the Curses inflicted on her. For her sins are heaped up to the heavens, and God has not forgotten her misdeeds. Pay her back with treatment with which she has treated you; repay twice over what her actions deserve; in the cup which she mixed for you, mix for her as much again; inflict on her torture and misery to equal her self-glorification and her luxury. Rev. 18:4-7.

For soon will come the day when "that mighty angel shall take up a stone like a great millstone, and throw it into the sea," crying:

So shall Babylon, the Great City, be violently overthrown, never more to be seen. No more shall the music of harpers, minstrels, flute players, or trumpeters be heard in you; no more shall any worker, skilled in any art, be found in you; no more shall the sound of the mill be heard in you; no more shall the light of the lamp shine in you; no more shall the voices of bridegroom and bride be heard in you. Your merchants were the great men of the earth, for all the nations were deceived by your magical charms. Yes, and in her was to be found the blood of the Prophets, and of Christ's people, and of all who have been put to death upon earth. Rev. 18:21-24.

"After all this, I heard what seemed to be loud voices from a great throng in Heaven which said: 'Praise the Lord! To our God belong Salvation, Glory, and Power, for true and just are His judgments. For He passed judgment on the great Prostitute who was corrupting the earth by her licentiousness, and He took vengeance upon her for the blood of His servants.'"

This is the outcome of events that are occurring on every side in the United

States to-day. The aim of the Papacy is supremacy in the United States and the world, and in the United States as the means of supremacy of the world. To that supremacy she is walking as steadily

as the days go by. And this time her supremacy culminates in speedy and total ruin, with all heaven and the holy apostles and prophets rejoicing and praising the Lord.

Judge Gordon's Argument Against the Pennsylvania Sunday Law

II

WE give herewith the remainder of the argument of Ex-Judge James G. Gordon in the Sunday-law cases at Philadelphia on March 23:

There is another view of this question which, it seems to me, has not been in the past adequately considered. It is true that long ago it was held that the act did not violate the spirit of the constitution as to the right of all men to liberty of conscience. Those decisions, however, were all before the constitution of 1874, and cannot be considered to have taken the proposition referred to into comprehensive view. In the opinion of the Supreme Court justice already referred to, it was held, as I have shown, that the statute was intended to preserve the peace and rest of Sunday to that class of the community who regarded the day as sacredly set apart by divine institution for religious meditation, quiet, and rest, and as a day upon which all "worldly" employment should cease.

The history of legislation may always be considered in construing a statute, and may especially be a factor with reference to criminal enactments. The wrong or crime to be prevented may be sought for in the times and environments when the legislation was passed. It requires but a slight knowledge of history to know that the act of 1794 was passed in deference to the religious convictions of a vast majority of the people of this Commonwealth at that time. Not only the religious convictions, but the customs and habits based upon those religious convictions, were the moving cause for the enactment of the Sunday law. Essentially, therefore, the statute was a recognition of the religious tenets of one part of the community as a reason for placing an interdiction upon the occupations and habits of another part of the community.

It is true the act in question is prohibitive

merely. It does not oblige the minority to adopt the religious customs and beliefs of the majority, but it does prohibit the minority from performing acts otherwise innocuous, and often salutary and certainly beneficial to the minority, out of deference to the religious sensibilities of the majority. If this can be done—if the minority can be prohibited from doing something in itself lawful as a deference to the religious views of others—it is but a single step, and a very short one, to the position that they may be commanded to do something for the same reason, lest their failure to do it may offend the religious sensibilities of others. The question whether the statute prohibits a thing or commands a thing to be done is of no moment in determining the question as to the motive and purpose of the enactment. In either case the moving cause is the religious views and sentiments of a part of the people. If a prohibition may be enacted upon such ground, a command may be enacted also, and if a command, then a statute providing for religious conformity.

Then, again, the views of the majority may change from time to time. While in 1794 the majority of the Commonwealth may have been strictly Sabbatarian, that may not be the case to-day. And who shall ascertain this fact?

The vice of such legislation, however, will be apparent if we contemplate for a moment what might occur (if the act of 1794 is defensible on the ground of the religious view of the majority) should the population so change as that a wholly different religious concept should prevail among the greater part of citizens. Suppose, instead of an overwhelming majority of Protestants holding certain views as to Sunday (which was the fact when the act of 1794 was passed), an equally preponderating majority of the Roman Catholic faith should exist in the Commonwealth, and suppose, in accordance with that majority, the representa-

tives in the legislature should in prevailing numbers be of the same religious persuasion. And suppose such a legislature should pass a law forbidding the use of meats as food on Friday, out of deference to the religious views and sensibilities of this imaginary majority—how could such legislation be held to be invalid if the act of 1794 is sustained?

The simple fact is that the difficulty of enforcing the act of 1794, and its practical non-enforcement for decades, has resulted from the obvious change, if not in the religious views, at least in the religious customs of the great majority of the people, as to what constitutes the proper observance of Sunday. It would be closing the eyes to open and apparent facts were it not admitted that the enactment of the statute of 1794 and its dormant state throughout many years, as well as its open violation, all have their foundation in religious conditions.

Consider, also, that in prosecutions under the act of 1794 the local customs of the particular community are to govern in determining whether a certain kind of work is one of "necessity" or not, or is "worldly" employment. There are certain communities in this State where practically all sorts of "worldly" work are carried on by custom by a majority of the people. In such a county no conviction could be had under the act under the judicial decisions referred to and the facts as they exist. In other counties a different state prevails. Therefore, what would be criminal in one county would not be criminal in another, and hence what was intended to be a law of general application would be one of local application only.

What right have you, sir, who now hear this case, to pass upon the question whether the act of any man brought before you is a crime or not, upon your personal views as to whether this act was one of "necessity" or not? I am very sure you would not wish to impose your private conceptions of religion or morality upon another citizen. As a magistrate it is your duty to declare and enforce the law as it exists, but when the law gives you no definite standard, and you are left to your own private and personal views, you will be following the spirit of our institutions and the constitution of the State if you refuse to stamp as a crime the act of any citizen when you have no legal and impersonal standard wherewith to measure it.

For all these reasons, therefore, I respectfully request your honor to dismiss this in-

formation and the proceedings thereunder.

The decision of our courts heretofore under this act have been upon questions of fact and not of law, and related to the times and conditions then existing. They were good law for those cases and for the facts then before the court, but they went no further, and were not intended to, and could not, in their nature, have gone further. They are not precedents governing other facts, other communities, and later times.

The information and evidence in this case, moreover, are legally and technically at fault. The act under consideration, in its enacting clause, excepts "works of necessity and charity." It is text-book law, as well as the result of numerous decisions, that where a statute in its exacting clause excepts certain acts or persons, the information or indictment must aver that the act charged against the defendant as a crime was not one of the excepted cases, and this being a material averment, it must be established by evidence. In the case of *State vs. Barker*, 18 Vermont (3 Wash.), 195, it was held that an indictment under a statute which prohibits the exercise on the Sabbath day of any "secular business, etc., except works of necessity and charity," must allege that the acts charged were not acts of "necessity and charity." So, also, in the case of *Jensen vs. the State*, 60 Wisconsin, 557, it was held that an indictment or complaint was not sufficient in the absence of the allegation that the work or labor relied on constituting the offense, was not a work or labor of "necessity or charity."

Under this view of the law it is necessary for the complainants in these cases to aver substantively that the acts complained of were not "works of necessity or charity," and to prove this fact. How can this be proved? How can it be proved to the satisfaction of your honor that in the city of Philadelphia the printing and publishing of newspapers containing the news of the day does not constitute a work of "necessity"? How will your honor ascertain what are the necessities of a million and a quarter of people? What quantity of proof would be sufficient to establish this? And what character of witness would you require? Does your honor not see that the thing is practically unsusceptible of determination, and, therefore, the act incapable of enforcement?

Since this statute was passed telephones have come into existence, and the electric telegraph and the trolley system of locomotion. Is the repairing of a broken trolley wire a work of

"necessity"? Is the reinsulation by workmen of a disturbed telegraph wire a work of "necessity"? Is the repairing of a broken telephone wire a work of "necessity"? How and upon what evidence can your honor determine such a question as that?

When President McKinley lay dying the telegraph was used to send forth daily to an anxious people the news as to his condition. And on Sunday in thousands of churches throughout the land telegraphic dispatches setting forth the condition of the august sufferer were read to sympathetic and eager congregations. All these dispatches were sent by hired employees and distributed by paid laborers. Was this a work of "necessity"? When the very religious centres accepted and desired the

information, was it irreligious and "worldly" to perform this work? Was it a "necessity"? And if it should be held that it was a necessity, and not a violation of the statute, to send such messages and distribute them throughout the land, would it not also be a "necessity" and lawful occupation for newspapers to multiply the information by publishing it and distributing it to other thousands and millions of people?

The complainants, therefore, in this case have not presented your honor with the evidence upon which you can hold that these defendants were not performing a work of "necessity." And for this additional reason you should dismiss the complaint.

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.

Sunday enforcement against ball playing has met with an early and decided reverse in New York this season. On March 29, the first favorable Sunday of the spring, numerous games were played by boys and young men in lots and ball fields about the city. On complaint of the New York Sabbath (Sunday) Committee, policemen were sent to the scene of a game at Jasper Oval, 131st Street and Convent Avenue, at four o'clock in the afternoon. They arrested William Leith, twenty-nine years old, a clerk, who was selling tickets to the grounds and who was said to be the manager of the game. The case was made "a test to have an interpretation of the law in this city," and on April 17, in the West Side police court, Magistrate Joseph M. Deuel dismissed the case against Leith in a decision which read in part as follows:

The arrest was at the instance of the Sabbath Committee, whose attorney was permitted to control the prosecution, and who, if the fact existed, had abundant opportunity to show the character of the game, either on the Sunday in question or on previous Sundays, in respect

of its interfering with the repose and religious liberty of the day. No such evidence was offered. The attorney for such committee contended that baseball playing on Sundays is forbidden by law, and therefore the question of annoyance to citizens is wholly immaterial.

The evidence in this case does not show that any one was disturbed, unless it were the members of the Sabbath Committee, who went purposely, and in anticipation of what would occur, to get evidence upon which to make an arrest. And yet the evidence does not show that any member of the Sabbath Committee was actually present. For aught appearing in the evidence before me, Jasper Oval is a secluded part of Manhattan Island, or is in a neighborhood entirely populated by people who uniformly keep another day of the week as holy time, and all the persons present on the occasion of the baseball playing were of like faith.

Now, if, under the law, such persons may labor "on the first day of the week, commonly called Sunday," provided they do not "interrupt or disturb other persons observing the first day of the week as holy time," is it consistent to ascribe to the legislature the intention to deprive such persons of the right and privilege of innocent and healthful recreation? They cannot labor on Saturday, because their religion forbids; many cannot labor on Sun-

day, because their employment is of a character to violate the Sabbath law. Must they also forego Saturday and Sunday amusements and healthful recreation, and especially so when there is no proof that others are substantially disturbed thereby?

But, irrespective of the question of religion and the exception made in the statute about the laboring of persons of the Hebrew faith, does it accord with present ideas of liberality to draw the lines of Sunday restrictions as strictly as did the people in 1801, when the present law had its statutory origin? A predominant public sentiment is all-powerful in the enactment of statutes, and is a factor in construing and applying them. Many acts on Sunday are now tolerated as inoffensive that were pursued with rigor and punished severely when the present statute was originally enacted. Fishing is one. To engage therein along our river front fifty and a hundred years ago was to invite arrest, conviction, and fine, as appears by the police court records of those times. Now thousands may be found each Sunday at favorite points along the river who fish from sunrise to sunset. Large fishing steamboats go to the fishing banks on Sundays, carrying many thousands whose patronage is solicited by advertisements in the daily papers. They are not disturbed.

Carriage, bicycle, and automobile riding, and century runs may be pursued with impunity under all circumstances and during all hours of the day, so long as the statutory speed limit is not exceeded, which is the same on Sundays as on other days. Sunday excursion trains and steamboats take multitudes from our city during the spring, summer, and fall for all kinds of fun and frolic, including baseball, pitching quoits, throwing hammers, playing tennis or croquet, swimming, bathing, and unrestricted picnicing. Golf players go by thousand to nearby links on Sunday for enjoyment and exercise.

Now, each of these forms of amusement is equally within the law or is equally inhibited by it.

The *New York World* says "good sense, discretion, and an excellent interpretation of the spirit of the law and of the times" mark this decision, and the *Brooklyn Eagle* says:

This is a judgment based upon a common-sense view of the case. . . . Judge Deuel strikes the keynote of the whole situation when he says that the neighborhood should

be the only complainant. Sabbath committees are all right in their way, but their way should not lead them into absurd endeavors to regulate the Sunday recreation of individuals who are not offensive to the people by whom they are surrounded. . . . Let those who think that man was made for the Sabbath remember that there are not a few who believe that the Sabbath was made for man. Let observance committees regulate, if they can, the recreations of the districts in which their members live and concede the same privilege to others elsewhere. Sunday ball playing, properly conducted, does no harm. On the contrary, it does much good.

We comment on the decision elsewhere. Notwithstanding this decision three arrests on the charge of violating the Sunday law by ball playing were made at Olympia Field, Harlem, on April 19. The pitcher, catcher and manager were taken in hand as soon as the game began, but were promptly discharged by Magistrate Hogan the next day. The detectives testified that no admission to the grounds was charged, but that contributions were accepted if offered, and that they had given ten cents each. On March 22 two fifteen-year old Brooklyn lads, who with other boys were playing ball at Baltic and Henry Streets, were arrested. The next morning they "were cautioned by Magistrate O'Reilly and discharged."



A "Sabbath Observance Association," composed of "six prominent ministers and as many laymen," was organized in Detroit, Mich., about the middle of April, for the purpose of waging "a determined fight," "in the courts if necessary," against Sunday ball playing and Sunday theatres. The laymen, whose names are withheld, "are understood to be men of means, and the fund that has been set aside for prosecuting the war is declared to be a generous one." Rev. George Elliott, a leader in the movement, declares that there is to be "no noise and bluster, but a good hard fight, meeting the viola-

tors of the law on their own ground." The special object of attack is to be baseball, "because we have a clear case there."

There is no doubt ball playing can be stopped on the ground of disturbing the peace, even if there were no court decision to go on. We shall call on the mayor and police department to stop the games. Then, if nothing is done besides fining the players, it will be time to go to the supreme court, and nothing can defeat us there.

When asked as to what would be done with regard to Sunday saloons, "the association refused to discuss this matter, admitting it is a harder proposition than the others." A few days after the organization of this association in Detroit it was reported from Lansing that Governor Bliss had given notice "that he will not interfere in the matter of Sunday baseball in Detroit or Wayne County, and the local authorities will have to settle the matter on their own responsibility." The governor is reported to have said: "I believe there are better places for people to go to on Sunday than to the baseball grounds, but there are also worse places."

It seems that the cigar dealers of Philadelphia are going to find out whether or not the Sunday law of that State is not as incapable of enforcement against their business as it has been decided to be against the business of newspapers. Six dealers who have recently been fined for Sunday selling have appealed, and it is expected that "if the cases can be got to the supreme court the validity of the blue-laws will be decided." On April 20 "Lawyer C. R. Woodruff, representing the association championing Sunday closing under the old blue laws of 1794, appeared in Court No. 5" and "argued a rule for the dismissal of the appeals." The court reserved its decision. A few days later the manager of the restaurant at the Broad Street Station and the proprietor of a cigar stand at the Reading

Terminal were arrested at the instance of a salesman for a Baltimore cigar company, who alleged that he purchased a cigar from the first and two cigars from the second on Sunday, April 19. Both men were fined \$5 and costs each by Magistrate South on April 27. They appealed, and it was expected that the question of "whether or not it is unlawful to sell cigars on Sunday" would be passed upon in the local courts within a week or two.

The Sunday-closing measure, known as the Finch bill, for which grocery clerks have been working in New York State this past winter, passed the lower house of the legislature on April 14 by a vote of ninety-nine to thirteen. A brief debate preceded the vote. Mr. Prince and Mr. Cohn "denounced the bill." Mr. Finch "asserted that its purpose was to give grocery clerks a much-needed rest," and Mr. Butler thought it "was a step in the right direction"; it "would give grocery clerks Sunday off, and would cause many a man to hurry home Saturday night with his wages because he knew grocery stores would be closed Sunday." We do not know whether or not the bill passed the senate before adjournment, but it is very likely that it did.

In a decision rendered by three justices of the court of special sessions in New York on April 24 it was held that it is not a violation of the section of the city charter prohibiting Sunday amusements for persons to dance on Sunday for their own amusement. The decision was rendered in the case of a dance-hall proprietor who had been arrested on April 12 on the charge of violating the Sunday law. A policeman had found several hundred people dancing at his place at four o'clock in the afternoon. The superintendent of police has issued a special order directing policemen to be guided by the decision in making arrests hereafter.

"There will be big doings in the court of Justice Cole, of Yorktown, this morning, when Gus Burgess of that place will be tried for hunting on the Sabbath," reported the Muncie (Ind.) *Star* of April 18. "The case will be prosecuted by John Bravy, deputy game warden of Madison County. It is alleged that recently Burgess was hunting on the Sabbath day, and that he shot a little bird. There have been a large number of witnesses summoned, and the case promises to be very interesting."

The Philadelphia *Record* of April 26 contained this item:

Through Secretary Joseph A. Miller, the Philadelphia Milk Exchange yesterday sent notice to all dealers and depots that, com-

mencing to-day, the law prohibiting the sale of milk after 11 o'clock Sunday morning would be strictly enforced. Those found guilty, so the notice declares, will be subjected to prosecution and a fine of \$7.50 for each offense. This order is the result of a meeting of the Sabbath Observance Committee of the Milk Exchange, held last Wednesday. No exceptions are allowed.

At a meeting of the ministerial association of Duluth, Minn., on April 6, this resolution was "unanimously adopted":

Resolved, That this association most heartily supports its committee, Messrs. Davis, Milne and Knowles, in the fight against Sunday professional baseball in this city.

Two saloonmen of Red Wing, Minn., were fined \$25 each on April 6 "for keeping open on Sunday."

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