

The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII

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NO. 20



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 this Commonwealth, and, in accordance with that majority, the representatives 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 the majority—HOW COULD SUCH LEGISLATION BE HELD TO BE INVALID IF THE ACT OF 1794 IS SUSTAINED?

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

When the thirteen colonies achieved their independence and the United States was formed, this government—the first great instance in history—planted itself purely on the secular ground. The United States as a nation is not a religious nation, it is not a Christian nation, it is not a Catholic nation, it is not a Protestant nation; it is a secular nation. With clear eye and deliberate purpose it refused to have anything to do with the establishment of anybody's religion. It took the ground that its business was to look after the affairs of this world; and it left everybody free to believe as they pleased and to exercise their religion in any way they chose. That is one fundamental principle of our government.

—Dr. Minot J. Savage at Church of the Messiah (Unitarian), New York, March 8.

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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.

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NEW YORK, THURSDAY, MAY 14, 1903

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The world needs personal, not political, religion.

❖
If "Christianity is a part of the common law," then all who are not Christians are outlaws.

❖
Individual, personal Christianity is the only Christianity that is genuine; "national Christianity" is a fraud.

❖
To compel people to refrain from labor on a certain day out of regard for its religious character is to constrain and coerce them in a matter of religion.

❖
A profession of religion is not good for a government, for it is certain to be a hypocritical profession. And the hypocrisy will be greatest when it professes Christianity, for Christianity is the religion most opposed to political religion.

❖
The government which forms an alliance with the Papacy in order to use her power in furtherance of its own will find before it gets through that whatever it may gain it is not the winner in the game. It will be used much more than it uses.

❖
The Founder of Christianity debarred no class of persons from his kingdom, but invited all to come unto him and gave the assurance that he would in no wise cast out any who did. He withheld not himself nor his blessings from the

poor, the blind, the diseased, the insane, the sinful, nor even the criminal. A "Christian nation" pursues a different course. See the article headed "Christianity versus National Profession."

❖
The way in which the courts have argued that Sunday legislation is valid under constitutions guaranteeing equal rights of conscience and prohibiting religious legislation indicates that the conclusion was reached first and the reasoning and arguments in support of it adduced afterwards. The reasoning by which one judge has supported this conclusion has often been "radically different in principle and in application" from that of another.

❖
It takes a people and a government actuated and controlled by the religion of Christ to make a Christian nation. No such people and government have yet appeared in the world nor are likely to appear until the time when the gates shall be opened "that the righteous nation which keepeth the truth may enter in." In that day the "strong city" will not be secure by virtue of arsenals and fortifications, for "salvation will God appoint for walls and bulwarks."

❖
If the fact that the motive of the lawmakers in enacting a statute was "to prohibit the profanation of a day regarded by them as sacred" does not vitally affect

the question of the validity of that statute under a constitution providing that "no human authority can, in any case whatever, control or interfere with the rights of conscience," and that "no preference shall ever be given by law to any religious establishments or modes of worship," as has been affirmed by the supreme court of Pennsylvania, then there is nothing that can affect that question; anything in the way of religious legislation and enforcement is constitutional.



In his speech on the grounds of the St. Louis Exposition on May 2 Governor Odell of New York declared that "to work, to labor, is man's bounden duty," and that "every man is entitled in the prosecution of his work to the broadest possible liberty of action and the protection of the law." Then the New York statute which prohibits "all *labor* on Sunday . . . , excepting works of necessity and charity," is an interference with the citizens in the performance of their duty, is an interdict against the performance of "man's bounden duty" on the first day of the week. And it is also a denial and withholding on the first day of the week of that to which "every man is entitled in the prosecution of his work." Where does the State of New York get the right thus to interfere with people in the performance of "bounden duty" and to deprive them of the "liberty of action and the protection of the law" to which they are entitled?



The legal principle upon which the greater portion of Ex-Judge Gordon's argument against the Pennsylvania Sunday law was based was affirmed by the United States Supreme Court on May 4 in a decision concurred in by six justices. In declaring void a law enacted by Congress in 1870 the court among other things said: "It is all-important that a

criminal statute should clearly define the offense which it purports to punish, and that when so defined it should be within the limits of the power of the legislative body enacting it." As Ex-Judge Gordon clearly showed, the Pennsylvania Sunday law (and of course the same is true of the other State Sunday laws), does not clearly define the offense which it purports to punish. And of course when the offense which the Sunday laws purport to prohibit and punish is honestly defined the fact is revealed that such legislation is not within the limits of the rightful power of any legislative body. The Supreme Court should not forget the above-quoted declaration when next the question of Sunday legislation comes before it.



"All roads seem to lead to Rome," remarks the *Springfield Republican*. "The Kaiser is there in less than a week after King Edward." Yes, and Rome seems to mean the Vatican. And there are indications that the traveling of these roads by "Protestant" rulers will not be confined to the Kaiser and King Edward. Not to speak of the "mission" sent last year to the Vatican, it may be said that when the President of the United States sends gifts and good wishes to the Pope, as has been the case twice within less than a year, steps have been taken toward the doing by the President of the United States of exactly what the Kaiser and King Edward have just done. In truth, it is hardly too much to say that what the President of the United States has done is, under the circumstances, equivalent to what the sovereigns mentioned have done. The gifts and "autograph" letters were in lieu of personal calls upon the Pope. Had the Vatican been as near to the United States as it is to Germany or England, and had the tradition that the President of the United

States must not leave American territory during his term of office not been allowed to stand in the way (as it probably would not have), it is by no means certain that the courtesies between the President and the Pope would have been confined to exchange of presents and communication by letter. At any rate there is no essential difference between the relationship established or exhibited and acknowledged by the sending of presents and letters and that established or exhibited and acknowledged by personal calls and interviews.



In the series of important articles that ended last week it was pointed out and emphasized that the Papacy (the Roman Catholic Church) was rapidly rising to supremacy in this country, and that through her supremacy in and over the United States she is to gain, or regain, world supremacy. As much has just been declared by a high Roman Catholic prelate. In an address at the "Holy Name" parish school in Chicago on May 4, Archbishop Quigley, who was recently advanced by the Pope from the "see of Buffalo" to the "see of Chicago," said, as reported in the *New York Sun*:

Since I have seen the Western parochial schools I have come to the conclusion that in fifty years, if things go on as I see they are going on at present, *the Catholic Church will actually own the West.* I have had opportunity to see a few of the churches and schools in the diocese and I have gained some idea of what a magnificent big Catholic city Chicago is. . . . Within twenty years this country is going to rule the world. Kings and emperors will soon pass away and the democracy of the United States will take their place. The West will dominate the country, and what I have seen of the Western parochial schools has proved that *the generation which follows us will be exclusively Catholic.* **WHEN THE United States rules the world, the Catholic Church will rule the world.** . . . The Catholics know that Chicago is

one of the great Catholic centers of the world. *In fifty years Chicago will be exclusively Catholic. The same may be said of Greater New York and the chain of big cities stretching across the continent to San Francisco.* It has never forced itself on me—this conviction—as it has since I have been in Chicago. I am simply overcome by it.

When a Roman Catholic archbishop is "overcome" by the rapidity and certainty with which the Papacy is going on to supremacy over the United States and through that to supremacy over the world, it is time other people were awake to the matter, for the supremacy of the Papacy means the overthrow of liberty.



The doctrine that "this is a Christian nation" was affirmed and the authority of Chancellor Kent and the United States Supreme Court was cited in support of it by Professor Nicholas Murray Butler, president of Columbia University, at a meeting of the Rockefeller Bible class in the Fifth Avenue Baptist Church in New York on the evening of April 23. Professor Butler was one of three speakers on this occasion, the other two being General Chaffee and Mr. Jacob Riis, and he touched upon "the problem of religious education," which he said "we have not yet succeeded in solving." As at the meeting of the National Educational Association last summer he took the stand that the Bible should be read and studied in the public schools. But in this instance he did not confine himself to the "literary" argument. He thought the Bible should be used as a text-book in the public schools because "this is a Christian nation." He said that the idea that many foreigners had that the United States as a nation was non-religious was wrong, as was shown by many judicial decisions. He said that Chancellor Kent had held that Christianity was a part of the common law in this country, and that a man who openly denied that religion was a blasphemer

and could be indicted and punished. Then he mentioned the fact that the Supreme Court had in recent years held that "this is a Christian nation." It seems strange that in these days there can be found a man at the head of a leading American university who advocates the teaching of religion in the public schools and who holds to the pagan notion that the state is religious and that its religion is the religion of the majority. There have been some American judges who seem to have ignored the fact that the principle of the separation of church and state was adopted as a cardinal principle in this country when the American government was founded, and that the principles of church-and-state union that obtained in England and Europe could thereafter no longer be properly recognized and countenanced in this country. Chancellor Kent seems to have been one of these judges. There may have been some excuse in his day for supposing that "this is a Christian nation" and that "Christianity is a part of the common law" in this country, but there is no excuse for such supposition now. Everybody should know now who knows anything at all about the matter that according to a fundamental principle of the nation the body politic in this country is secular and not religious, that neither the Christian nor any other religion is the religion of the state, because the state is restricted to civil affairs and is debarred from making any religious profession whatever.



To the quotations presented last week in confirmation of the fact that the papal campaign in this country in behalf of the "rights" of "the Church" in the Philippines has not by any means been waged in vain, may be added the following, which was the concluding paragraph of an article by its Washington correspondent that was published in the

Catholic Standard and Times, of March 14, under the large heading, "Outlook Bright in the Philippines":

In view of the fact that a majority of the judges of the Philippine Supreme Court, and the Secretary of Education, are Catholics, and that the property rights of the Church and even of the friars are fully recognized and conserved, the general situation in our Catholic island possessions is most satisfactory.

It has been insisted by the Catholic press all the time that the outlook was most dark in the Philippines and that the situation was most *unsatisfactory*. But now, since "our young President" has "listened to the voice of the [Catholic] Federation," to "the demand of fifteen millions of American Catholics" "which no administration *dare ignore*," and "has mended up several weak spots in the Philippine machine" "by *accepting the resignation of important officials and appointing desirable men*," so that now "a majority of the judges of the Philippine Supreme Court, and the Secretary of Education, *are Catholics*," and "the property rights of the Church and even of the friars are *fully recognized and conserved*, the general situation in our Catholic island possessions is most satisfactory," and the "outlook" with regard to the Philippines is "bright." It certainly ought to be from the papal standpoint. It is very evident that "Father Thos. J. Campbell did not utter words without meaning when he declared in his oration at the "jubilee" celebration in St. Patrick's Cathedral in New York on March 3 that "the wild clamors of religious fanaticism have been quelled and the unworthy aims of designing politicians have been thwarted, while he [the Pope], the great Father of Christendom, with absolute trust in the fearlessness and keen sense of justice of our great Chief Executive, . . . serenely legislates for the religious government of the new possessions, and gives an

assurance that the Catholics of the Philippines will be the most devoted supporters of the American Republic." Was there any connection between the giving of this "assurance that the Catholics of the Philippines will be the most devoted supporters of the American Republic" and the bringing about of such a condition with regard to Philippine matters that it can be boasted by the representatives of "the Church" that "the wild clamors of religious fanaticism have been quelled and the unworthy aims of designing politicians have been thwarted," and that the Pope "serenely legislates for the religious government of the new possessions"? It is significant that those who last summer were so frantic over the course of the Government with regard to "the Church" in the Philippines are now calmly trusting "in the fearlessness and keen sense of justice of our great Chief Executive." Last summer they were bitterly denouncing the "proselyting policy" which they alleged was being pursued by the Government in the Philippines; now they are admiring the President's "courage and his love of justice," and are expressing their gratitude for "an Executive who is not afraid" and "not averse to doing what is just." The meaning of this, as *The Independent* says of the appointment to the Chief Justiceship of the Philippine Supreme Court, "is not difficult to discover." We will have more to say regarding this matter at another time.

The principle laid down by Magistrate Deuel of Manhattan in a case of baseball playing on Sunday has been reaffirmed by another Greater New York magistrate in a case of football playing on Sunday. A football game between two New York teams was advertised to take place at Celtic Park, Long Island, on May 3. Just as the game was about to begin two officers arrived, and after securing en-

trance to the grounds (which they did by purchasing two programs at twenty-five cents each on the outside), arrested David Madigan, the manager, on the charge of "violating the Sunday law." Madigan was taken to the police station and released on \$500 bail. Two days later he was discharged by Magistrate Connorton of Long Island City, who "held that athletic sports were legal on Sunday as long as no complaints were made by residents of the neighborhood that they were being annoyed."

Noting Magistrate Deuel's decision and the fact that golf-playing and other games and sports are "tolerated in New York City and surrounding towns" on Sunday, the *Springfield Republican* remarks that "New York City is still a long way ahead of the large cities of the West in the matter of Sunday observance." It may be said also that New York City is a long way ahead of some of the large cities of the East in the matter of leaving Sunday observance to individual choice—to which of course it should be left entirely.

At a Methodist ministers' meeting in Toronto on April 13 Rev. T. A. Moore, of the Ontario Lord's Day (Sunday) Alliance, gave an address upon the work of that organization, his topic being, "The Canadian Sabbath of Yesterday, To-day and To-morrow." "The lapse from former standards of Sabbath observance and the chief reasons for Sabbath desecration at the present time were attributed to desire for gain and lust for pleasure."

"Whoever controls the masses, reigns," declared Archbishop Ireland recently. This explains why the Papacy is working so assiduously to-day to become, if not in fact, at least in the eyes of governments and rulers, the controller of the masses. She wants to reign.

Christianity versus National Profession

By W. N. Glenn

THE chief characteristic of Christianity, as exemplified by Christ himself, is unselfish love, self-denial for the sake of the needy. The Christianity of Christ makes no exception among classes or conditions of men. His promise is, "Him that cometh unto me, I will in no wise cast out." The criminal class was not excepted, as instanced by the thief on the cross. The further promise is, "Though your sins be as scarlet, they shall be as white as snow." The enemies of Christ complained that he received sinners, and ate with them. Nor is the most loathsome disease a barrier to admittance to his kingdom. He laid his hand on the leper, and made him welcome. The blind pauper was not ignored; the King of the real Christian nation ministered to his great need, and he became a naturalized citizen. The insane man of Gadara was restored to reason and made a missionary of the cross and of the kingdom.

The great contrast between this magnanimous course and the principles enunciated by this professed "Christian nation" is portrayed in the immigration law passed at the last session of Congress. Here are a few of the classes excluded from the benefits of our peculiar national "Christianity":

Epileptics, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with a loathsome or with a dangerous contagious disease; persons who have been convicted of a felony or other crime or misdemeanor involving moral turpitude; polygamists, anarchists, or persons who believe in or advocate the overthrow by force or violence of the government of the United States or of all government or of all forms of law, or the assassination of public officials; prostitutes, and persons who procure or attempt

to bring in prostitutes or women for the purpose of prostitution; those who have been, within one year from the date of the application for admission to the United States, deported as being under offers, solicitations, promises or agreements to perform labor or service of some kind therein; and also any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes.

This marked contrast is not cited for the purpose of criticizing the Government's policy. From a sanitary and social standpoint there are no doubt good reasons for this restriction and regulation. But does this immigration regulation harmonize with Christianity? What would be said of the Christian church that would make such distinctions between the various classes of men who should knock at its doors? "The earth is the Lord's, and the fulness thereof; the world, and they that dwell therein." Would Christianity, which is God's idea of equal rights, say that sick people and poor people shall not be allowed to better their condition by a change of locality? Would God say that people so overcrowded that they can hardly get enough to eat in one part of His earth shall not go to another part and settle in uninhabited localities? No; such regulations are inspired by the wisdom of man, and, like the regulations of every other worldly government, are designed for home benefit exclusively, regardless of the welfare of others. There is in it no recognition of the commandment, "Thou shalt love thy neighbor as thyself."

A civil government on the basis of this commandment would be of short duration in a sinful world. So we cannot condemn the rulers of earthly governments

because they do not accomplish impossibilities. To censure earthly rulers because they do not carry out the principles of Christianity in all the details of government is inconsistent and unreasonable. The people of this sinful world could not be governed by the law of God. It has been demonstrated, for nearly six thousand years, that "the carnal mind is enmity against God; for it is not subject to the law of God, neither indeed can be." Rom. 8:7.

If the Government finds that such immigration regulations are essential to the social and political well-being of the country, it is a proof that the world is so saturated with sin that a *Christian* government is impossible. To call any government a Christian government that resorts

to such unequal measures is to display an utter misconception of Christianity and of the function of civil government. Not until the Lord Himself again purifies the earth, according to His promise (2 Peter 3:5-13), will it be possible to conduct a Christian government upon it. All attempts of men to establish and administer such a government can end only in persecution and hypocrisy. So says all the history of the past, as also the spirit of the present.

The discrimination of our immigration laws, while possibly essential to the temporal prosperity of our own people, are a standing witness that this is *not* a Christian nation; nor can it be while such discriminations are in any sense essential to our national welfare.

*Three Powers and the Pope**

RECENT occurrences have served strongly to attract attention to the relations between the Vatican and the chief three powers of Europe. One of these latter, France, has long sustained peculiar relations to the Holy See as the recognized protector of Roman Catholic missions in various parts of the world. But in the last year or two the attitude of the French government toward the ecclesiastical communities has made some little rift within the lute. However friendly Leo XIII may be toward the French Republic, there is no question that many influential prelates at Rome are incensed against it, and would be glad to punish it by transferring all possible favor of the Church to some other power.

Just at this juncture it is interesting to observe the visits to the Vatican of the sovereigns of the only other powers in the

world that could replace France as the protector of missions. It may be that King Edward's visit had no direct political object; yet it was a particularly notable visit, as the first made to the Pope by an English sovereign for some centuries, and there is no reason to suppose that the Supreme Pontiff was not in some way reminded of the greatness of the British Empire, of its globe encircling extent, and of the exceptional ability of that empire to protect missionaries of all sorts; for a good many Roman Catholic missionaries go forth from Great Britain, and King Edward is sovereign over millions of Roman Catholic subjects.

The German Emperor's visit was far more spectacular than his uncle's, and may without injustice be suspected of considerable political intent. We are, indeed, told that the Emperor and the Pope discussed the matter of missionaries, and the former assured the latter of his readiness to serve as their protector—if any such assurance was needed after the in-

*The recent visits of the King of England and the Emperor of Germany to the Vatican have attracted considerable attention and caused much comment, as well they might. This is an editorial from the New York Tribune of May 5. An account of these visits will be given later.

cident of some years ago at Kiao-Chau. Our correspondent at Rome reports a belief among the informed that the Emperor is planning to use the power of the Roman Catholic Church for the creation of a great colonial empire in Africa and Asia. It would not be in the least surprising if that were true, and if the Emperor's visit to the Vatican had been designed to further that aim.

There might be some apparent incongruity in the playing of such a part by a Protestant power. Yet Germany is a Catholic as well as a Protestant power. As king of Prussia the Emperor maintains diplomatic relations with the Vat-

ican, and the Roman Catholic Church has political recognition in his empire. German influence is now paramount in Palestine and Syria, and is very great in China, in Africa and in the islands of the sea. There is little doubt that the "mailed fist" would be highly effective for the protection of missions in all heathen lands, and there is reason to suppose that recognition of such championship by the Vatican would be of material service to Germany in her schemes of colonial expansion. It seems to be a case in which mutual advantage is involved, and that is a circumstance that points toward fulfilment of design.

The Philadelphia Decision Again

WE present herewith that portion of Police Magistrate James E. Gorman's decision in the Philadelphia Sunday-law cases that was omitted in the report published four weeks ago. It deals with Ex-Judge Gordon's contention that the Sunday law, because of its religious character, is in conflict with that section of the Pennsylvania Bill of Rights which guarantees freedom of worship and liberty of conscience, and therefore unconstitutional. The quotations presented in this portion of the decision add to its interest. In order to read the following in its proper connection, get the report given in THE SENTINEL of April 16 and insert this at the point where the omission is made on page 248:

I am free to say if no judicial construction had been placed upon the act by the Supreme Court and Court of Quarter Sessions I would have considered the reasoning and logic of the argument of defendants' counsel so convincing as to be unanswerable, and would have adopted it as my opinion and judgment upon the law governing the cases before me. This act, perhaps more than any other, has inspired deeper research and more extended, if not always uniform and harmonious, exposition thereof on

the part of the judges than any other. I have, however, examined all the cases passed upon receiving judicial construction, and am bound to decide these cases in consonance with the law as laid down by the Supreme Court. It may be pertinent to add, however, that *the reasons given by different judges for reaching the same conclusion in upholding the constitutionality of the act were radically different in principle and in application.*

For instance, in the case of *Specht vs. Commonwealth*, Justice Bell, who delivered the opinion, supported the judgment of the court that the act was constitutional upon the principle that the act was passed only to afford society a day of rest, and not as an observance of a religious sentiment or a prohibition of the profanation of the Lord's day; while Judge Coulter, who concurred in the judgment of the court, dissented from the grounds assumed in the opinion, and held the act constitutional because it guarded the Christian Sabbath from profanation and prohibited work or worldly employment on the Lord's day, and not because of the mere usefulness of the day as a day of rest and cessation from worldly labor.

In considering the contention of the defendants that the act is unconstitutional because it contravenes Section 3 of Article I of the Bill of Rights, heretofore fully set forth, I might dismiss the subject by referring to *Commonwealth vs. Wolf*, 3 S. & R., 48, and *Specht vs. Commonwealth*, 8 Barr, 312, in both of which

cases the Supreme Court held the act constitutional, *but for totally different reasons*; but it is due the defendants in this case, who invoke the benefit of the guaranties of the Bill of Rights, to know the reasons for every judgment rendered or opinion given, hence I shall briefly refer to *Specht vs. Commonwealth* (*supra*), the only case construed by the Supreme Court in which argument worthy of the subject was made and almost substantially similar to that addressed to me.

In that case the record showed that one Specht, a member of the Seventh-day Baptist congregation, was convicted under the act of April 22, 1794, of performing worldly employment and business on Sunday. An appeal was taken to the Supreme Court and the constitutionality of the act was attacked. The counsel for the defendant argued that the act did—

control and interfere with the rights of conscience. It treats the first day of the week as a holy or sacred day; and it prohibits labor on that day, not for the purpose of giving rest to men as a mere civil regulation, but because it profanes the Lord's day. The act in question compels all to observe Sunday as a sacred day. To oblige men to refrain from labor out of regard to its holiness is to "control" their religious observance as much as if they were ordered to kneel before the altar of the images of the saints. It is not enough to say that the day of rest should be uniform among all. If it were a mere civil regulation there might be some reason in it, but then it would be made a day of recreation—of relaxation—and most probably such days would not come so frequently. I suppose it requires no other argument than reading the several acts upon this subject to prove that our legislation looks to enforcing the religious observance of the day. If our legislators can direct the people to stay at home quietly they can direct them to go to church, and if they can direct them to attend church they can indicate the church to be attended. In short, if they have any power over religious subjects, they have all power. Such power would be a perfect union of church and state, so much abhorred by the people of this Republic. It would inevitably lead to religious persecutions, and finally to civil and religious tyranny.

The doctrine that "the Christian religion is a part of the common law" is, I suppose, the foundation and justification of this act. That doctrine was promulgated in the worst times and by the worst men of a government that avowedly united church and state; in times when men were sent to the block or the stake on any frivolous charge of heresy. To deny transubstantiation or the supremacy of the Pope was a capital offense under one reign; to admit them was a capital offense under another. Men were executed in great numbers by the civil power for denying the real presence because it was held to be a part of the Christian

religion, and the Christian religion was a part of the municipal law. When the Protestants gained the ascendancy to believe in the real presence was contrary to the Christian religion, and therefore a violation of the law, and punishable by the secular arm. . . . As late as the nineteenth century this pernicious doctrine led Lord Eldon to decide that Unitarians may be punished as blasphemers at common law, and not treated as Christians.

How dangerous, therefore, is the apparently pious doctrine that the "Christian religion is a part of the common law." If it be true, all who disbelieve that religion are habitual breakers of the law.

These consequences of the doctrine were satisfactory to the English government when it originated. They enabled the tyrants of the fifteenth and sixteenth centuries to find a convenient excuse for sending to the block any one who became obnoxious to them. If such tyrant were a Roman Catholic, the heresy of the Reformation was sufficient; if he were a Protestant, adherence to the Church of Rome was equally so.

What else was it but the doctrine that the Christian religion was a part of the law, and to be enforced by the civil arm, that gave the Holy Inquisition such horrid force and placed the civil and religious liberty and the lives of nations of men at the mercy of the bloodiest power that ever inflicted misery upon the human race.

If this doctrine is to be the rule of action, where do you find its interpretation? Where are to be found adjudged decisions of what this law teaches, so that the people may escape the perils of its violation? Are they to be seen in the doings of the Council of Nice, or the Diet of Augsburg? are they in the bulls of Hildebrand, or the writings of Luther? in the rigid doctrines of Calvin, or the more liberal opinions of Wesley?

I think I may safely say that the constitutions of the United States and of Pennsylvania are founded on no religion, but on purely civil considerations, on the inalienable rights of man, one of which is that man shall not interfere with the rights of conscience.

I have quoted the argument fully because, like the argument of the defendants' counsel, it was the fullest, clearest and most exhaustive (indeed, it may be said the only) argument upon the subject ever presented to the Supreme Court, and substantially similar in thought to the one presented to me, and the decision in that case ought to control my judgment upon the question of the constitutionality of the act. The opinion of the court (delivered by Bell, J.) held—

but, impressed with the importance of preserving and protecting the unrestrained liberty of conscience guaranteed by the Constitution of the United States and of the several States, . . . and desirous of retrieving any error which, by possibility, might have been committed in

so grave an inquiry, we have given close attention to the ingenious argument addressed to us by the counsel of plaintiff in error, who, it is understood, represents a portion of our citizens belonging to a respectable Christian sect which claims and keeps the seventh day of the week as a true Sabbath. The conclusion at which we have arrived, after much reflection, is in consonance with that before announced by this court in the case alluded to (*Commonwealth vs. Wolf*).

And continuing:

Does the act of assembly in question infringe upon the natural right, or on the constitutional declaration which seeks to foster and protect it? It is insisted this question must receive an affirmative response, because, as it is said, the statute treats the first day of the week as a holy and sacred day and prohibits labor as a profanation of the Lord's day. And it is thus proved to be not a mere civil regulation to give rest to man, but an attempt to exalt by law the religious beliefs of certain sects over that of others.

Though it may have been a motive with the lawmakers to prohibit the profanation of a day regarded by them as sacred—and certainly there are expressions used in the statute that justify the conclusion—it is not perceived how this fact can vitally affect the question at issue. All agree that to the well being of society periods of rest are absolutely necessary. To be productive of the required advantage these periods must recur at stated intervals, so that the mass of which the community is composed may enjoy a respite from labor at the same time. They may be established by common consent, or, as is conceded, the legislative power of the State may, without impropriety, interfere to fix the time of their stated return, and enforce obedience to the direction. When this happens some one day must be selected, and it has been said the round of the week presents none which, being preferred, might not be regarded as favoring some one of the numerous religious sects into which mankind are divided. In a Christian community where a very large majority of the people celebrate the first day of the week as their chosen period of rest from labor, it is not surprising that that day should have received the legislative sanction; and as it is also devoted to religious observance we are prepared to estimate the reason why the statute should speak of it as the Lord's day and denominate the infraction of its legalized rest a profanation. Yet this does not change the character of the enactment. It is still, essentially, a civil regulation made for the government of man as a member of society, and obedience to it may properly be enforced by penal sanctions. To say that one of the objects of the legislature was to assert the sanctity of the particular day selected is to say nothing in proof of the unconstitutionality of the act, unless in this the religious conscience of others has been offended and their rights invaded.

But it is argued, with apparent conviction of its truth, that to compel men to refrain from labor solely from regard to the implied holiness of a particular day is, within the meaning of

the Constitution, to "control" religious observances and "to interfere" with and constrain the consciences of those who honestly disbelieve the asserted sanctity of the selected day. We cannot assent to this.

It will be observed that the court did not meet the question raised in this case of the constitutionality of the act if it was passed to compel men to refrain from labor on Sunday solely from regard to the sacredness or holiness of the day. We are left to conjecture what the fate of the act might have been if what *the history of the legislation which ended in this act and the utterance of the Supreme Court in other and later cases upon the same subject make plain: That the act of 1794 was passed for the sole purpose of observing Sunday in deference to the religious sentiment of a majority of the Christians, and to prevent its profanation.*

A slight reference to the acts upon this subject prior to that of 1794 may not be out of place. Before William Penn obtained his charter, the Statute of 29 Charles II. c. 7, had been enacted, the third section of which provided "that no tradesman, artificer, workman, laborer or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary calling upon the Lord's day or any part thereof, works of necessity and charity only excepted." Provided, etc., etc. This statute, enacted in 1667, and brought over by Penn, was evidently the model of our Pennsylvania legislation, but it will be observed that its prohibition was limited to labor in the ordinary callings of men. The first legislation had here on this subject was in 1705 by the provincial legislature, and throws much light upon the motives which actuated its enactment, *not as a day of rest and relaxation, but as an observance of Sunday as a sacred and religious day.* The act provides in its preamble:

To the end that all people within this province may with greater freedom devote themselves to religious and pious exercises, be it enacted . . . that according to the example of the primitive Christians, and for the ease of the nation, every first day of the week, commonly called Sunday, all the people shall abstain from toil and labor that . . . they may the better dispose themselves to read and hear the Holy Scriptures of truth at home, and frequent such meetings of religious worship abroad as may best suit their respective persuasions. And that no tradesman, artificer, workman, laborer or other person whatsoever shall do or exercise any worldly business or work of their ordinary calling on the first day or any part thereof (works of necessity and charity only excepted), etc., etc.

This act was superseded by that of September 25, 1786, which is substantially the same in title and terms, so far as relates to Sunday, as the act of 1794, and in both of these acts "any worldly employment or business whatsoever," instead of "business or work of their ordinary calling," is the thing forbidden. It will be observed that with this slight change the act of 1794 is in almost precisely the same language as that of the statute of Charles II, passed in 1667, and that first passed in Pennsylvania in 1705, and leaves no doubt that they were passed out of regard for and in deference to the prevailing religious sentiment of a majority of the Christians of the State, and not as was decided in *Specht vs. Commonwealth*.

However, no matter how much any one may differ with the reasoning of the judges or the conclusion of the court in that case, it remains substantially as the law laid down by the highest judicial authority in the State, and, applying the principle of "*Stare decisis*," I must consider the contention of the defendants upon this

point against them, and decline to find as a matter of law that the act does not contravene the third section of Article I of the Constitution.

So Magistrate Gorman makes it clear that he holds the Sunday law to be constitutional merely on the authority of the State supreme court, and not because he agrees with the reasoning or conclusion of that court in the matter. The way in which he handles the matter indicates that he agrees thoroughly with the contention that the law is unconstitutional because of its religious character, and that he would have so decided had not the supreme court ruled otherwise. We intended to comment at greater length upon the decision, but it is necessary to postpone further comment until later.

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.

On April 16 a bill providing for the Sunday closing of theatres throughout the State was pending in the upper house of the Michigan legislature.



On March 28 "all dealers in wares and merchandise" in Marlin, Texas, were notified by a constable "that hereafter the laws regulating the sale of goods on Sunday will be enforced."



It was reported from La Crosse, Wis., on April 10 that "the trades unions have invoked the law to enforce Sunday closing and promise a campaign that will close La Crosse up tight and enforce the blue laws."



Three members of the Bayside Athletic Club, of Bayonne, N. J., were arrested

on May 3 for playing baseball on Sunday. "Ex-Judge Thomas F. Noonan, their counsel, says the club has as much right to play baseball on Sunday on its own grounds as any man has to play billiards in his own home." A test case was to be made of the matter.



At Elizabeth, N. J., on May 5, "Supreme Court Justice Van Sickle charged the grand jury on Sunday baseball." After "directing the public prosecutor to observe whether the law was violated in this respect" on the following Sunday, "he told the jurors that if it were he would on Monday ask them to indict the heads of the police department and every policeman whose duty it is to see that the law is not violated." "Baseball enthusiasts assert that if Sunday ball is

disallowed they will see to it that clothing and other stores that are usually open on that day are made to close."



Strict enforcement of the Sunday law "for the first time" was reported from Pensacola, Fla., on May 3.

Hacks were not allowed on the streets. Livery stables were compelled to close. Soda water and confectionery stands did no business, and only the street-cars and railroad trains were permitted to run, the county solicitor announcing that for the present he would not advise interference with them, as two sections of the State law conflict. The only Sunday morning newspaper in the city was served with a notice to cease work at midnight. The order was obeyed, the paper being circulated before 12 o'clock. Large numbers, especially among the poor, were compelled to go without meat, bread, and ice. On the wharves of the Louisville and Nashville Railroad, where hundreds of men are employed every Sunday, all work was suspended.



At the close of a performance before a crowded house in Council Bluffs, Iowa, on the evening of March 29, fifteen actors were arrested "for violation of the Sunday law" on informations filed by members of the W. C. T. U., which organization has for some time been fighting Sunday theatrical performances. The actors were held on bail of \$50 each, and at the hearing on the 31st were discharged. On April 12 the members of another company, presenting "Romeo and Juliet," were arrested after the performance, "the charge being 'breaking the Sabbath.'" "The information was sworn out by Rev. Hoover," who "is supposed to be working in conjunction with the W. C. T. U." The members of the company were to "be arraigned in Justice Carson's court."



Immediately following the fining in Philadelphia on April 27 of the manager of the restaurant at the Broad Street

Station and the man in charge of the cigar stand at the Reading Terminal for selling cigars on Sunday, it was reported that the Pennsylvania Railroad had decided to make a test case of the first and the Union News Company of the second. Its assistant general solicitor was to handle the matter for the railroad company and an attorney for the news company was to "join in contesting the law." But a later report says the railroad company "has reconsidered its intention of taking an appeal with a view to testing the blue laws." "The railroad's attorneys declined to state why this step was taken, nor would they say what action they would take in the event of future arrests for similar offenses."



The Springfield *Republican* evidently has a Sunday-enforcement advocate as correspondent at Windsor Locks, Conn. Under date of April 25 he wrote thus concerning the "hard problem" which he says the people of that place "are beginning to realize that they have in the matter of open stores on Sunday":

The public here has been patient and long-suffering in this matter. The proprietors of stores have repaid this generosity by taking every possible advantage of it, until now the stores open on Sunday have become so numerous that they have proved a nuisance to the better class of citizens, who believe in the observance of law, and order. In the first place, keeping stores open Sunday is a direct violation of the public statutes, that say in unmistakable terms:

Every person who shall do any business or labor, except works of necessity and mercy, or keep open any shop, warehouse or any manufacturing or mechanical establishment, or expose any property for sale, shall be fined.

Little notice has been given to this extract from the statutes. The fruit stores, when their number was small, kept open Sundays without any authority, but kept within such bounds that the public took no offense and all was well. Now, however, matters have approached a crisis. The fruit stores have increased to six in number, while there are two drug stores open all day, and the lunch wagon also goes

full blast on Sunday. There is an excuse for the drug stores being open for a part of the day, but there is absolutely no excuse for the other stores. The stores that once were fruit stores have added to their stock in trade so that now they carry a line almost as complete as any grocery store. The latter, however, would not think of doing business on Sunday, and the so-called "fruit stores" have, therefore, an unfair advantage over them. The chief attraction of the "fruit stores" on Sunday is the line of cigars and tobacco, almost as complete as that of any tobacco store. Where the fruit stores derive their authority for keeping open what is practically a tobacco store is hard to discover. Their existence as Sunday institutions is simply the result of public tolerance, and there are now unmistakable signs that the tolerance is near an end. The better class of citizens are complaining in vigorous terms of the Sunday violations. They are alarmed at the rapid and continued growth in size and number of "fruit stores." They say with justice that the main street will soon have nothing

but "fruit stores," and that Sunday will be more disregarded than it is in New York City. If the practise of Sunday violation continues, the lovers of one day of rest and cessation from public business will get up a petition to have the licenses of the stores in question forfeited altogether. The authorities of the town ought to heed this warning note of justified public discontent, and should make strenuous efforts to see that Sunday is observed by "fruit stores" as well as other stores. The public tolerance has been strained to the breaking point.

This makes quite clear what it is about which the people who are so disturbed by these open stores on Sunday in Windsor Locks are concerned. The thing is "Sunday violation," not law violation. "The lovers of one day of rest and cessation from public business" are disturbed because Sunday is "disregarded" and not "observed" by the stores described.

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