

The Sentinel

OF CHRISTIAN LIBERTY

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NO. 30



Civic righteousness cannot be promoted by the enforcement of religion.

The fact that the Sunday laws cannot and should not be literally enforced is reason enough why they should not exist.

Affairs which bring about conference between Government officials as such and church officials and representatives as such, bring about incipient union of church and state.

The Government and its officials as such should have nothing to do with church affairs; and no church and its representatives as such should have anything to do with governmental affairs.

The statute, if literally construed, is still harmonious with those times when under contemporaneous laws four Quakers were hanged on Boston Common; but it is somewhat out of joint with the ideas of the year 1903.

—See page 475.

Beaumont, Texas, June 22.—For selling peanuts on Sunday, John Raino, an itinerant peanut vendor, was today fined \$31.50 by Justice of the Peace B. M. Pope, and in default of payment of the same WAS REMANDED TO THE COUNTY ROAD FOR A PERIOD OF SIXTY-FIVE DAYS.—Press Dispatch. (On June 7 the president of the "Sunday League of America" made several "eloquent and convincing" speeches in Beaumont "upon the necessity of the observance of the Sabbath by men, cities, and nations." This case is one of the results.)

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A Persistent Rumor Again Appears

Again the idea that the President of the United States is interesting himself in securing from the Vatican "cardinalate honors" for Archbishop Ireland has appeared in the press. And the "story" this time is in some respects more definite and detailed than ever. The Brooklyn *Eagle* has a correspondent in Rome who writes under the *nom de plume* of "Romulus." In a letter dated June 7, which was published in the *Eagle* of June 21, he said:

A fact now occurring in the Eternal City is a determined attempt to make use of the favors of the Holy See to promote, and, it is hoped, compass, the ultimate triumph of the Republican candidate in the coming Presidential election. In this view a prominent Republican politician and lawyer of New York, an ardent admirer of Archbishop John Ireland and personal friend of President Roosevelt, is now in Rome, bearer of introductory letters from the Pauline prelate, on an assured mission on behalf of the Republican cause to induce the Holy Father to raise to cardinalate honors the Archbishop of St. Paul, who, as price of this indirect pressure, is to exert all his influence to secure to the Republican party the vote of the vast following he is held to sway, the long coveted "red hat" to be the recompense of his efforts in that sense.... Within the past month two other persons, Senator Scott and General Stone, have, it is stated, been in Rome on similar errands in favor of the above-named Western prelate. This third intermediary was presented to Cardinal Rampolla, who, naturally, received him courteously, as did likewise Cardinal Satolli, he bringing commendatory letters from American sources. Both cardinals, in homage, doubtless, to the amiable duplicity of Italian diplomacy, are held to have comforted him

with vague hopes of ulterior success, as also hints that possibly a direct appeal in that sense from President Roosevelt might meet with due consideration.

"This move," said the correspondent, "is clearly understood as wholly in political and party interests, those of the church and of religion having no bearing in the premises." He regarded its success as "decidedly dubious," saying that "those most deeply in the king's secrets represent the Vatican as fairly disgusted and wearied with these continually reiterated schemes to force the hand of the Sovereign Pontiff" in behalf of Archbishop Ireland's cardinalate ambition, and that "when it be remembered that in days gone by Rome turned a deaf ear to the tacit request of President Lincoln for a cardinal's hat for the "Great Archbishop" Hughes, it is more than improbable that she will be moved from her ordinary rule of action by the wishes of persons of minor mental caliber and world-wide importance." A request direct from the President himself would no doubt be regarded as coming from a person of sufficient "mental caliber and world-wide importance" to merit consideration at the Vatican, and there is no doubt that this is exactly what the Vatican would be greatly pleased to have come out of this matter. And is it true that President Lincoln did what he is here represented to have done? We do not believe it. The day following the publication of this communication from Rome a dispatch to the *Eagle* from Washington stated that it had "attracted

a great deal of attention here among politicians of both parties and members and officials of the Catholic Church," but that all were "reticent when approached with a request for a statement on the subject." "Public men, as a rule," it was stated, "object to giving interviews on questions concerning the attitude of the church [the Catholic Church]." But on the strength of what could be gathered it was stated that "Washington puts little faith in the story that friends of President Roosevelt are working to secure the promotion of Archbishop Ireland in return for the latter's influence in favor of the election of President Roosevelt." This particular story may itself be a piece of politics, but in view of much that might be presented what it avows is not altogether improbable. Archbishop Ireland has sustained very intimate, and, in our view, improper, relations with both the present and the former national administrations, and the idea that in return for political services rendered by him in his capacity as a Roman Catholic leader a request, direct or indirect, was to be made to the Vatican by the President of the United States for his appointment as cardinal has been reiterated in the press too long and denied too weakly to be without some substantial foundation. In this dispatch from Washington of which we speak occurred these statements:

It is remembered here that on several occasions during the McKinley administration Archbishop Ireland was seen leaving the White House long after midnight, after being in conference with the President for several hours at a time. It is understood that in certain church work requiring financial aid Archbishop Ireland was helped out by some New York Republicans.

The matter referred to in this last statement must be that of the financial support of the Catholic Church in Cuba immediately following the change from Spanish to American sovereignty, which

change of course interfered with the accustomed division of the public revenues with the church. In October, 1898, the Baltimore *American* published a communication from its Washington bureau in which it was stated that as the result of "numerous conferences with Cardinal Gibbons and Archbishop Ireland on the subject," it was the "determination of President McKinley that the Catholic churches [in Cuba] shall be kept open, and that the public worship shall be amply provided for," and that "to this end sufficient money will be advanced by the Government to support the Catholic Church." Whether or not this utterly un-American and unconstitutional project in the interests of the Catholic Church was carried through, the country was never informed. Although the communication referred to caused some comment, as well it might, there was never any denial from any authoritative source of the truth of what it affirmed. There was simply no subsequent public information regarding the matter. But if this was the matter in which "Archbishop Ireland was helped out by some New York Republicans" "in certain church work requiring financial aid," then it must be that the thing was carried through. But even if it was another matter entirely it was none the less vicious and unconstitutional. In either case financial aid was secured from the Government for the Catholic Church, and that through the efforts of ecclesiastics, or an ecclesiastic, and with the assistance of politicians and officials. Whether or not there is any truth in this late story from Rome, it is very suggestive of what is coming if things continue as they have been going for some years. More and more are politicians deferring to papal influence, and we may expect that influence to play a larger and larger part in the politics of the country. It is not at all improbable that the time is near

when Presidential candidates will count the favor of Rome as their greatest political asset. There are not lacking indications that this favor is now rated very high in relation to the Presidency and is being assiduously courted in view of candidacy for that office.



**The Jews Hold to
the Sabbath**

A question that has been to the front in Jewish ranks in recent years is that of sanctioning the transfer of the Sabbath services from the seventh to the first day of the week. Its appearance is the result, it seems, of the failure of a large proportion of the Jews to observe the seventh-day Sabbath and their practical substitution of Sunday observance instead, and the willingness of some Jewish leaders to alter the principles of Judaism to accord with this practise. At the Central Conference of American Rabbis at New Orleans last summer a committee was appointed "to consider the ethical and economical principles underlying the Sabbath, and whether the holding of Sunday services was likely to lead to schism or was otherwise injurious to Judaism or Jewish religious interests." This committee rendered its report at the recent meeting of the conference in Detroit, and among other things said that "a transfer of Sabbath to Sunday, however much opposed by sentiment, presents to the student of history no element of danger that the fundamental traits of the Jewish faith might be affected by such a transfer, or that the solidarity of the people of Israel might be disturbed." The committee recommended "reference of this all-important question" to an authoritative body to be hereafter established, but it was insisted by the chairman, Dr. Silverman, that the conference should "declare itself in unmistakable terms on this Sabbath question." After a prolonged debate the conference by a vote of twenty-

three to nine declared itself "in favor of maintaining the historical Sabbath as a fundamental institution of Judaism, and exerting every effort to improve its observance." A resolution to the same effect was adopted at the convention of the Orthodox Jewish Congregations of the United States and Canada in New York on June 21. This body viewed "with deep regret that men calling themselves Jews should advocate such a plan" as that proposed by some members of the Central Conference of Rabbis. The *American Israelite* says the declaration of the conference at Detroit "expresses the overwhelming sense of the majority of the American rabbinate," and that "we are not only not ready to commend a Sunday Sabbath, but we cannot afford to justify it for a possible future when it might seem expedient." We are glad that this is to remain the position of the Jews, for one reason because their influence and opposition is needed against Sunday enforcement. This influence and opposition would be lost somewhat should they give up the Sabbath for Sunday. The stand taken is the one that commands the respect of outside observers. The *New York Tribune* says that "to the disinterested spectator the Jews are to be congratulated on the outcome of the controversy," and the *New York Christian Advocate* says that "after suffering persecution for so many years the Jews would make themselves ridiculous in the eyes of the whole world if they should change the day. It is true that many of the Jews do not keep Saturday, but the theory of changing principles with the change of the people is simply a theory for destruction and not for growth or regeneration." If the Jews are going to hold to any Sabbath at all they should certainly hold to the seventh-day Sabbath, for that is the Sabbath of the Fourth Commandment, and no other is.

**A Praiseworthy
Exception**

Our observation is that as a general thing "law and order society" is another name for Sunday enforcement organization. To most of those that have come to our notice it would appear that "law" means Sunday legislation and "order" Sunday observance and enforcement. We were therefore not only pleased but surprised to find the following in the official report of the May business meeting of the board of directors of the New York State Law and Order Society, which report was published as the leading editorial article in the May *State Sentinel*, the society's organ:

The secretary was called upon for an explanation in reference to a telegram which was sent by him to the editor-in-chief of the *New York World*, in response to one from the editor which requested that he give the Society's idea in reference to Magistrate Duell's decision regarding Sunday baseball. The secretary stated that in reply he had said in a telegram of 250 words that the State Law and Order Society was committed to "the enforcement of all *just* laws and the enactment of such measures as would be beneficial to the community at large." A Sunday law, he explained, could hardly be called a *just* law, as it was an abridgment of religious liberty. In order to find if a law was just according to the American standard it would be necessary to consult the Constitution of the United States. In that document we are informed that a man has a right to worship God according to the dictates of his own conscience. The Constitution also states that no form of religion shall be recognized by law, and as the keeping of Sunday was always a religious act, it was therefore in violation of the Constitution to enact a law to compel its observance. To say that it was for the purpose of compelling rest upon a civil rest-day was only begging the question, as it is a well-known fact that Sunday laws would not be upon the statute books unless it was for the demand made for their enactment by various religious bodies. To deny this is futile.

It is generally supposed that the divine authority for Sunday observance is based upon the Fourth Commandment, but this is false, as Sunday is the first day of the week, while

the Fourth Commandment required the observance of the *seventh day*, which is Saturday. Friday evening until Saturday evening—sunset to sunset—is the *seventh day* according to Scripture. The first day runs from Saturday evening sunset until Sunday evening sunset. Sunday, therefore, is a part of two Scriptural days, and the whole of *none*. This is a fact which is seldom considered by the Sunday advocates. If anybody regards the first day as holy, they do not so observe if they work after sunset upon Saturday. I can prove my position from Scripture. "From even unto even shall ye celebrate your Sabbath." Lev. 23:32. In Gen. 1:5, 8, 13, 19, 23, and 31; Lev. 23:31; Neh. 13:19; Matt. 8:16; Mark 1:32; Luke 4:30, we find Scriptures to support what I have said. I will make any person a present of \$25 if they can find any verse in the Bible which says that the day begins at midnight. I am safe in making the offer because such a verse cannot be found.

We, therefore, see that a law to compel rest upon a religious day would be illegal; and, also, that if it was legal that the Scriptural first day of the week is not comprehended in the Sunday law, and to Scripture we must go for authority for religious acts, especially if we desire to bind the observance of the act upon our fellowmen. We can easily see that if we break the first six or seven hours of the first day of the week (on Saturday evening) that we might as well break the whole day, as St. James has well said, that he who shall "offend in one point is guilty of all." James 2:10.

Now in this great city of New York we have Jews, Seventh-day Baptists, Seventh-day Adventists and other people who observe the *seventh day* (Friday evening until Saturday evening) as holy time according to the Fourth Commandment, as found in the 20th chapter of Exodus. Now it is most unfair to impose upon these Hebrews and Christians the burden of observing Sunday, especially when no command to keep Sunday holy can be found in the New Testament. The Rev. Father Enright, of Kansas City, Mo., offers \$1,000 to any person who can find such a command. Nobody as yet has claimed the money.

Therefore, gentlemen of the board, I took the ground that as this society is committed only to the enforcement of *just* laws, the decision of Magistrate Duell in reference to Sunday baseball met with our approval, inasmuch as it partially nullified what we must believe from the evidence presented to be an *unjust* law. Sin is described in the Scriptures as "the

transgression of the law." As Sunday baseball playing transgresses no law of God, it is, therefore, *not a sin*, and it would be tyrannical to forbid a seventh-day observer or the observer of any other day to do that which it is not a sin to do. I trust, gentlemen, that I have made my position clear.

After the remarks by the secretary Mr. Rogers said: "I heartily agree with the stand the secretary has taken in defense of civil and religious liberty. I have no doubt that my colleagues have been greatly enlightened upon the salient features of this absorbing question, and that they are agreeable to the position taken by the secretary." No words of dissent were noted.

The secretary of the New York State Law and Order Society is evidently informed on the Sabbath and Sunday question, and deserves all honor for boldly and plainly stating the truth and taking the position that he has with regard to Sunday enforcement. His name is R. S. Aitken. The society's headquarters are at No. 34 Park Row, New York City, and its chief purpose seems to be that of looking after the enforcement of laws pertaining to the liquor traffic. We trust that no word of dissent will be heard in the future on its board from the position that seems to have been unanimously approved and adopted, and that this attitude of the organization will have an effect upon similar organizations throughout the country, many of which seem to be in ignorance of the fact that order cannot be promoted by injustice and that the enforcement of a religious observance by law is not a sort of law enforcement that will do any good.

Roman Catholic Archbishop Farley of New York and Mr. John D. Crimmins, "who is prominent in Catholic Church affairs," dined with President Roosevelt and some half dozen other guests, among them Secretary Root, at Oyster Bay on July 13. "Prior to luncheon the President, Secretary Root, Archbishop Farley and Mr. Crimmins are under-

stood to have discussed at considerable length several questions involving the Catholic Church and the Government, more especially Catholic conditions in the Philippines. Mr. Crimmins is very prominent among the laity, and his advice in the matters under discussion is said to have been sought by both the President and Archbishop." If the matters were church affairs it would be interesting to know what the President and Secretary had to do with them; and if they were governmental affairs it would be interesting to know what the Archbishop and Mr. Crimmins as a man "prominent in Catholic Church affairs" had to do with them. But they were matters "involving the Catholic Church and the Government." There is altogether too much of this involving in these days. The way is being prepared for a permanent involving of the Catholic Church and the Government.

According to the *Utica (N. Y.) Observer* "members of the milk peddlers' union in Syracuse would like to discontinue peddling milk on Sundays, but as all the milk vendors in the city do not belong to the union, they dare not attempt it by order of the union. They would like to see it prohibited by law, arguing that butchers, barbers, grocers and saloonkeepers are prohibited by statute from doing business on Sunday." And thus the Sunday-enforcement infection spreads from business to business. There is no law preventing the members of the Syracuse milk peddlers' union, or anybody else who wants to, from discontinuing the peddling of milk on Sunday, and there should be no law prohibiting anybody who wants to from peddling milk on Sunday.

"Civic Righteousness or the Observance of the Sabbath" was the topic dwelt

upon at two largely-attended services in the First Primitive Methodist Church in Jamestown, N. Y., on July 7. The phrasing of the topic is very appropriate, for it is evident that to most of the religious leaders who are talking about "civic righteousness" the sum and substance of the matter is comprehended in "the observance of the Sabbath," by which they mean the observance and enforcement of the Sunday laws. "At the close of each service a rising vote was given against Sunday baseball playing and open saloons," and it was declared by the pastor, Rev. Samuel Darlington, that "the sheriff is not doing his duty in permitting such things."

On June 23 President Roosevelt designated two men to be employed by the Government as special counsel in the prosecution of offenders in the Postoffice Department. One of these two lawyers is Charles J. Bonaparte, of Baltimore, a leading and active Roman Catholic. He has many times been referred to in the Catholic press as the foremost Roman Catholic layman in the United States.—It is announced that the President will make an address at the annual council of the "Holy Name Society," a Roman Catholic fraternity that was recently affiliated with the National Federation of Catholic Societies, which is to be held on the grounds of "St. Dominic's" in Oyster Bay, L. I., on July 26. In addition to 5,000 members of the organization it is expected also that "a large representation of Knights of Columbus and other Catholic organizations" will be present.

The pastor of the First Presbyterian Church at Oyster Bay, L. I., on July 12 "offered a prayer for the recovery of the Pope, and prayed also that the Catholic Church might be led into preaching a purer gospel." It would be well if all the other pastors who are eulogizing the

Pope would give some thought to this latter point. The opinion seems to be becoming established that Catholicism is just as pure a form of the gospel as any other.

In condemning the ruling of Solicitor Hallowell and upholding the Sunday law the *Crookston (Mass.) Times* says: "The spirit which evolved the law in question is to be found in its pristine energy and austerity in the modern enactments against fishing and gunning on Sunday." This is no doubt true, but it is high time that that spirit was passing away, for it is the spirit of religion by force and coercion.

Speaking of Sunday laws and their enforcement the *Truth Seeker* (Free-thought) asserts that "no one except the Freethinkers is objecting to these laws and outrages on principle." Can none but Freethinkers act from principle? THE SENTINEL has been opposing Sunday enforcement on principle for eighteen years.

Mr. Hiram Syar, of Wilburton, I. T., the seventh-day observer whose arrest, fining, and rearrest for Sunday work was reported four weeks ago, has been "cleared" in the second case. Two attorneys, Messrs. Gordan and Young, voluntarily defended him, "not for a fee, but from the standpoint of justice."

"Under the convoy of the Rev. Wilbur F. Crafts of the Reform Bureau," James M. Thoburn, Methodist Episcopal "Missionary Bishop for Southern Asia," appeared by appointment before Secretary of War Root on July 9 "to argue in opposition to the licensing of the opium traffic in the Philippines."

"Whatever one man does to improve his own conduct improves the whole world."

A Massachusetts Solicitor on the Sunday Law

With Special Reference to the Prohibition Against "Sport"

SINCE writing our note of last week regarding the matter we have been favored by Mr. James M. Hallowell, city solicitor of Medford, Mass., with a copy of the opinion recently prepared by him in response to a request from the mayor of that city for advice as to his duty in view of a resolution of the city council directing him (the mayor) to suppress the playing of golf on Sunday on the links of the Medford Golf Club. Aside from the ruling as to the legality of Sunday golf playing, which has given it great notoriety, the opinion contains much that will be of interest to all interested in the Sunday-law question, and that makes it a very worthy addition to the literature on this subject. We are glad to present a good portion of it:

Legislature Has Attempted to Improve Upon Fourth Commandment

The Biblical command to the sons of men is: "Remember the Sabbath day, to keep it holy. Six days shalt thou labor, and do all thy work; but the seventh day is the Sabbath of the Lord thy God; in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates." (Exodus, ch. XX: 8, 9, 10.) The legislature has seen fit to depart, however, from the admonitions of the ten commandments, and in Revised Laws, c. 98 sec. 3, it has attempted to improve upon the Mosaic law by granting special legislative dispensation to many persons engaged in supplying what are supposed to be the conveniences if not the necessities of life. Among the essentials which it deems of such benign influence as to exempt them from the Biblical prohibition are the retail sale of tobacco in all its forms, and the sale and delivery of newspapers. Under this legislative sanction I find that yellow journals of the most pronounced type, permeated with scandal and sensationalism, are every Sunday distributed and sold by Medford newsboys throughout the length and breadth of our city; while these boys and others are by law provided with an abundance of time to read and digest the stuff

by being forbidden to occupy their leisure time on that day by taking part in any other work, sport, game or play. An equally wise provision of the common law has likewise seen fit to grant unto the Lord's day the special privilege of being the only day in the week upon which one may cheat another in a horse trade and retain his plunder; for a learned judge, since elevated to the Supreme Court of the United States, has said in a comparatively recent case which is still law: "No action can be maintained for a deceit practised in an exchange of horses on the Lord's day." (Hall vs. Corcoran, 107 Mass. 251.)

The legislature has not, however, viewed the ordinary pastimes of the ordinary man with such favor. The law in respect to these reads as follows (Revised Laws, ch. 98 s. 2):

Whoever, on the Lord's day, keeps open his shop, warehouse or workhouse, or *does any manner of labor, business or work, except works of necessity and charity, or takes part in any sport, game, play or public diversion, except a concert of sacred music or an entertainment given by a religious or charitable society the proceeds of which, if any, are to be devoted exclusively to a charitable or religious purpose*, shall be punished by a fine of not more than fifty dollars for each offense; and the proprietor, manager or person in charge of such game, sport, play or public diversion, except as aforesaid, shall be punished by a fine of not less than fifty nor more than five hundred dollars for each offense.

This statute may have different meanings, depending upon the construction given it by the courts. I find upon examination of the cases, however, that, although the courts have placed a construction upon the "labor, business or work" clause, there has been no pertinent construction as yet in any adjudicated case upon that part of the statute which uses the words "takes part in any sport, game, play or public diversion." I am forced, therefore, to examine the statute *de novo*, giving due consideration to the date of its enactment, the conditions attendant upon its passage, the evils it was intended to remedy, its applicability to present times, and any other circumstances which may throw light upon its true meaning.

Prohibition Against Work—Formerly More Liberal

That part of the statute now in force which prohibits a person from taking part in any

manner of labor, business or work except works of necessity and charity, was enacted in the year 1782. Previous to 1782 the law forbidding labor on the Sabbath day was (with the exception of the special exceptions allowed in section 3 of the present law) more liberal than it is to-day. All the acts of the Province for the due observance of the Lord's day were in so far as working was concerned framed so as to prohibit persons from doing only "any labor, business or work of their ordinary calling." Under these enactments a person might lawfully do any act on the Sabbath however secular or temporal, provided it was not included within the class of dealings or transactions which might properly be deemed to belong to his ordinary and usual employment on week days. The statute of 1782, however, amended the old law and prohibited a still wider range of work by omitting from the statute the clause which limited the prohibition to the "ordinary callings of persons" and by extending it so as to prohibit "any manner of labor, business or work except works of necessity and charity." The meaning of this statute is obvious. As already said, the statute of 1782 is still law.

The question as to what sort of labor is to be considered a work of necessity or charity under the statute has been frequently adjudicated by the courts, and it is beyond the scope of this opinion to give all the decisions thereon. It suffices to say that the words have been given their ordinary meaning, the difficulty being to apply them always correctly to the facts. The most instructive case that I know of in this connection is that of the Commonwealth *vs.* Josselyn, 97 Mass. 411, where a man was arrested under the statute because he hoed in his garden back of his house on the Lord's day. The defendant was a shoemaker who was obliged to work at his trade for six days out of seven. On a Sunday morning about eight o'clock he hoed a few potato hills in the garden back of his house which were "unfinished and in very bad condition and suffering for want of hoeing," and at the trial his counsel contended that this was a work of necessity and did not therefore come within the prohibition of the statute. It was stated by the court, however, and this statement was afterwards approved by the full bench of the Supreme Judicial Court, that "if the jury was satisfied that the defendant performed the labor on the Sunday in question as alleged, he was liable to the penalty of the statute, although he might have been unable to complete the cultiva-

tion of his garden during the other six days of the week in consequence of having been occupied at his trade or other engagement or employment." A conviction followed. In another case it was held that the gathering of some seaweed at about ten o'clock on the evening of the Lord's day on a beach at a considerable distance from any house or public road was not a work of necessity although the seaweed would probably be floated away beyond reach unless then gathered. (Commonwealth *vs.* Sampson, 97 Mass. 407.)

As regards present violations of the above portion of the statute I have not undertaken to gather instances of the same; but I have no doubt that if it is the desire of the common council to enforce the law they can find violations *ad infinitum*.

Prohibition Against Sport—Its History

Leaving the portion of the law which deals with labor, I now turn to that part which prohibits a person from taking part in any sport, game or play. This law is of still more ancient origin. It first appears in a statute of the year 1653 of the Colonial Laws, which prohibited any one from "uncivilly walking in the streets and fields, travelling from town to town, going on shipboard, frequenting Common Houses and other places to Drink, Sport or otherwise to misspend that precious time." During the next forty years several amendments were passed increasing the penalties, and in 1692 it was enacted that "no tradesman, artificer, laborer, or other person whatsoever, shall, upon the land or water, do or exercise any labour, business or work of their ordinary callings nor use any game, sport, play or recreation on the Lord's day or any part thereof (works of necessity and charity only excepted)." In the year 1836 the law was again amended by striking out the words "nor use" and the words "or recreation," and inserting in the place of the former the words "take part in," so that the statute read as follows:

No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business or work, except only works of necessity and charity, or be present at any dancing, or any public diversion, show, or entertainment, or take part in any sport, game or play on the Lord's day.

In a later amendment the words "public diversion" were added to the amusements in which a person was forbidden to take part, and still later (Statutes 1895, c. 432 s. 2) a clause was inserted by which the proprietor, manager or person in charge of such game,

sport, play or public diversion was included within the terms of the statute.

Statute Harmonious with Times when Quakers Were Hanged—Enforcement Would Revolutionize Present Observance of Sunday

As regards violations of this portion of the statute, if the act is to be construed and enforced literally it will revolutionize the present observance of the Sabbath day. Before the omission of the word "recreation" from the statute a man committed a criminal offense who read a book other than a religious one upon the Lord's day; likewise if he smoked, or indulged in any other form of recreation. By the omission of the word "recreation," however, the extreme severity of the law was mitigated. The statute, nevertheless, if literally construed, is still harmonious with those times when under contemporaneous laws four Quakers were hanged on Boston Common; but it is somewhat out of joint with the ideas of the year 1903. The word "sport" is found embodied in it at its inception, and it still retains its place. It has a wider meaning than the word "game," and has evidently been kept in the statute in order to include everything in the nature of sport which does not fall within the meaning of the word "game" or "play." Its meaning must be obvious, and if the statute is to be literally construed, the regularity, frequency and openness with which it is everywhere violated must be equally obvious. Skating is one of our recognized winter sports, and is practised during the winter on all our ponds upon the Sabbath day. Of the many bicyclists who pass through our city on the Lord's day probably not one in fifty is a traveler, the others being out merely for a day's sport. Of the large number of automobilists who on the Sabbath day occupy our streets, probably a large majority are not travelers, but are merely out for a day's sport. Yachting is a summer sport, and so likewise are rowing and canoeing; and they are all practised of a Sunday upon the Mystic Lakes. It may even be open to argument that driving for pleasure is a sport. The latter is certainly a greater violation of the ten commandments than the other forms of diversion above set forth, for in addition to the pleasure of those who are driving it necessitates work by the horse pulling the carriage and also by the manservant who harnesses the horse. As to yachting, boating and driving, Rev. Laws, c. 98 s. 3, excepts from the pro-

hibition of the law the "letting of horses and carriages and of yachts and boats" upon the Sabbath day, and this in my opinion makes it legal also to use a horse, carriage, yacht, or boat which has been hired. But the statute does not except the right by the owners to use their own private horses, carriages, yachts, or boats when these are used for other purposes than simply of travel. This on its face is an absurdity, but it is no more absurd than many other provisions of the law, some of which I have already pointed out. The statute controls. And at all events it can be said in favor of the statute that in most cases Sunday affords the only opportunity for those who must hire, while those who own are usually in such circumstances that the use of these private luxuries can be indulged in during the other days of the week.

Statute Now Dead if Literally Construed

It can readily be seen, therefore, from the above statement of the law both as to labor and sport, that if it is to be literally construed and rigidly enforced the police can find hundreds of violations occurring openly and regularly upon every Sabbath day. At about the same time as the original enactment of this statute there was another law passed making it a criminal offense to travel upon the Lord's day. The latter statute was not repealed until 1887, although for years prior to its repeal it was never enforced. Another statute which for years prior to its repeal likewise remained a dead letter was one by which the statutory provisions relating to the Lord's day applied also to Saturday night, this statute also not being repealed until 1887. The present statute if construed literally seems to be as dead as were the latter two.

Partial Enforcement Is Persecution

The common council has requested your honor to require the chief of police to ascertain whether the Sabbath laws are broken by the golf players of this city, and if so to take measures to stop the violation. . . . I have therefore considered this question with the desire as far as possible to carry out the wishes of the council. One great difficulty, however, meets me at the outset. The resolve singles out from all the people of the city those citizens who practise the recreation of golf and requests you to attack them alone. I cannot believe that the council upon sober second thought would desire your honor to pursue such a course; and if they should I

should advise your honor to disregard the request. I cannot assume for a moment, however, that the ten gentlemen who voted in favor of the resolve desire you to persecute any particular persons or class of persons within our city; and the literal enforcement of this statute against a few, leaving all other law-breakers to continue their course with impunity, would in my judgment be persecution. I prefer to believe that if they desire a rigid enforcement of the law they desire that it shall be enforced equally and impartially. The social position, the poverty or the wealth of the offender is not to be considered. There is one law for all, and if literally enforced it must be enforced against all alike.

This leads me to the question as to what your official duty is in regard to enforcing the provisions of the present law. You are bound by your oath of office to enforce the laws, and in respect to this you have no discretion. On the other hand in regard to that part of the statute which forbids a person from taking part upon the Sabbath day in any sport, game, play or public diversion, no decision of the Supreme Court has yet been given interpreting the real meaning of the statute, and until this occurs you must by yourself or your solicitor interpret the law according to the best of your ability.

Here followed the portion of the opinion quoted last week. Many misinterpretations and misrepresentations of his ruling have been made, the city solicitor wrote, and the mayor made public, a subsequent communication in which he said:

**Literal Construction Would Prohibit Golf, also
Bicycling, Skating, Automobiling, Etc., Etc.**

The statute makes it illegal for any one to "take part in any sport, game, play or public diversion." This phrase is susceptible of two interpretations. You asked me whether, if strictly construed, it would prohibit the sports of skating, bicycling, canoeing, rowing, automobiling, sailing, riding and driving. My answer was, "Yes, with the possible exception of the latter two; and provided, in the case of yachting or boating, that the yachts or boats are not hired ones." With the possible exception of riding and driving these are all summer or winter sports, and the statute prohibits taking part in any sport. This literal construction would likewise prohibit golf.

On the other hand, I find that the law is

susceptible of a more liberal interpretation.

The statute does not make it a criminal offense to play a game, or, using the words which were used in the statute of 1653, "to sport." It forbids only taking part in a sport, game, play or public diversion. In order to be illegal under the statute two acts must occur: (1) The person must be taking part; (2) the act in which he is taking part must be a sport, game, play or public diversion as distinguished from "recreation."

Applying this reasoning to golf indulged in upon private grounds, if a person does this as a recreation by skillfully hitting a ball around the field and at the same time refrains from any contest or match, . . . I fail to see how the statute prohibits this any more than it does bicycling, skating, automobiling, sailing, rowing or canoeing. They all involve skill and physical exercise. They must all stand or fall together.

And everything else in the way of exercise, recreation, sport, labor, work or business that is consistent with the rights which it is the function of the civil law to guard should also stand or fall with them in this matter. While it is proper to point out and to take advantage of the inconsistencies of Sunday legislation, it is not by ingenious interpretations and constructions calculated to adapt it to present customs that its real evil can be reached and removed. It is hardly likely that such a course will lessen its complications and absurdities. It should be literally enforced or literally abolished. The value of such opinions and rulings as this of the city solicitor of Medford is that they do in a way tend toward the abolition of such legislation, for the application of reason and common sense to such legislation cannot logically stop short of the true position that nothing should be prohibited on Sunday that is not prohibited on other days and that is not in itself an invasion of the rights of others. And that of course leaves no place for Sunday legislation. The solicitor is right when he says that a partial enforcement of the law is persecution; but a law which, for

instance, permits the playing of golf on Sunday, but prohibits the hoeing of potatoes, which permits some things and prohibits other things equally legitimate and consistent with the rights which it is the proper business of the *civil* law to guard,

is a partial, unjust measure, and its enforcement necessarily works injustice and persecution. The fact that the Sunday law cannot and should not be literally enforced is reason enough why it should not exist.

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.

Mr. K. Klieman, a shopkeeper, was found guilty of "violating the Sunday-closing ordinance" by a jury in Justice Eisenmenger's court in Schenectady, N. Y., on July 1. He was fined \$10 and costs.



According to the *Chicago Chronicle* of July 7 four persons, Samuel Ginsberg, Meyer Lozerwitz, H. Frank, and Oscar Repke, were fined \$5 and costs each in Justice Dooley's court in that city on the preceding day for "attempting to sell horses on Sunday in violation of a city ordinance."



By order of the mayor and chief of police the operation of a toboggan slide at Belmont St. and Lake Ave., Worcester, Mass., has been discontinued. With the co-operation of "some prominent ministers and officers of religious societies" a protest was filed with the mayor by the assistant secretary of the Y. M. C. A., who "believed that the Sabbath should not be broken by the running of the toboggan."



This is from the *New York Tribune* of July 13:

One of the most surprised men in Manhattan last night was William Ackerman, of Jersey City. Ackerman is a driver for Swift & Co. With a big double load of beef and pork, which, he said, was worth \$1,800, he drove off a Chambers St. ferryboat last even-

ing and was at once arrested by Patrolman Lewis, and taken to the Leonard St. station. He was charged with violation of Section 267 of the Penal Code, the offense being the transportation of merchandise through the public streets on Sunday. Ackerman was locked up, and the load of beef and pork, which had just arrived from the West in a refrigerator car, stood in the street in front of the station until another employee of the company appeared. It was taken back to Jersey City.



On June 29 a dealer in refreshments in Johnsonburg, Pa., was arraigned before a justice for Sunday selling. He "pleaded guilty and paid his fine, which is fixed by statute at \$4." Although "several attempts have been made by the churches to close up business places on Sunday," Johnsonburg "has for several years been a wide open town so far as cigar, confectionery, fruit and like stores go." But now a movement is on "between the Sunday-closing merchants and the clerks' union to close all places of business on the Lord's day," and notice has been "served on all business men that those who perform worldly employment hereafter on Sunday will be prosecuted to the full extent of the law."



Rev. Fred A. Leitch, a Methodist minister of Old Orchard, Me., has "declared his intention of enforcing the old blue laws relative to the observance of the Lord's day." On June 29 he "called at

various business places and notified the proprietors that if they continued to do business on Sunday he should have them brought before the court." The movement "includes news stands, drug stores, grocery, provision, and fish stores, photograph galleries, and in fact every place engaged in business; the scenic railway, bowling alleys, billiard halls and every other place of amusement must be closed on the Lord's day." The place is a leading summer resort, and it has been customary for years during the summer months "to keep open the places of business seven days a week." Persons interested declare that "the running of steam and trolley cars is as much of a violation of the old blue laws as selling wares," and that "if the laws are enforced in part they must be to the letter." "The outcome of the movement is being watched with interest."



A recommendation recently by a committee of the Worcester, Mass., city council in favor of band concerts on Sunday called forth instant and what were no doubt effective protests from some of the clergy and church people. On the morning of July 5 the pastor of Plymouth Church "denounced the suggestion that the Worcester city government should make an appropriation for Sunday band concerts," saying "it would only be the letting in of the thin wedge that ultimately would make Worcester just as bad as Paris or Havana so far as the sanctity of Sunday is concerned." He "caught the sympathy of his congregation," and "made an earnest appeal to the men of the church, by every means in their power, to use their influence against such a proposition, and urged the members of the city government in his church to do the same." On the same day the pastor of the Old South Church "roundly denounced Sunday band concerts as tending to destroy the American

Sabbath and letting down the bars for the introduction of the Continental, open Sunday." "The words of the pastor produced such an effect upon the young people of the church that in the evening they drew up this protest, addressed to and to be forwarded to the city council":

The Christian Endeavor Society of Old South Church do hereby enter this protest against the granting of a license to the Worcester Brass Band, or any other such organization, to hold band concerts on the Lord's Day in the city of Worcester.

It was expected that the proposition would be defeated at the meeting of the city council the next evening. A similar proposition was defeated last year "as the result of the protest of the ministerial league." The proposition this time came "after the ministerial league had begun its summer vacation, and there was no opportunity for concerted action on the part of the clergy."



There was unusual activity on the part of the police in New York on Sunday, July 12, "in seeing that the excise law was observed." There were 162 arrests in all, said to have been "the greatest number of excise arrests on one Sunday in several years." There were 109 arrests on the preceding Sunday.—On July 13 at Long Island City, L. I., two saloonmen were held on \$1,000 each for examination on the charge of Sunday selling.—Two saloonmen were fined \$47 each at Beaumont, Texas, on July 6 for selling liquor on the preceding day.—After nineteen hours' deliberation a jury at Whatcom, Wash., on June 23 found one Smith guilty on "the charge of selling drinks in his saloon on Sunday." This is said to be the first conviction in that State "for the violation of the Sunday-closing law" against saloons.—Three persons connected with an East Wingate, Ohio, saloon were convicted by a jury on June 29 on the charge of violating the Sunday-closing law. The accused were in the

saloon from 6 to 10 a. m., and claimed that they were there and the saloon was open for the purpose of "cleaning up." The court held that this was no defense, that the law prohibited opening for any purpose. The ruling is regarded as one of "far-reaching importance as a precedent in the matter of enforcing the Sunday-closing law."—Mack Clanahan, a saloonkeeper in Birmingham, Ala., was arrested on July 6 "on a charge of violating the Sunday law."—According to a report from

Mountain Lake, Minn., the proprietors of saloons in that place appeared by invitation before the village council on June 30, and on acknowledgment from all of them that they "had sold intoxicating drinks over the bars on Sundays," "a resolution was passed asking them to make a deposit of \$30 each, and promising them that this amount will be returned to them at the end of the year in case they are not again guilty of this offense in the meantime."

In commenting on the ruling of City Solicitor Hallowell of Medford regarding Sunday golf, the *Boston Herald* has this to say with reference to "our statutes concerning the manner in which the Lord's day must be observed":

No one pretends that these Massachusetts laws are strictly enforced, nor can it be maintained that, when judged of as a whole, they are consistent with themselves. The spirit that animated the original drafters of these regulations, and the public opinion which sustained these old lawmakers in passing these statutes, have to a great extent passed away. The amendments to the restrictions which have been made in more recent years would not have been tolerated by the early lawmakers, and they are entirely out of harmony with the original regulations, which, however narrow they may now appear to have been, were when first made at least consistent. But as changes have taken place in social conditions and public opinion, these restrictions in certain specific instances have first been winked at, then ignored, and by degrees common practise has become so entirely at odds with statutory requirements that the legislature has felt compelled, out of a decent regard for the law, to bring it in some degree into conformity with public usage. This is a change which is constantly going on, the law in this respect resting a long way in the rear.

The fear of the so-called religious vote has prevented a majority in the Massachusetts legislature from bringing the Sunday restrictive laws more nearly into conformity with the practises, and possibly wishes, of much the

larger part of our people; but because there is for this reason a species of political tyranny exercised in the matter of maintaining archaic regulations, a popular rebuke is administered by acting in rationally unobjectionable matters as if such restrictions did not exist.

And so it is because of a species of political tyranny exercised by a religious minority that the restrictions of the archaic Sunday laws are retained, and which makes it necessary for civil officials from time to time to make ridiculous interpretations and constructions in order to free the people in some degree from the restrictions of a religious statute. It is a pity that the Sunday laws themselves have not passed away with the spirit and public opinion which caused their original enactment. When it becomes proper to act as if certain restrictions did not exist, it is time such restrictions did not exist. But, unfortunately, the fact is that the spirit and public opinion which caused the enactment of Sunday laws originally is still very much alive in some quarters, and seems to be gaining strength in these days.



It is not the opponents but the advocates of sumptuary and unenforceable laws who are promoters of disrespect for law.

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