

Sabbath Laws

In the

United States.

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Sabbath laws in the United
States

SABBATH LAWS
IN THE
UNITED STATES.

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By R. C. WYLIE, D. D.

With an introduction by the
REV. S. F. SCOVEL, D. D.

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RICHARD CAMERON WYLIE, D. D.

INTRODUCTION.

It has been a matter of great satisfaction to me that the author of this compilation and analysis of the Sabbath Laws in the United States was found willing, amid the pressing cares of a city pastorate, to undertake the task of preparing the work now given to the press. In these introductory words I must be confined to such considerations as may go to prove the proposition that this book is worthy the attention of the public, and of the whole public, as well as that of the bench, the bar and the pulpit.

1. It is unique and without precedent, so far as I know, in its comprehensiveness.

2. It has been carefully and even laboriously prepared with diligent comparisons of legal texts and discriminating choice of the most important material in the various decisions and situations.

3. It is of equal interest to men of all shades of opinion because it presents the maximum of facts accompanied with only the minimum of the reasoning which belongs to the pronounced views of the respected author and those whom he represents. It is, in this respect, not much more than a "catalogue raisonné." Its main function is to supply much-needed information not otherwise to be conveniently found.

4. It is of interest to every citizen thoughtful enough to desire knowledge of that which underlies our civilization. Nothing has been more characteristic of our institutions from the beginning, and nothing has attracted more concentrated and sustained attention than our "American Sabbath." Books of observation by mere excursionists as well as books of profound study of our institutions have taken notice of this feature of our

national life. It is just now published, for example, that the day of rest on the fleet of Commodore Perry, including the piping of all hands to divine worship and the exclusion of the Japanese themselves who would have visited the ships on that day, made a profound impression on that wonderful people then just opening eyes and minds to Occidental civilization.

When the abrogation of the slender requirement for Sabbath rest was under discussion in France, less than a decade after the third Republic had been established, a Catholic Deputy appealed to the Chamber to remember that the nations whose commercial competition they most feared—the United States being one of them—were the Sabbath-keeping nations. It has not only been visible in its results, but fundamental in its implications that we have had three Sabbath-rest-securing classes of enactments, Colonial, Commonwealth and Federal. It has been the demonstration of our character as a Christian nation, and has given us the right to insist upon our privilege of Sabbath observance by sea and land wherever our flag floats.

5. This book shows the foundation in common sentiment and customs and in common law, as well as in statute law, of a civil institution which has had a controlling influence in our whole national development. It is not too much to say that our Sabbath laws were introduced in the period of our highest national ideals, and have been operative through the noblest periods of our national history. Can it be denied by any—even by those most addicted to the reproachful terms, “puritanical,” “blue laws”—that the American Sabbath has conserved if not created the national *character* on its best side by law-abiding, self-control and serious view of the citizen’s responsibilities? And are there any who fail to perceive that our need of more of this best side of our national character is now most urgent, not to say distressing? Does anyone doubt that neglect of these laws and the partial loss of the seriousness which is the condition of free institutions, have been co-incident? A life which will not cease at any time, wholly, its eager pursuit of gain, and will only yield partially in order to pursue pleasure, must necessarily fail in providing the elements of steadiness and consideration of high moral ideas and vocations, which are indispensable to self-gov-

ernment. Our Sabbath laws are largely efficient in preserving for us what remains of our most important national traits. Faithfully observed, they would mightily help to repair our losses.

6. This book must appeal with great force to the consideration of the workingmen, whether as individuals or in their organizations. It is a veritable arsenal for them in urging their most reasonable demands concerning the conditions of labor—conditions that affect our whole national life most profoundly. Here is a vast army, each man of which may well become a soldier in the cause of Sunday rest. Overstrained brains and muscles and fatigued attention in such exacting employment as railroading, for example, are foes to the security of the whole community as well as that of the individual victims. And in our railroads alone there are said to be one million and a half of men (and many of them skilled men of the highest class and character), forced to work on the Sabbath. The tide is ever rising and sweeping new classes of men into employment and incidentally disturbing more people with temptations to spend a homeless, "wide-open" Sabbath. Sabbath work is driving conscientious men out of some occupations where conscience is much needed, or driving such men into guilty compromises which must end disastrously for them.

The great truth has never been disputed which was thus formulated years ago in the Geneva Conference: "*The law of rest for all is the condition of rest for any.*" Note the force of competition in the matter of Sunday excursions. So many railroad authorities have said: "We do not prefer Sunday excursions;" and some have said: "We will not have them, they are no better financially than morally." And yet, while there are not wanting cheering hopes of better things, almost all the roads are crying out: "We must because the others do." The law of rest for "all" disobeyed, destroys the hope of rest for "any." Agitation in other countries takes up the question at this point and Sunday laws are proposed in France and Spain. When the discussion above mentioned, took place in France the argument was advanced: "You have been carefully seeking methods to shorten the hours of the working day, and yet you are proposing to take away all the protection the laborer has for one-seventh of

his whole time." Will not the workingmen, now such keen students of all social conditions, see the "coign of vantage" they have in pressing the argument for a rest day? Here the whole people are with them. Here is an oppression at which they may justly rebel. They need but to stand solidly by their real friends in this matter and a greater relief will come to their class, as a whole, than has been thought possible, save by a few. Physical relief alone, coming in the way in which science has already shown it can best come, i. e., by a weekly rest equalizing the daily limitation of vital force, is an argument no man can withstand who cares for the well-being of his fellowmen or the progress of society.

7. The book should gain the attention of fathers and mothers and all who properly estimate the home as the real matrix of every advanced civilization. More and more social science bears testimony to the central position and the inexpressibly important relations of the home. Sociologists consider it an epitome of all social life. Philanthropists claim that the dependent classes can only be prophylactically treated through better homes and the penologists concur as to the criminal class. But who does not know that the Sabbath day is the sanctuary of home. Sabbath laws make it possible for thousands and beckon toward it the millions. By so much as home means all that is best and brightest for men, women and children, by so much must the Sabbath laws be valued and respected.

8. And these laws, so thoroughly supported where they exist by the highest judicial decisions, are a perpetual plea for their own enforcement. Against all the pretences and weaknesses of accommodating local politics, and against all that "tyranny of the executive" which nullifies the declarations of the legislatures and the decisions of the Courts, the laws themselves are the most effective protest. They guard such rights to rest, to home joys, to intellectual improvement, to moral uplift and to religious elevation (surest force to all the rest), that simply to know them cannot but help in every struggle to enforce them. If this book is read by all those who ought to read it, the majesty of the law would be more easily vindicated and punished, and a moral indignation would not be wanting.

9. And when defense is desired against the common objection to all moral legislation that such laws interfere with personal liberty or liberty of conscience, all that is necessary is to find in this volume what these laws really are, what end they are meant to subserve, how they have grown out from our deepest life and how they have been vindicated at the very point of this objection by the eminent authorities here cited. The contention has been met in every conceivable shape and our Sabbath laws have been judicially held to be perfectly consistent with our bills of rights and with every foundation of personal liberty secured by our free institutions. Nothing could demonstrate so fully the timeliness and importance of this book as the urging of this objection. The answer given therein is full and complete and to trace and collate the various methods of its expression is a sound education in that in which many thousands of our fellow-citizens most sorely need education, viz., the just limitations of personal liberty.

10. Moreover, it will surprise some faint-hearted friends of a true rest day to note how large the area covered by the laws which conserve it really is, and how soundly established those laws appear to be. "If the foundations be destroyed, what can the righteous do?" But the foundations are not destroyed. In this volume (as also in the like brochure on the Bible in the American schools, which ought to be read far more widely) Dr. Wylie has proved that we remain in that possession which is "nine points of the law." Could the demonstration of these two treatises touch at once the hearts and minds of all the classes in all our country which ought to be intensely interested, there would arise a wave of earnest sentiment and hopeful endeavor which would go far to vitalize and make increasingly efficient this whole beneficent legislation. The situation is not desperate, though its dangers may not be ignored. Under the conditions of the revived interest which this book ought to aid largely in creating, the retention, improvement and enforcement of our Sabbath laws is in nowise impossible. Doubtless, individual study and thought and consecration, ~~together with~~ associated effort of all kinds, and wise and patient endeavor are needed; but they will appear and they will succeed.

II. Yet, while I believe this will be, we must not forget what may be. The calamity of the loss of these laws would be far greater than even the disrespect and disobedience with which they are now treated. And they cannot always be disregarded without being either so modified as to compromise their value or being entirely abrogated. Entering the World's Conference on the Sabbath question held some years ago at Basel, I saw and heard an aged Swiss pastor, who with imploring gesture and voice uttered the prayer: "O Herr, gieb du uns wieder deinen heiligen tag." Once and again it was uttered in a passionate fervor of supplication. Already we begin in this favored land to utter the petition, which would be a despairing cry if uttered to any other than God.

But what shall we not be prompted to beg if still farther loss of these laws themselves shall show that the heart of the people is turned away from the truth, and that the initiative of the hostiles (the powerful association of gain and pleasure), together with the indifference of the Christian forces, have gained the victory! It would be a deplorable condition. According to the genius of our race we would go from the top to the bottom and thus of our race we will go from the top to the bottom and the lost the lost Sabbath would mean more immorality, ungodliness, and anarchy than elsewhere.

May the justly founded hope to which this book leads be realized, and the dark shadow of a great misfortune and the deep stain of a national sin be averted.

SYLVESTER F. SCOVEL.

Wooster, Ohio, July 1, 1905.

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CHAPTER I.

HISTORY OF OUR SABBATH LAWS.

The first legislation within the territory now occupied by the United States was by the Assembly of Virginia in 1619. It contained a provision with respect to the proper observance of the Sabbath.

In the Plymouth Colony, the Massachusetts Bay Colony and some others no Sabbath laws were enacted for a number of years after their settlement, the common law of England on this matter being considered sufficient.

Gradually however it became evident that in this as well as in many other matters, it was the better plan to embody in statutory enactments the principles of the common law in such a form as to meet the requirements of local conditions. Sabbath laws were therefore placed at an early date on the statute books of all the Colonies. It is significant that these laws grew out of the common or unwritten law, and were not forced upon the Colonies by any extraneous power either civil or ecclesiastical.

At the time of the outbreak of the Revolutionary War the law known as the 29th. Charles II. Chapter VII., enacted in 1676, was the Sabbath law in force in all the American Colonies. In legal circles it is regarded as the immediate historical antecedent of all our present Sabbath legislation. The study of this legislation should be introduced by an investigation of the Sabbath law of Charles II. Its principal clauses are herewith presented.

"I. (1) For the better observance and keeping holy the Lord's day, commonly called Sunday: (2) be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords, spiritual and temporal, and of the Commons, in this present Parliament as-

sembled, and by the authority of the same, That all the laws enacted and in force concerning the observation of the Lord's day, and repairing to the church thereon, be carefully put in execution; (3) and that all and every person and persons whatsoever, shall every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; (4) and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings, upon the Lord's day, or any part thereof (works of necessity and charity only excepted); (5) and that every person being of the age of fourteen years or upwards, offending in the premises, shall, for every such offense, forfeit the sum of five shillings; (6) and that no person or persons whatsoever, shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth, or exposed to sale.

"II. And it is further enacted, That no drover, horse-courser, waggoner, butcher, higgler, they or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's day or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offense; (2) and that no person or persons shall use, employ, or travel upon the Lord's day with any boat, wherry, lighter or barge, except it be on extraordinary occasion, to be allowed by some justice of the peace of the county, or some head-officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed; (3) upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offense. . . .

"III. Provided, that nothing in this act contained shall extend to the prohibiting of dressing meats in families, or dressing or selling of meat in inns, cook-shops, victualing houses, for such as otherwise can not be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon." . . .

"VI. Provided also, That no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment or decree (except in cases of treason, felony or breach of the peace) but that the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever; (2) and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree at all." (*Statutes at Large*, vol. VIII., Cap. VII., pp. 412-14, 1763).

This with a few supplementary sections is still the Sabbath law of England.

Legislation for the protection of the first day of the week as a day of rest may be traced back, through the history of the various nations into which the Roman Empire was divided, to the edict of Constantine, issued in the year 321 A. D., which is often called the first "Sunday law." One very important point of difference is to be noted however between English and American legislation and legislation in Continental Europe. In the latter there is but seldom any reference to a divine warrant for Sabbath laws, while Sabbath laws in England, especially from the Reformation period, and in America from the planting of the first Colonies, have been based upon the law of God. From this it follows that in our country no other day than the first day of the week is regarded as possessing a sacred character. We have a few holidays, but no other holy day than the Lord's day. It follows likewise that the day thus recognized among us as holy and protected by law from desecration is a vastly different thing from a "Continental Sunday."

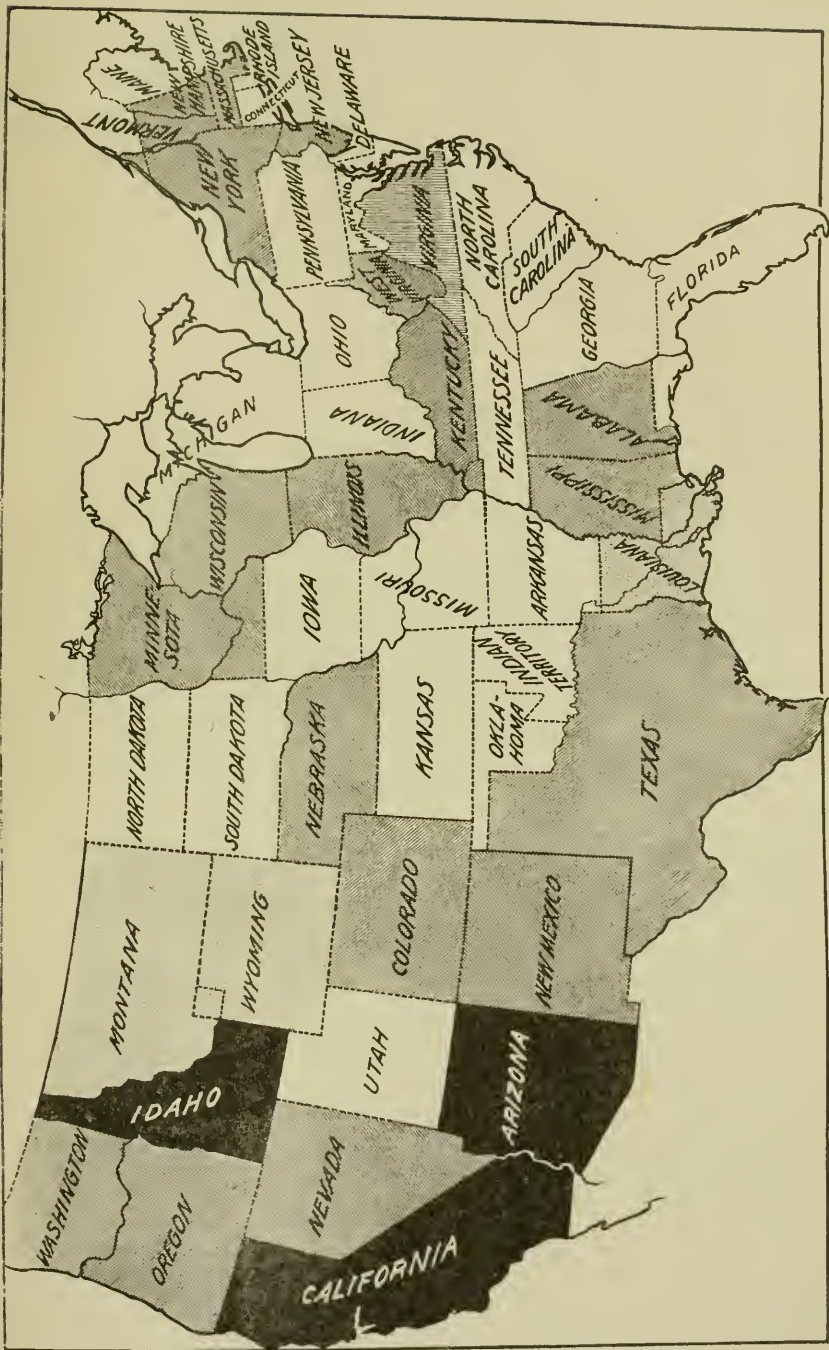
In a few of our States Sabbath laws are still modeled after the act of Charles II. in forbidding "worldly labor or business or work," in one's ordinary calling only. It was soon perceived in the most of the States that such a prohibition was wholly inadequate, and wrought injustice. If two persons, for example, are engaged in the same worldly labor, should it be the ordinary calling of the one and not of the other, the first is a violator of the law and the second is not. At an early period therefore in nearly all the States these words, "ordinary calling," were omitted and the prohibition made to extend to all worldly labor, business and work, whether of one's ordinary calling or not.

In more recent years there has been a marked and growing tendency to depart from the former strictness of Sabbath legislation. In some States there has developed a pronounced antagonism to all laws protecting the first day of the week except such as would make it a mere holiday. A struggle is therefore in progress throughout our country between the friends and foes of Sabbath laws. Efforts are made in State legislatures to secure the modification or repeal of these laws. Efforts are likewise made in civil courts to secure judicial opinions giving them a liberal interpretation or even declaring them unconstitutional.

The changes brought about in our Sabbath laws in the ways thus indicated have resulted in the division of our States into five distinct classes: (1) Those in which the law is still patterned after the act of Charles II. (2) Those that have adopted a general prohibitory statute with few exceptions to its application. (3) Those with laws containing general prohibitory clauses weakened by numerous exceptions. (4) Those with laws containing prohibitory clauses inherently weak, their scope being limited. (5) Those that have no Sabbath laws.

In this discussion the States will be classified according to this plan. The Sabbath law of each State will be given in full according to the latest code. The figures on the right of the names of the States indicate, not the year of the enactment of the law, but the year of the publication of the code from which the law is quoted. The law will be followed by extracts from the principal judicial opinions upholding its constitutionality and giving its proper interpretation.

It is believed that such an investigation will answer many questions raised concerning our Sabbath laws, remove much prejudice against them, and multiply the forces arrayed in their defense.



Map showing the character of the Sabbath laws in the United States. (1)—Twenty-one States and two Territories, embracing classes one and two, which have the strongest laws, are white. (2)—Two States and one Territory, composing class five, in which there are no Sabbath laws, are black. (3)—Twenty-two States and one Territory, embracing classes three and four, having laws weakened by numerous exceptions, or inherently weak, are shaded. Of these Louisiana, Montana and Wyoming appear with dotted surfaces, having laws weaker than all others of these classes.

CHAPTER II.

LEGISLATION RETAINING THE PRINCIPLE OF THE ENGLISH LAW.

The States confining the prohibition of "worldly labor or business or work" on the Lord's day to occupations of one's "ordinary calling" are not numerous. It was doubtless perceived at an early period that the prohibition in this form is inadequate and inequitable. Laws with this limiting clause however are not as weak as they might appear to be. Many things not included in labor, business or work can be wholly prohibited in perfect harmony with this clause. It will be found that the law in each of the States of this class is quite strong in some other sections designed to suppress many of the most objectionable forms of Sabbath desecration.

GEORGIA. (1895).

Article 6 of the Tenth Division of the Penal Code of Georgia relates to keeping open tippling-houses on the Sabbath. Article 13 of the same division contains the general Sabbath law. The important sections are the following:

"390. (4535). Any person who shall be guilty of open lewdness, or any notorious act of public indecency, tending to debauch the morals, or of keeping open tippling-houses on the Sabbath day, or Sabbath night, shall be guilty of a misdemeanor." (Vol. III. p. 119).

"420. (4578). If any freight train, excursion train or other train than the regular trains run for the carrying of mails or passengers shall be run on any railroad in this State on the Sabbath day, the superintendent of transportation of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable to indictment in each County through which such train shall pass, and shall be punished as for a misdemeanor.

"The foregoing provision shall not extend to—

"2. A train which has one or more cars loaded with live stock, and which is delayed beyond schedule time. Such train shall not be required to lay over on the line of road during Sunday, but may run on to the point where, by due course of shipment or consignment, the next stock pen on the route may be, where said animals may be fed and watered, according to the facilities usually offered for such transportation.

"2. A freight train running over a road on Saturday night, if the time of its arrival at destination according to the schedule by which it started on the trip, be not later than eight o'clock Sunday morning.

"3. Special fruit, melon and vegetable trains, the cars of which contain no other freight except perishable fruits, melons, vegetables, fresh fish, oysters, fresh meats, live stock, and other perishable goods of a like character, and which trains shall be loaded and leave the station from which they start in this State before the hour of midnight on Saturday night previous to the Sunday on which they are operated.

"No company shall be compelled to run the trains mentioned in this paragraph, and all freight-trains or cars thus loaded and coming into this State may run to any point of destination in this State or continue their run through the State on Sunday.

"422. (4579). Any person who shall pursue his business or the work of his ordinary calling on the Lord's day, works of necessity and charity only excepted, shall be guilty of a misdemeanor.

"423. (4580). Any person who shall hunt any kind of game with gun or dogs or both, on the Sabbath day, shall be guilty of a misdemeanor.

"424. (4581). Any person who shall bathe in a stream or pond of water on the Sabbath day, in view of a road or passway, leading to or from a house of religious worship, shall be guilty of a misdemeanor." (Vol. III. pp. 127-129).

Sabbath desecration is declared by these sections to be a misdemeanor. The following is the penalty for all misdemeanors.

"1039. Every crime declared to be a misdemeanor is punishable by a fine not to exceed one thousand dollars, imprisonment not to exceed six months, to work in the chain-gang on the public works, or on such other works as the County authorities may employ the chain-gang, not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge." (Vol. III. p. 292).

Numerous cases have come before the Supreme Court of the State requiring opinions both as to the constitutionality and the proper interpretation of the law.

In *Neal and others v. Crew*, in a few vigorous sentences, the basis of the law in the divine will and its value to society were maintained. The Court said:

"All agree that to the well-being of society, stated intervals of

rest are absolutely necessary. We should not tempt mankind therefore, to yield obedience to municipal arrangements which overlook and disregard the moral law of the great Jehovah, who, from the smoking top of Mount Sinai proclaimed to all the world, 'Remember the Sabbath day to keep it holy; in it thou shalt not do any work.' (12 Ga. 93, 1852).

In the case of *Karwisch v. the Mayor and Council of Atlanta*, in which *Karwisch* had been convicted before the Mayor and Council of Atlanta for keeping open his store on the Sabbath, the Supreme Court, to which the case came on the refusal of the Court below to grant a certiorari, declared as follows:

"The law fixes the day recognized as the Sabbath day all over Christendom, and that day, by Divine injunction, is to be kept holy—'on it thou shalt do no work.' The Christian Sabbath is a civil institution, older than our government, and respected as a day of rest by our constitution, and the regulation of its observance as a civil institution has always been considered to be, and is, within the power of the Legislature as much as any regulations and laws, having for their object the preservation of good morals and the peace and good order of society." (44 Ga. 205, 1871).

In *Bass v. Irwin* it was held that the act of receiving a verdict on the Sabbath is illegal. The Court said:

"In every form,—by all the different authorities of this State—by its organic law—its civil and criminal code, and by every judicial decision upon the question, the Sabbath day is regarded as the Lord's day, and it is protected from violation by so many guards that the Courts should not be allowed to invade its sanctity, and in so doing make a record to be read by all men in all time." (49 Ga. 436, 1873).

In the case of *Salter et al. v. Smith* the Supreme Court sustained the act of taking bail and discharging a prisoner on the Lord's day, as not a violation of the law. The following language was used:

"Independently of the moral obligation resting upon all men to obey the law of the Lord, and to observe, by abstaining from all secular business, the day set apart for His worship throughout Christendom, the rest of one day in seven from all physical and mental labor, is a great conservative, refreshing, invigorating means, designed by Almighty wisdom for the preservation of health and the recreation of our mental and bodily faculties." (55 Ga. 244, 1875).

In the case of *Weldon et al. v. Colquitt*, Governor, the Supreme Court said:

"In Georgia, as in England, Sunday is a holy day. The Code denominates it the Lord's day, and as the Lord's day all Courts and magistrates are to consider it. This they are to do as a matter of mere law, irrespective of religious obligation and duty. On it there can be

performed no judicial labor which does not come fairly within the description of works of necessity or charity. Sunday is no day for trial and judgment, being by the common law, *dies non juridicus*. The mere act of receiving a verdict on Sunday, which the jury are ready to deliver, is illegal. 49 Ga., 436. The current of decision by this Court has been pro-Sabbatic in full measure, and with that current runs, we think the true law, as well as the general moral sentiment of the people of the State. Courts, high or low, are no less bound to abstain from ordinary labor on the Sabbath day, than are private individuals." (62 Ga. 449, 1879).

In *Hennington v. the State* the constitutionality of section 4578 of the law, making it a misdemeanor to run a freight train upon any railroad in the State on the Sabbath day was upheld. The plea of the plaintiff was that the section in question is repugnant to article 1, section 8, of the constitution of the United States which gives to Congress the exclusive right to regulate interstate commerce. The Supreme Court held that this section together with the remainder of the Sabbath law is a police regulation and that its effect on interstate commerce is only incidental, such as any broad and comprehensive police regulation may have. The case was appealed to the Supreme Court of the United States which Court upheld this opinion. (See Chapter VII, p. 186.) The Supreme Court of Georgia said:

"At no instant since her independence was declared has Georgia been without such a law on her statute book. . . . There can be no well founded doubt of its being a police regulation, considering it merely as ordaining the cessation of ordinary labor and business during one day in every week; for the frequent and total suspension of the toils, cares and strain of mind or muscle incident to pursuing an occupation or common employment, is beneficial to every individual, and incidentally to the community at large, the general public. Leisure is no less essential than labor to the well-being of man. Short intervals of leisure at stated periods reduce wear and tear, promote health, favor cleanliness, encourage social intercourse, afford opportunity for introspection and retrospection, and tend in a high degree to expand the thoughts and sympathies of people, enlarge their information, and elevate their morals. They learn how to be, and come to realize that being is quite as important as doing.

"Without frequent leisure, the process of forming character could only be begun; it could never advance or be completed; people would be mere machines of labor or business—nothing more. . . . That which is properly made a civil duty by statute is none the less so because it is also a real or supposed religious obligation; nor is the statute vitiated, or in any wise weakened, by the chance, or even the certainty, that in passing it the legislative mind was swayed by the religious rather than

by the civil aspect of the measure. Doubtless it is a religious duty to pay debts, but no one supposes that this is any obstacle to its being exacted as a civil duty. With few exceptions, the same may be said of the whole catalogue of duties specified in the Ten Commandments. Those of them which are purely and exclusively religious in their nature, cannot be or be made civil duties, but all the rest of them may be, in so far as they involve conduct as distinguished from mere operations of mind or states of the affections. Opinions may differ, and they really do differ, as to whether abstaining from labor on Sunday is a religious duty, but whether it is or not, it is certain that the legislature of Georgia has prescribed it as a civil duty. The statute can fairly and rationally be treated as a legitimate police regulation, and thus treated, it is a valid law." (*Hennington v. The State* 90 Ga. 396, 1892).

In the same year (1892) the constitutionality of the law against hunting on the Sabbath was tested, on the ground that it interferes with the right to worship God according to the dictates of conscience and attempts to punish for religious opinions. Its constitutionality was sustained. (*Gunn v. the State*, 89 Ga. 341.)

Various devices have been resorted to for the purpose of evading the liquor law. The following are examples:

The Albany Glee Club, for the purpose of securing liquors on the Sabbath adopted the following resolutions:

"Resolved, that this club, and we the members thereof, knowing that it is in strict violation of the city as well as the State laws for any dealer in spirituous or fermented liquors to sell on the Sabbath day, and not wishing to violate the laws in any part or sentence, nor to cause others to do so, and knowing that every laboring man or others who are in the habit of taking their social drinks during the week, wants and needs it on the Sabbath,

"Resolved, That in order to comply with the laws in every particular, we agree to pay the sums opposite our respective names, to a treasurer to be chosen by the club, on or before the Saturday preceding each Sabbath, for the purpose of purchasing the liquor necessary for the use of the club the following Sabbath."

The Supreme Court held that the house where the Albany Glee Club met and drank on Sabbath was a tippling-house, and that the owner was both the keeper of a tippling-house and a retailer of spirituous liquors. (63 Ga. 318, 1879.)

In *Hussey v. the State* it was shown that a sign was up in the saloon stating that the bar was closed, but that liquors were served in another room used as a restaurant. The Court declared as follows:

"It makes no difference in law whether the place be called a bar

room, or a glee club resort, or a parlor, or a restaurant, if it be a place where liquor is retailed and tipped on the Sabbath day with a door to get into it so kept that any body can push it open and go in and drink the proprietor of it is guilty of keeping open a tippling house on Sunday. It makes no difference if the drinking be done standing or sitting—at a bar or around a table—it is tippling, and the place where it is done is a tippling house; and if anybody wishing to drink can have access thereto—if ingress and egress be free to all comers—it is a tippling house kept open on Sundays.” (69 Ga. 54, 1882).

The Sabbath law of Georgia as sustained and defined by the Supreme Court of the State is thus shown to be a very efficient law. Its principal weak point is in the clause limiting the prohibition as to labor, business and work to acts of one's ordinary occupation. Under this statute it is held that a note given on the Lord's day, not of necessity or charity, and not in the exercise of any worldly labor, business or work of the ordinary calling of the parties to it, is not prohibited by the statute. This is a dangerous clause in a Sabbath law and might be used to the destruction of the peace and order of the day of rest. In other respects the law is admirable and the penalties sufficient. The first four opinions given above in which the divine basis for Sabbath laws is set forth with much force and clearness are especially worthy of commendation.

INDIANA. (1901).

Chapter 50 of the Code of Indiana is entitled “Crimes.” Article 5 of this Chapter treats of crimes “Against Public Morals.” The sections relating to “Sabbath Breaking” are these:

“2086. Whoever, being over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, at common labor, or engaged in his usual occupation, (works of charity and necessity only excepted), shall be fined in any sum not more than ten nor less than one dollar; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers, families removing, keepers of toll-bridges and toll-gates, and ferrymen acting as such.

“2087. It shall be unlawful for any person or persons to engage in playing any game of baseball where any fee is charged, or where any reward, or prize, or profit, or article of value is depending upon the result of such game, on the first day of the week commonly called Sunday, and every person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding twenty-five dollars.” (pp. 831, 832).

"2098. Whoever shall sell, barter, or give away to be drunk as a beverage, any spirituous, vinous, malt or other intoxicating liquor, upon Sunday, the Fourth of July, the first of January, the twenty-fifth of December, (commonly called Christmas day), Thanksgiving day as designated by the governor of this State or the President of the United States, or any legal holiday; or upon the day of any election in the township, town or city where the same may be holden; or between the hours of eleven o'clock P. M. and five o'clock A. M.,—shall be fined in any sum not more than fifty dollars nor less than ten dollars to which may be added imprisonment in the county jail not more than sixty days nor less than ten days." (p. 871). ,

Processes may be issued on the first day of the week whenever it shall appear by affidavit that the object of such process would be defeated by delaying to another day. (Sec. 1454).

Numerous cases have come before the Supreme Court of Indiana involving both the constitutionality and the proper construction of the Sabbath law.

In *Vogelsong v. the State* an elaborate argument against the validity of the law was presented by the counsel for the defense, but the Court, instead of discussing the issues raised, declared that "the question can hardly be considered an open one." (9 Ind. 112, 1857).

In the above case the indictment was for selling liquor on the Sabbath, and the Court held that the sale of liquor is labor, and when liquor selling is one's usual occupation the law forbids it. In *Thomasson v. the State* the indictment was the same as in the above case. But the Court held that while it is competent for the legislature to prohibit, as a police regulation, the sale of liquor on Sunday, it is doubtful whether it has the power to enact a law compelling the observance of the Sabbath. The gist of the argument is seen in the following sentences:

"When our existing government was created, its creators determined that there were some matters in which the majority should not control the minority; that there were some things over which the Legislature should not have authority; that in some things the people should not be within the power of the Legislature. Such is our organization of government—our Constitution. One of the subjects withdrawn by that Constitution, in the Bill of Rights, from legislative interference, is that of religion, and the writer has no hesitation in saying, highly as he individually values the Sabbath, that if the Sunday law is upon the statute book for the protection or enforcement of the observance of that day, as an institution of the Christian religion, it cannot be upheld; no more than could a law forbidding labor on Saturday, the Jewish Sabbath, or on any and all other days of

the week, which may be, in fulfillment of a requirement of a creed, set apart for religious observance, by any portion of our citizens, whether Christian, Jewish, Mohammedan, or Pagan. It is not, of course, meant here to trench upon the laws to protect meetings of those desiring to worship from disturbance, on all days. Can the Sunday law be maintained as a mere police regulation, without reference to an institution of religion? Could the Legislature enact a law that no man should labor on New Year's day? The Legislature enacts a law that no man shall compel his children, apprentices, and employees to labor more than ten hours a day, and it may be well. Such a law may be a reasonable regulation of labor to protect the weak from the oppression of the strong; but has the Legislature ever attempted to enact a law, that the father or employer should not himself labor more than ten hours a day, if he preferred to do so?

So, perhaps, the Legislature, on the same principle, might enact a law that no man should compel those under him to labor more than six days in a week; that he should allow one-seventh of the days for rest; but could it enact that no individual should labor for himself but six-sevenths of the days? We express no fixed opinion on the point here, as the case does not require it. Does it not involve the patriarchal theory of government? (15 Ind. 449, 1860).

Again in 1870, in *Foltz v. the State*, the question of the constitutionality of the law was considered by the Supreme Court of the State and an affirmative answer given (33 Ind. 215.)

Once more in 1881 in *Johns v. the State* the constitutionality of the law was attacked, this time on the ground that it makes an exception in favor of those who observe the seventh day of the week as the Sabbath. It was contended that this proviso brings the law into conflict with that section of the bill of rights in which the General Assembly is forbidden to grant to any citizen, or to any class of citizens, privileges or immunities which, upon the same terms, shall not belong equally to all citizens. But the Supreme Court held that "The statute in question under immediate mention does not grant immunities to one class of citizens which, upon the same terms, shall not belong to all." (78 Ind. 332).

Failing to break down the law by having it declared unconstitutional, its enemies have industriously sought to secure a liberal construction of the clause which excepts works of charity and necessity. A few of the leading decisions on this point may be studied with profit. The first to be considered gives to the opponents of the law about all they could desire. It is as follows:

"In the United States, where religion can be neither opposed nor supported by law, and where Sunday, under the law, is viewed purely in a secular light, the tendency naturally is to relax the restrictions of the Sunday laws in all things which do not interfere with the rights of others, and do not annoy or discomfort the public generally. . . . There is a difference between a work which may be done on one day as well as another, and which is not a daily need, and a work necessary to supply a constant daily want. There is no necessity for working in a shop, ploughing a field, selling from a store, opening an office, going to exchange or mart of commerce, or working at any common labor or usual avocation on Sunday; but there is daily necessity for putting a house in order, cooking food, taking meals, drinking coffee or tea, smoking a cigar by those who have acquired the habit, or continuing any other lawful habit, on Sunday, the same as there is upon a week day; and whatsoever is necessary and proper to do on Sunday to supply this constant daily need, is a work of necessity within the fair meaning of the law under consideration. In this State it has been held that the manufacturing malt beer, gathering and boiling sugar-water to prevent its waste, receiving the verdict of a jury by a Court, and gathering the fruits of the earth to prevent their decay and taking them to the market place on Sunday, are works of necessity, within the meaning of the present act." "Keeping a hotel in this State on Sunday is not unlawful. Keeping a hotel on Sunday, in the same way that it is usually kept on a week day, is not unlawful. It follows then, that if a hotel keeps a cigar stand, which is part of its establishment, from which it sells cigars to its guests, boarders and customers on a week day, to sell cigars from the same stand in the same way on Sunday is not unlawful. Indeed, we see no difference, legally, between the act of selling a cigar under such circumstances and the act of furnishing a cup of tea or coffee, a meal of victuals, or supplying any other daily want, to a customer on Sunday for pay." (*Carver v. The State* 69 Ind. 61, 1879).

This loose definition of the term "necessity," and the reasoning by which it was supported were afterwards controverted by the same court. This was done in the case of *Mueller v. the State*. (76 Ind. 310. 1881). *Mueller* was on trial for selling cigars on the Sabbath. Justice Woods who delivered the opinion of the court said:

"Necessity like fraud, is incapable of definition at once accurate and sufficiently comprehensive to accomplish the object of this enactment. The law, however, must often deal with the indefinable. The lawgiver's work is to make the law in such general or specific terms as are deemed suitable to declare his purpose. The duty of the Courts is not to defeat, but to discover and enforce, the legislative design. . . . What should be deemed a necessity, the law itself could not well have been made to say, and any attempt of the Courts to frame a definition

of general application would be more likely to produce confusion than certainty. The question in each case must be decided according to the circumstances, and is therefore more a question of fact than of law." He then says that much of the confusion upon the subject has arisen from such efforts as that made in the case of *Carver v. the State*, to give an accurate definition. After quoting from that decision he proceeded to demolish it, as follows: That the hotel keeper "may not keep open a stand, bar or other place, for the purpose of general sales to resident customers or boarders, who, like other citizens, ought to anticipate and furnish a supply for their Sunday wants, seems clear. There should be no privilege allowed the hotel-keeper of selling to his boarders and resident customers, which is not allowed to the keeper of a boarding house or restaurant, or to other classes of dealers." As to selling cigars to those who have acquired the smoking habit, he said: "It is hardly probable that the law makers contemplated that the cravings of a morbid and unnatural appetite should be deemed to create such an imperious necessity for appeasement as that the general requirement for Sunday observance should yield to it, while the supplying of the ordinary necessities of life, like food and clothing, by purchase and sale out of stores, should be forbidden. . . . If it can be said by the Court that a cigar is necessary to the smoker, it is no less certainly known that a drink is, in the same sense, needful to the drinker. The appetite for the latter is not weaker than the demand for the former. The law, however, specifically forbids the sale of intoxicating liquors on Sunday. . . . The rule which in *Carver v. the State* supra is declared to be the true rule, is in fact a rule which cannot be practically applied without nullifying the law. . . . Under the rule as stated, any lawful purpose may be accomplished by doing on Sunday what, under the circumstances was necessary to achieve it. The law, however, makes all purposes unlawful in so far as they require common labor or the pursuit of accustomed employments on Sunday except works of charity or necessity. . . . What does necessity, as used in this law mean? It may be said, as has been said before, that it does not mean an absolute physical necessity, but a moral fitness or propriety of the work or labor done, under the circumstances of any particular case. . . . Generally speaking, it ought to be an unforeseen necessity, or if foreseen, such as could not reasonably have been provided against."

The following opinions still further define the law.

The making of a promissory note on the Sabbath is common labor and therefore illegal. (*Reynolds v. Stevenson*, 4 Ind. 619, 1853).

The harvesting of dead-ripe grain on the Sabbath is a work of necessity. (67 Ind. 595, 1879).

Repairing a railroad track has been held to be a work of necessity. (*Yonoski et. al. v. the State* 79 Ind. 393, 1881).

The publication of a notice of a Sheriff's sale in a Sunday newspaper is illegal. (*Shaw v. Williams*, 87 Ind. 158, 1882).

One of the troublesome questions arising under Sabbath laws is whether or not contracts made on the first day of the week are binding. In *Perkins v. Jones* this question was argued at some length. The principle involved as stated by Lord Mansfield was quoted with approval as follows:

"The objection that a contract is immoral or illegal, as between the plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy in this: *Ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.

"If from the plaintiff's own stating, or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there, the Court says, he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant, but because it will not lend its aid to such a plaintiff. So, if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it, for where both are equally in fault, *potior est conditio defendentis*."

The Supreme Court of Indiana holds that while a contract made on Sabbath is void, it may be ratified on another day, but, "The mere retention of that which has been received upon such a contract, even after a demand for its return, will not amount to a ratification." (26 Ind. 499, 1866. See also *Davis v. Barker*. 57 Ind. 54, 1877).

In *Peter v. Wright*, it was shown that a contract had been made for the delivery of flour requiring labor on the Sabbath. Only part of the flour was delivered in the specified time, the price of the flour fell and loss was sustained. The Supreme Court said:

"If it is illegal to make a contract on Sunday, it certainly is illegal to contract to perform one requiring common labor on that day. . . . If the vicissitudes of trade and speculation were allowed to fix the rule as to what are works of necessity, there could be no observance of the Sabbath. There are as a general thing, dangers attending every enterprise, which may be avoided by expedition; but the Sabbath is not the day for common labor although by such labor dangers may be avoided." (30 Ind. 476, 1868).

It will be observed by those who examine the cases that have come before the courts in the different States that violators of the Sabbath law frequently plead the law as an excuse for the non-fulfillment of obligations. A case in point is the following:

George H. Bennett, a brakeman on the New Albany & Chicago Railway, was killed on the Sabbath while engaged in his usual voca-

tion. His widow sued the company for damages. The plea of the company was that Bennett was violating the Sabbath law at the time he was killed, and that this fact would bar the widow from the right to recover. The Court held that the company "cannot now become the champion of the Sunday law as an excuse for its wrong, or to defeat a recovery."

In *Dugan v. the State*, a case relating to the running of a steamboat on the Sabbath to carry people to a picnic, the Court held that this was neither necessity nor charity, and was therefore a violation of the law. (125 Ind. 130, 1890).

In *Catlett v. Trustees of the M. E. Church*, (62 Ind. 365, 1878), it was held that a subscription made to a Church on the Sabbath is not binding, but in the case of *Bryan v. Watson*, (127 Ind. 42, 1890), this opinion was overruled, and such acts were held to be, not common labor, but works of charity. It was held further that if such subscriptions are forbidden by the law, "then every collection made on the Sabbath day, in connection with religious services, is an act of common labor, and unlawful."

In 1899, in the case of *The State v. Hogreiver*, (152 Ind. 652), an effort was made to secure a decision by the Supreme Court declaring section 2087, which forbids games of baseball on the Sabbath, to be unconstitutional, but the effort failed.

Repeated efforts to secure the repeal of this section by the legislature have also failed.

This exhibition of the legal struggles in Indiana over the Sabbath law shows that the courts have sometimes wavered a little both on the question of the constitutionality of the law and of its proper interpretation. It appears however that the tone of the later decisions is better than that of the older ones. The people of Indiana are to be congratulated not only on this fact, but also on the fact that the legislature has refused to modify the law at the solicitation of those who would make the Sabbath a day for base ball and other athletic sports.

NORTH CAROLINA. (1883).

Chapter Twenty-five of the statutes of North Carolina is entitled "Crimes and Punishments." The following sections relate to the Sabbath:

"1115. If any person whosoever shall be known to hunt on the Lord's day, commonly called Sunday, with a dog or dogs, or shall be found off his own lands on Sunday, having a shot gun, rifle or pistol, every person so offending shall be subject to indictment; and shall pay a fine not to exceed fifty dollars, at the discretion of the Court, two-thirds of such fine to inure to the benefit of the free public schools in

the County of which such convict is a resident, the remainder to the informant.

"1116. It shall be unlawful for any person to fish on Sunday with a seine, drag net or other kind of net, except such as are fastened to stakes; and any person violating this section shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars, or imprisoned not more than twelve months.

"1117. If any person shall sell spirituous, or malt, or other intoxicating liquors on Sunday, except on the prescription of a physician, and then only for medical purposes, the person so offending shall be guilty of a misdemeanor, and punished by fine, or imprisonment, or both, in the discretion of the court." (Vol. I., pp. 448, 449).

Chapter Forty-nine relates to Railroad Companies. Section 1973 regulates railroad labor and traffic on the Lord's day:

"No railroad company shall permit the loading or unloading of any freight car on Sunday; nor shall permit any car, train of cars, or locomotive to be run on Sunday on any railroad, except such as may be run for the purpose of transporting the United States mails, either with or without passengers, and except such as shall be run for carrying passengers exclusively: Provided, that the word Sunday in this section shall be construed to embrace only that portion of the day between sunrise and sunset; and that trains in transitu, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock A. M. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops. And any railroad company violating this section shall be guilty of a misdemeanor in each county in which such car, train of cars or locomotive shall run, or in which any such freight car shall be loaded or unloaded; and upon conviction shall be fined not less than five hundred dollars for each offense; the fine when collected to be paid to the State Treasurer for the use of the public schools." (Vol. I., p. 759).

Chapter Sixty-one is entitled "Sunday and Holidays." The sections relating to "Sunday" are these:

"3782. On the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person, shall, upon land or water, do or exercise any labor, business or work, of his ordinary calling works of necessity and charity alone excepted, nor employ himself in hunting, fishing, or fowling, nor use any game, sport or play, upon pain that every person so offending, being of the age of fourteen years and upwards, shall forfeit and pay one dollar.

"3783. If any person shall be known to hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shot gun, rifle or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, two-thirds of such fine to inure to the benefit of the public schools in the county in which such convict is a resident, the remainder to the informant; and upon failure of such

convict to pay the required fine, he shall be imprisoned at hard labor for not more than three months, as the Court shall direct: Provided, that this section shall not apply to any person who may violate its provisions in defence of his own property." (Vol. 2, pp. 573, 574).

The law provides that when a holiday falls on Sabbath the following Monday shall be a holiday, and papers due on such Sabbath are payable on Saturday, and papers otherwise payable on Monday are payable on Tuesday. When Saturday is a legal holiday papers due on Sabbath are payable on Monday. When Monday is a legal holiday papers due on that day are payable on Tuesday. (Vol. II, pp. 573, 574).

The constitutionality of this law has never been seriously questioned, and has only been considered incidentally by the Supreme Court. The most important of the opinions in which its constitutionality is thus incidentally upheld was rendered in 1844 in *State v. Williams*. In this case Williams had compelled his slaves to labor on his farm on Sabbath. The Court said:

"The conduct of the defendant is contrary to the usages of North Carolina, the general welfare, and likewise to the law of the land. It seems to us to be very reprehensible; for we perfectly concur in the eloquent passage in the Commentaries, on the propriety and political necessity of keeping one day of the week for the purposes of public worship. 4 Bl. 63. The institution, wherever it has existed, has proved to be a great good, promoting private virtue and happiness among all classes, and the public morals and prosperity. It is, therefore, fit, that every Commonwealth, and especially one in which Christianity is generally professed, should set apart by the law a day for those purposes and enforce its due observance by such sanctions as may seem adequate."

As to the offense in this case the Court said: "The truth is, that it offends us, not so much because it disturbs us in practicing for ourselves the religious duties, or enjoying the salutary repose or recreation, of that day, as that it is in itself a breach of God's law, and a violation of the party's own religious duty. . . . Although it may be true, that the Christian religion is a part of the common law, it is not so in the sense that an act contrary to the precepts of our Saviour or Christian morals, is, necessarily, indictable. Those which are merely against God and religion were left to the correction of conscience, or the religious authorities of the State. . . . Therefore, however clearly the profanation of Sunday might be against the Christian religion, it is not and could not be made, merely as a breach of religious duty, an offense. . . . The Legislature, deeming it, as it does many other violations of Christian duty, detrimental to the State, may prohibit it, and then it will be punishable to the extent and in the manner pointed out by the Legislature. There are many offenses against God which are not offenses against the State. An act is punishable in the temporal courts, not as being prohibited by ecclesiastical authority, or even by the Divine

Head of the Church, but as being forbidden by the civil power of the State residing in the Legislature." (4 Iredell, 400).

In 1843 the Supreme Court in *Sloan v. Williford* declared that "a notice to take a deposition on Sunday is not good, and a deposition taken on such notice must be rejected."

In speaking of the rights of those who believe it to be against the moral law to devote the Sabbath to secular concerns the Court said:

"They ought neither to be compelled to violate their sense of duty, nor to abandon their civil rights." "It would be indulging a wanton or a worse spirit, if a party with, six other days in the week appropriate to such a purpose, were encouraged to select for it the seventh." (3 Ired. 307).

In 1860 the Supreme Court in *Melvin v. Easley* used vigorous language as to the habit of taking advantage of the Sabbath law by persons who have cheated in contracts made on the Lord's day. In this case a horse trader had sold a horse and guaranteed its soundness which was false. The Court first decided that the buyer did not violate the statute because buying horses was not his ordinary calling. Proceeding it said:

"The court will not aid any person who violates law; therefore, the defendant could not maintain an action. This rule is adopted on the ground of policy, for the purpose of preventing the violation of law, and if confined in its operation to the actual offender, its application will be salutary, but if it be extended to the party who is not an offender, so far from checking, it will encourage a violation of it, by letting it be known to "horse-traders," "shop-keepers," and "all whom it may concern" that they may cheat with impunity, provided always, it may be done on the Lord's day. "They will readily purchase this indulgence and dispensation, by paying one dollar if it should be sued for." (7 Jones. 356).

There is a law in North Carolina which says: "It shall be unlawful for any railroad company, etc., to allow any freight they may receive for shipment to remain unshipped for more than five days, unless otherwise agreed." It was held by the Supreme Court in *A. Branch v. W. & W. R. R. Co.*, that if the Sabbath is included in such a period it is to be counted. (77 N. C., 347).

Receiving the verdict of a jury on Sabbath is not a violation of the law.

In addition to the objectionable feature noted as belonging to the laws of all States of this class the law of North Carolina is somewhat weakened by making the penalty for violating the section relating to labor, business and work only one dollar. The

railroad law if enforced will prevent a vast amount of unnecessary disturbance of the peace and quietness of the day of rest. The constitutionality of the law is sustained on high ground, although there are some sentences in the opinion handed down in *State v. Williams* open to criticism. All things considered the law of this State is quite satisfactory.

RHODE ISLAND. (1896).

Chapter 28I, Title XXX. treats of "Offences against Chastity, Morality and Decency."

The following sections relate to "Sabbath breaking":

"17. Every person who shall do or exercise any labor or business or work of his ordinary calling, or use any game, sport, play or recreation on the first day of the week, or suffer the same to be done or used by his children, servants or apprentices, works of necessity and charity only excepted, shall be fined not exceeding five dollars for the first offense and ten dollars for the second and every subsequent offense.

"18. Every person who shall employ, improve, set to work or encourage the servant of any other person to commit any act named in the preceding section shall suffer the like punishment.

"19. All complaints for violations of the provisions of the preceding two sections shall be made within ten days after the committing thereof and not afterwards.

"20. Every professor of the Sabbatarian faith or of the Jewish religion, and such others as shall be owned or acknowledged by any church or society of said respective profession as members of or as belonging to such church or society, shall be permitted to labor in their respective professions or vocations on the first day of the week, but the exception in this section contained shall not confer the liberty of opening shops or stores on the said day for the purpose of trade and merchandise, or lading, unlading or of fitting out of vessels, or of working at the smith's business or any other mechanical trade in any compact place, except the compact villages in Westerly and Hopkinton, or of drawing seines or fishing or fowling in any manner in public places and out of their own possessions; and in case any dispute shall arise respecting the persons entitled to the benefit of this section, a certificate from a regular pastor or priest of any of the aforesaid churches or societies or from any three of the standing members of such church or society, declaring the person claiming the exemption aforesaid to be a member of or owned by or belonging to such church or society, shall be received as conclusive evidence of the fact." (p. 1003.)

The statutes providing for the granting of licenses to liquor dealers, showmen and pawnbrokers declare that these licenses shall not authorize the carrying on of these occupations on the Sabbath.

All persons except those in military service are forbidden to discharge firearms on the Sabbath. (Sec. 3, chap. 92.)

No civil process can be served on the Sabbath. (Sec. 34, chap. 207.)

The cases that have come before the Supreme Court are few, and these deal principally with Sunday contracts. A peculiar interest attaches to such contracts in Rhode Island because of the clause in the statute limiting the prohibition to labor, business or work in one's ordinary calling. In *Allen v. Gardiner* this was considered at length. The case related to the validity of a release executed by Gardiner on the first day of the week. The Court declared that this statute is a transcript of 29th., Charles II., § 7, and that the settled construction of it in England is that it did not intend that every act of business or labor performed on the first day of the week should be punishable, but that the ordinary, daily occupation of men should be suspended on that day, and that no act in the pursuit of that occupation or calling should be performed, unless called for by some necessity, or motive of charity. A number of cases are cited, the following being a fair example. Drury, a banker, sent a horse to one Hull who kept a commission stable for the sale of horses by auction. Hull sold the horse to Defontaine at private sale on Sabbath. The Court held that as selling horses was not Drury's occupation, and as selling at private sale was not Hull's, the statute was not violated. The Court held that the law of Rhode Island is to be similarly construed. "The only inquiry in every case is, was the business or work done in the course of the ordinary employment of the party? If it was, it is within the statute; otherwise, not." (R. I. 7, 22, 1861.)

In *Whelden v. Chappel* it was held that "The letting of a horse on Sunday, by a livery stable keeper, in the ordinary course of his calling, when uncalled for either by necessity or charity, is an illegal transaction." (R. I. 8, 230, 1865.)

In *Sayles v. Wellman*, relating to the sale of a horse on Sabbath, and the validity of a note for part of the purchase money given on the following Tuesday, the Court held that the note validated the contract. The Court said: "We think that as the contract is invalid only on account of the time, reason and weight of authority are in favor of allowing a ratification, more especially where the defendant retains the property." (10 R. I. 465, 1873.)

The case of *Smith v. Rollins* serves to illustrate a common occurrence, and the interpretation of the law as to contracts made on the Sabbath. *Smith*, a livery stable keeper, let, in his ordinary business, a horse and carriage to be driven for pleasure to a particular place. *Rollins*, the hirer, drove them to a different place, and returned them damaged. Whereupon *Smith* brought trover against *Rollins* for the conversion of horse, buggy and harness. The Court held that such a contract is illegal, that the terms of the illegal contract must be produced by the plaintiff in proof of the conversion; and that since the contract is illegal, he cannot recover. (11 R. I. 464, 1878.)

The question whether a person who, while traveling, receives an injury through the carelessness of another, is entitled to damages, came before the Supreme Court in *Baldwin v. Barney*. The Court called attention to the fact that this question is not always answered in the same way. In some States it is held that such a person must show that he was traveling from necessity or charity, the burden of proof being on him to show that his own fault did not concur in causing the injury. The following cases in Massachusetts are referred to: *Bosworth v. Inhabitants of Swansey*, 10 Met. 363; *Jones v. Inhabitants of Andover*, 10 Allen, 18; *Stanton v. Metropolitan R. R. Co.*, 14 Allen 485; *Smith v. Boston and Maine Railroad*, 120 Mass. 490. The Court adds: "The logic of this opinion is, that a person who receives an injury while traveling, which he would not have received if he had not been traveling, contributes to the injury by the act of traveling, and that he is therefore bound to show that his own fault did not concur in causing his injury."

The validity of this reasoning is disputed by some courts, among them the Supreme Court of Rhode Island, which regards the traveling as a "condition rather than as a cause of the injury," and that the injured person is entitled to damages. (12 R. I. 392, 1880.)

A complicated case arose in 1888 involving the matter of a contract made in Connecticut. The law of Connecticut prohibits secular business on the Lord's day between sunrise and sunset, while that of Rhode Island prohibits such business in one's ordinary calling between midnight on Saturday and midnight on Sabbath. It was held that a contract made after sunset in Connecticut is valid and can be enforced in Rhode Island. (*Brown v. Browning*, 15 R. I. 422.)

In *Pepin v. Societe St. Jean Baptiste*, it was held that "A beneficial society, in the trial of charges against a member under its by-laws, is not a court of law. Its action is a part of the business of such a society, and is not void because transacted upon Sunday." (24 R. I. 550, 1902.)

The weakness of laws of this class is seen in an aggravated form in the case of Rhode Island, in *Allen v. Gardner* quoted above. In most other respects the law is excellent and is well sustained by the courts.

SOUTH CAROLINA. (1902).

"Non-observance of the Lord's day and Disturbing Religious Worship" is the title of Chapter XXIV. of the statutes of South Carolina. The following sections relate to the first part of this title:

"500. No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings upon the Lord's day (commonly called Sabbath), or any part thereof (works of necessity or charity only excepted); and every person, being of the age of fifteen years or upwards, offending in the premises shall for every such offense forfeit the sum of one dollar.

"501. No person or persons whatsoever shall publicly cry, show forth or expose for sale any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale.

"502. No public sports or pastimes, or bear-bating, bull-fighting, foot-ball playing, horse-racing, interludes, or common plays, or other games, exercises, sports or pastimes whatsoever, shall be used on the Lord's day by any person or persons whatsoever; and every person or persons offending in any of the premises shall upon conviction be deemed guilty of a misdemeanor, and be subject to a fine not exceeding fifty dollars or imprisonment not exceeding thirty days.

"503. In addition to the penalties prescribed against tradesmen, artificers, workmen and laborers who shall do or exercise any worldly labor, business or work of their ordinary calling upon the Lord's day (commonly called the Sabbath) or Sunday, or any part thereof, any corporation, company, firm or person who shall order, require or direct any work to be done in any machine shop or shops on Sunday, except in cases of emergency, shall upon conviction, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars for each offense.

"504. For the better execution of all and every one of the foregoing provisions, every magistrate within his county shall have power and authority to summon before him any person or persons whatsoever who shall offend in any of the particulars before mentioned, and upon his own view, or confession of the party, or proof of any one or more witnesses, upon oath, the said magistrate shall give a warrant, under his seal, to seize the said goods cried, showed forth or put to sale as aforesaid, and to sell the same; and as to the other penalties and forfeitures, to impose the fine and penalty for the same, and to levy the said forfeitures and penalties by way of distress and sale of the goods of every such offender, returning the overplus, if any be, after charges allowed for the distress and sale. All forfeitures and

penalties recovered under this chapter to be paid over to the County Treasurer for the use of the county." (Vol. II., pp. 397, 398).

"516. Whoever shall keep, or suffer to be kept, any gaming table, or permit any game or games to be played in his, her, or their house, on the Sabbath day, such persons, on conviction thereof before any court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for, the use of the State." (Vol. II., p. 403.)

Chapter L. of the Civil Code contains the General Railroad law. Article VI. is entitled, "Regulations as to running trains on Sunday and Carriage of Animals." The sections relating to the Sabbath are these:

"2121. It shall be unlawful for any railroad corporation owning or controlling railroads operating in this State to load or unload or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars or trains of cars moved by steam power except as hereinafter provided, and except to unload cars loaded with animals.

"2122. Said corporations or persons may run on Sunday, during the months of April, May, June, July and August, trains loaded exclusively with vegetables and fruits; and on said day, in any and every month, their regular mail trains, as may be rendered necessary by extraordinary emergencies other than those incident to freight or passenger traffic, and such freight trains as may be in transitu which can reach their destination by six o'clock in the forenoon: Provided, That the Railroad Commissioners shall have the power (upon proper application made to them for the purpose, by the officers of the Church or religious denominations in charge of the place where such services are to be held) to authorize and permit the running of trains on any Sunday in the year for the transporting of passengers to and from religious services: Provided the application for the permit and the authority granted must both be in writing and made a part of the records of said Railroad Commissioners.

"2123. Any train running by a schedule in conformity with the provisions of this chapter, but delayed by accident or other unavoidable circumstance, may be run until it reaches the point at which it is usual for it to rest on Sunday.

"2124. For a wilful violation of the provisions of the three preceding sections the railroad company so offending shall forfeit to the State five hundred dollars, to be collected in any Court of competent jurisdiction." (Vol. I., pp. 817, 1818.)

The following law relates to the sale of liquor on the Sabbath:

"It shall not be lawful for any person to sell, trade or barter any spirituous liquors or wine on Sunday; and any person so doing shall be liable to a fine of not less than ten dollars, or more than two hundred dollars, or imprisonment for not less than ten days or more than two months."

The constitutionality of Sabbath laws was sustained by the Supreme Court of South Carolina in 1833 in the case of *Town Council of Columbia v. Duke and Marks*, who were indicted for keeping their shop open on the Sabbath.

Judge Martin in delivering the opinion of the court declared:

"The ordinance neither exacts nor imposes any religious duty or obligation—it requires no sacrifice on the part of any one, unless closing their doors and suspending their business be so considered. . . . It enjoins no profession of faith, demands no religious test, extorts no religious ceremony, confers no religious privilege or preference. . . . Now, if the Ordinance in question required either of the relators to observe Sunday as a sacred day, or to conform to the notions of others as to its holy character, then it would be giving a 'preference,' or making a 'discrimination,' in contravention of the Constitution."

The constitutionality of the law was again sustained in the case of *City Council of Charleston v. Benjamin* in 1846. Mr. Benjamin was a Jew and kept a store in the city of Charleston. He sold goods on the Sabbath and was indicted under a city ordinance which declares that "no person or persons whatever, shall publicly expose for sale, or sell, in any shop, warehouse, or otherwise, any goods, wares, or merchandize whatsoever, upon the Lord's day." The City Court decided that this ordinance "is in regard to the present defendant, in clear and palpable violation of the 8th Article of the constitution of the State," which guarantees "the free exercise and enjoyment of religious profession and worship." The case then went to the Supreme Court. The opinion of the lower court was reversed and the constitutionality of the ordinance sustained. Among other things the Court said:

"The Lord's day, the day of the Resurrection, is to us who are called Christians, the day of rest after finishing a new creation. It is the day of the first visible triumph over death, hell and the grave! It was the birthday of the believer in Christ, to whom and through whom it opened up the way which, by repentance and faith, leads unto everlasting life and eternal happiness! On that day we rest and to us it is the Sabbath of the Lord—its decent observance in a Christian community, is that which ought to be expected.

"It is not perhaps necessary to the purposes of this case, to rule and hold that the Christian religion is part of the common law of South Carolina. Still it may be useful to show that it lies at the foundation of even the Article of the Constitution under consideration, and that

upon it rest many of the principles and usages, constantly acknowledged and enforced in the courts of justice. . . .

"What gave to us this noble safeguard of religious toleration, which made the worship of our common Father as free and easy as the air we breathe, and his temple as wide, capacious and lofty as the sky he has spread above our heads? It was not that spirit of infidelity, which deified reason, denied God and was stained with more blood than ever flowed upon the altars of the Aztec Idols. It was Christianity robed in light, and descending as the dove upon our ancestors, which gave us this provision. It was that same spirit which, when the war of the revolution was about to commence, sanctified a fast, and prostrated a nation before the Lord of hosts, to ask his blessing and assistance. . . . Again, our law declares all contracts *contra bonos mores*, illegal and void. What constitutes the standard of good morals? Is it not Christianity? There certainly is none other. Say *that* cannot be appealed to, and I don't know what would be good morals. The day of moral virtue in which we live would, in an instant, if that standard were abolished, lapse into the dark and murky night of Pagan immorality. In this State, the marriage tie is indissoluble—whence do we take that maxim? It is from the teaching of the New Testament alone. In the courts over which we preside, we daily acknowledge Christianity as the most solemn part of our administration. A Christian witness, having no religious scruples against placing his hand upon the Book, is sworn upon the holy Evangelists—the books of the New Testament, which testify of our Saviour's birth, life, death and resurrection; this is so common a matter that it is little thought of as an evidence of the part which Christianity has in the common law." Taking up the Sabbath law the Court said: "It is, however, fancied in some way this law is in derogation of the Hebrew's religion, inasmuch as by his faith and this Statute, he is compelled to keep two Sabbaths. There is the mistake. He has his own, free and undiminished. Sunday is to us our day of rest. We say to him, simply, respect us, by ceasing on this day from the pursuit of that trade and business in which you, by the security and protection given to you by our laws, make great gain. This is a mere police or municipal regulation. If the Israelite were allowed to make the objection that he would not be constitutionally restrained from pursuing a public business on Sunday, the infidel would say, as Duke said, "All days are alike to me, and therefore I will at all times pursue my business." Such an assumption is so preposterous that no one would tolerate it. . . . If it were true that the commandment to keep the Sabbath day holy also required the Israelite to work six days, as closely and faithfully as he is to observe the seventh day as a day of rest, then indeed there might be a ground to say that the ordinance which requires him to desist, during Sunday, from a public business, the sale of goods, was unconstitutional. . . . The meaning of the commandment is so plain that I almost fear

to add any explanation of my own. In six days the Israelite is to do the work he may have to do; on the seventh he must not work—it is his day of rest. No one ever supposed it could go further. I fancy few among Israel worked every day in the six. If such had been the commandment it would have been hard indeed. But it was intended to set apart a day of rest, and not to give a command to labor. . . . There is, therefore, no violation of the Hebrew's religion, in requiring him to cease from labor on another day than his Sabbath, if he be left free to observe the latter according to his religion." (2 Strobhart, 508.)

In *Hellams v. Abercrombie*, in which the dispute was about the validity of a mortgage executed on the Lord's day, it was held that since the law forbids exercising any worldly labor, etc., of one's ordinary calling on the Lord's day, the execution of a mortgage, not being the ordinary calling of the parties, is not forbidden. (15 S. C. 119, 1880.)

While the Supreme Court of the State of South Carolina has upheld the Sabbath law in opinions of considerable force, it is clear that the law needs to be strengthened.

The weakness of the statute that prohibits labor, business or work of one's ordinary calling only is again apparent; the penalty of one dollar for violating the law against doing such work is inadequate; the law relating to railroads allows too much latitude; while the opinion declaring that notices in Sunday newspapers are lawful does not seem to be based on any section of the law, it would be well to amend the law so as to render such opinions impossible.

CHAPTER III.

LEGISLATION WITH STRONG PROHIBITORY CLAUSES AND FEW EXCEPTIONS TO THEIR APPLICATION.

In the most of the States the limitation of the prohibitory clause in the Sabbath law to labor, business or work of one's ordinary calling, was, at an early day removed, and the prohibition made to extend to all worldly occupations whether of one's ordinary calling or not. There is a large number of such States in which modern efforts to weaken the law by multiplying exceptions to its application have met with very little success. This class will now be considered.

ARKANSAS. (1904.)

Article 67, Chapter 48 of the Criminal law of Arkansas is entitled "Sabbath Breaking." It is as follows:

"2030. Every person who shall, on the Sabbath day or Sunday be found laboring, or shall compel his apprentice or servant to labor or to perform other service than customary household duties, of daily necessity, comfort or charity, on conviction thereof, shall be fined one dollar for each separate offense.

"2031. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

"2032. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the State, nor to such manufacturing establishments as require to be kept in continual operation.

"2033. No person who from religious belief keeps any other day than the first day of the week as the Sabbath shall be required to observe the first day of the week, usually called the Christian Sabbath, and shall not be liable to the penalties enacted against Sabbath break-

ing. Provided, no store or saloon shall be kept open or business carried on there on the Christian Sabbath; and, provided, further, no person so observing any other day shall disturb any religious congregation by his avocations or employments.

"2034. Every person who shall on Sunday, keep open any store or retail any goods, wares and merchandise, or keep open any dram-shop or grocery, or shall keep the doors of the same so as to afford ingress or egress, or sell or retail any spirits or wine, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

"2035. Charity or necessity on the part of the customer may be shown in justification of the violation of the last preceding section.

"2036. Every person who shall, on the Christian Sabbath or Sunday, be engaged in the running of any single horse, for any bet or wager on the speed of such horse, or for pastime, or for amusement without any bet or wager, or shall be engaged in any cock fight, on any bet or wager, or for pastime, without bet or wager shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than twenty dollars.

"2037. Every person who shall, on the Christian Sabbath or Sunday, be engaged in any game of brag, bluff, poker, seven-up, three-up, twenty-one, vintun, thirteen cards, the odd trick, forty-five, whist, or at any other game at cards known by any name now known to the laws, or with any other new name, for any bet or wager on such game, or for amusement without any bet or wager, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars, nor more than fifty dollars.

"2038. If any person shall be found hunting with a gun, with intention to kill game, or shooting for amusement, on the Sabbath day, on conviction thereof, he shall be fined in any sum not less than five nor more than twenty-five dollars for each separate offense.

"2039. If such offense shall be committed by a minor, under the age of twenty-one years, and it shall be made to appear that the offense was committed by or with the consent or approbation of the parent or guardian of said minor, then such parent or guardian, as aforesaid, shall also be fined according to the provisions of Section 2038.

"2040. If any person shall be engaged in running a horse-race on the day known as the Christian Sabbath or Sunday, on a bet or wager, or for sport or pastime, with or without such bet or wager, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five nor more than one hundred dollars."

"2041. It shall be unlawful for any club, person or persons to engage in any game or play of base-ball on the Christian Sabbath or Sunday.

"2042. All persons violating the preceding section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any

sum not less than ten dollars, nor more than twenty dollars in each case." (pp. 566-568.)

A summons, order for a provisional remedy, order for attachment, or for the delivery of property, subpoena, notice, order of arrest or of injunction, may be issued on the Sabbath when it is necessary to protect the rights and interests involved.

The constitutionality of the Sabbath law of Arkansas was tested in 1850, in the case of *Shover v. State*. The counts in the indictment were, keeping open a grocery by force of arms and retailing spirits on the Sabbath.

Chief Justice Johnson, in upholding the constitutionality of law, said:

"If the act is unauthorized by the Constitution, it must arise from the fact that it interferes with the rights of conscience which are secured to all by the Declaration of Independence. A portion of those rights consists in freedom to worship Almighty God according to the dictates of every one's conscience, and in not being compelled to attend, erect, or support, any place of worship, or to maintain any ministry against their consent. The act in question cannot, with any degree of propriety, be said to trench upon any one of the rights thus secured. By reserving to every individual the sacred and indefeasible rights of conscience, the convention most certainly did not intend to leave it in his power to do such acts as are evil in themselves and necessarily calculated to bring into contempt the most venerable and sacred institutions of the country.

"Sunday, or the Sabbath, is properly and emphatically called the Lord's day, and is one amongst the first and most sacred institutions of the Christian religion. This system of religion is recognized as constituting a part and parcel of the common law, and as such all of the institutions growing out of it or, in any way connected with it, in case they shall not be found to interfere with the rights of conscience, are entitled to the most profound respect, and can rightfully claim the protection of the lawmaking power of the State. We think it will readily be conceded that the practice, against which the act is directed, is a great and crying vice, and that, in view of its exceedingly deleterious effects upon the body politic, there cannot be a doubt that it falls appropriately under the cognizance of the law-making power." (*Shover v. State*, 10 Ark, 259, 1850.)

In *Stockton v. the State* in which Stockton was indicted for playing cards on the Sabbath, the Supreme Court, in affirming the decision of the Circuit Court of Tell County finding him guilty as indicted, laid stress upon the Divine authority for the law. The following language was used:

"The object of the Statute was to prohibit the desecration of the Sabbath by engaging in the vicious employment of playing cards on

that day, which is set apart by Divine appointment, as well as by the law of the land for other and better engagements; and whether the defendant play for a wager or amusement, he is alike guilty of a desecration of the Sabbath, and consequently of a violation of the law. The playing of cards upon that day is the gist of the offense, and whether the playing be for a wager, or for amusement is not material. No matter what the purpose of the game may be, it is a desecration of the day, and vicious to public morals in its tendencies." (18 Ark. 18, 1856.)

In 1886 the Supreme Court of Arkansas, in *Scales v. State*, upheld the constitutionality of the law whether or not it excepts from its operation, either wholly or in part, those who keep another day. The Court said:

"This observance of Sunday as a day of refrainment from secular business has always been required of the people generally, without reference to creed, and they continue to so observe it without complaint that, as a municipal institution, it violates any of their constitutional or religious rights. . . . The law which imposes the penalty operates upon all alike, and interferes with no man's religious belief, for in limiting the prohibition to secular pursuits it leaves religious profession and worship free." (47 Ark. 476.)

The most of the opinions given by way of interpretation of the law are judicious. The following are sufficient to show the character of such opinions:

"When a contract for a sale of land is made on a week day, and a note for the purchase money executed on Sunday, the vendor may recover the purchase money, notwithstanding the invalidity of the note." (*Tucker, v. West et al*, 29 Ark. 386, 1874.)

"Although a contract for the hire of a horse on Sunday is void, the hirer will be liable in tort for any injury to the horse from misuse or carelessness, and will be held to the highest degree of care." (*Stewart v. Davis*, 31 Ark. 518, 1877.)

"One who keeps a saloon open on the Sabbath is guilty whether he is the owner or proprietor or not." (*Marre v. The State*, 36 Ark. 222, 1880.)

"The statute with respect to labor applies to the work of a barber" (*State v. Frederick*, 45 Ark. 347, 1885.)

"The manager of a public theater who sells tickets for, and superintends an entertainment on Sunday, is guilty of laboring on Sunday within the meaning of section 1883, (2030)."

"The statute against open stores applies to butcher shops." (*Petty v. The State*, 53 Ark. 1, 1893.)

"The selection of the first day of the week for putting in new telegraph instruments at a railroad station is not justified by the fact that there are fewer trains running and as a consequence there is less dan-

ger of collision than on other days.' (Cleary v. The State, 56 Ark. 124, 1892.)

Labor cannot be lawfully performed on the Sabbath merely to add to the accumulations of a business already lucrative.

There are few States whose Sabbath laws deserve more praise and less criticism than that of Arkansas. The exceptions of section 2032, however, in favor of steamboats and manufacturing establishments requiring to be kept in continual operation, might easily be taken advantage of for the carrying on of both business and pleasure.

The ringing deliverances of the Supreme Court in upholding the constitutionality of the statute because the Divine will is back of it and because Christianity is part of the common law are deserving of high praise.

CONNECTICUT. (1902).

Chapter 89 of the revised statutes of Connecticut is entitled "Offences against Public Policy." The sections relating to the Sabbath are these:

"1369. Every person who shall do any secular business or labor, except works of necessity or mercy, or keep open any shop, workhouse, or manufacturing or mechanical establishment, or expose any property for sale, or engage in any sport between twelve o'clock Saturday night and twelve o'clock Sunday night, shall be fined not more than fifty dollars.

"1370. Every person who shall be present at any concert of music, dancing, or other public diversion on Sunday, or on the evening thereof shall be fined not more than forty dollars.

"1371. Prosecutions for violations of the two preceding sections shall be exhibited within one month after the commission of the offense.

"1372. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to prosecution for performing secular business and labor on the Sabbath, provided he disturbs no other person while attending public worship." (pp. 384, 385.)

"3132. "No person shall on Sunday shoot or hunt, or have in possession in the open air the implements for shooting. (p. 788.)

"2703. Every person who by himself, his servant, or his agent, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night next following, shall sell or expose for sale any spirituous or intoxicating liquors, or shall keep open any place of

any kind or description in which spirituous and intoxicating liquors are at any time sold or exposed for sale, or in which any sports or games of chance are at any time carried on or allowed, or are reputed to be so carried on or allowed, shall be subject to the penalties of section 2712, (a fine of not less than ten nor more than two hundred dollars for the first offense and for each subsequent offense the same fine and imprisonment not less than ten days nor more than six months); but this section shall not apply to sales under a druggist's license. (p. 95.)

The following sections relating to railroads were added in 1887:

"3749. No railroad company shall run any train on any road operated by it within this State, between sunrise and sunset on Sunday, except for necessity or mercy; provided, that it may run trains carrying the United States mail, and such other trains or classes of trains as may be authorized by the Railroad Commissioners on application made to them on the ground that the same are required by the public necessity, or for the preservation of freight.

"3750. No such company shall permit the handling, the loading, or the unloading, of freight on any road operated by it, or at any of its depots or stations within this State, between sunrise and sunset on Sunday, except from necessity or mercy.

"3751. Every such company which shall violate any of the provisions of the two preceding sections shall forfeit to the State the sum of two hundred and fifty dollars for each violation.

"3752. No such company shall transport passengers, on Sunday, upon any train deemed necessary according to the intention of section 3749, for less than the highest regular fare collected on week-days, provided that commutation, season, and mileage tickets may be used on Sunday. No such company shall issue or accept for any travel on said day excursion or other special bargain tickets. Every company which shall violate any provision of this section shall forfeit to the State fifty dollars for each violation." (p. 934.)

In 1893 the following relating to street railways was enacted:

"No law affecting travel, business or labor on Sunday or the operation on Sunday of any railroad or railway, shall apply to any railroad company or street railway company so as to prohibit or limit the operation on Sunday of electric cars." (pp. 960, 961.)

"3753. The provisions of Sections 3749, 3750, 3751 and 3752 shall not affect statutes which prohibit secular work or recreation on Sunday, except so far as they may be found in their operation to be inconsistent with them." (p. 934.)

The Supreme Court of Connecticut has upheld the law in the following terms:

"The prohibition on Sunday, of any sport or recreation which interferes with the preservation of public peace and order, or the enjoyment of appropriate and religious observance of that day, is clearly

within the power of the legislature." (State v. Miller, 69 Conn. 373, 1896.)

The interpretation of the law as it applies to contracts made on the first day of the week has frequently been given by the Supreme Court of this State. The following are the most important opinions relating to this matter:

A note made payable on Sunday, in express terms, is void, because it is a contract to do an unlawful thing. (Avery v. Stewart, 2 Day 73, 1816.)

A loan of money made on the Lord's day cannot be recovered. (Finney v. Donahue, 35 Conn. 216, 1868.)

A contract made on Sabbath is void, although the price of the purchase may not be paid till Monday. If there is fraud the purchaser cannot recover. (Grant v. McGrath, 56, Conn. 335, 1888.)

If negotiations are begun on Sabbath which result in a written guaranty on another day, the contract is valid. (Tyler v. Waddington, 58 Conn. 376, 1890.)

If personal injuries are suffered by persons riding on street cars for pleasure on Sabbath, such injuries being the result of the negligence of the street car company's servants, they can recover. (66 Conn. 274, 1895.)

The law of this State is defective in permitting those who observe the seventh day of the week as the Sabbath to engage in both business and labor on the Lord's day. It is common to permit labor by such persons, but to permit business is unusual.

The law is defective also in the liberty it allows railroad and street car companies. In other respects it is an excellent statute and is well sustained by the courts.

DELAWARE. (1893).

Chapter 131 of the statutes of Delaware is entitled "Offences against Religion, Morality and Decency." Section 4 relates to "Sabbath breaking." It is as follows:

"If any person shall perform any worldly employment, labor, or business, on the Sabbath day, (works of necessity and charity excepted), he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned not exceeding twenty-four hours."

"If any carrier, pedler, wagoner, or driver of any public stage, or carriage, or any carter, butcher, or drover, with his horse, pack, wagon, stage, carriage, cart, or drove, shall travel, or drive, upon the Sabbath day; or if any retailer of goods shall expose the same to sale on the Sabbath; he shall be fined eight dollars, and on failure to pay such fine and costs shall be imprisoned not exceeding twenty-four

hours. Any justice of the peace may stop any such person so traveling on the Sabbath, and detain him until the next day."

"If any person shall be guilty of fishing, fowling, horse-racing cock-fighting, or hunting game on the Sabbath day, he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid."

"If any number of persons shall assemble to game, play or dance, on the Sabbath day, and shall engage, or assist, in such game, play or dance, every such person shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid."

"Any justice of the peace of the county shall have jurisdiction and cognizance of the offenses mentioned in this section." (p. 953.)

In 1844 the Court of Errors and Appeals held that the furnishing of liquor to guests by an inn keeper is not a violation of law, but such inn keeper may not keep an open bar and allow persons to assemble in the bar-room to drink and tittle and profane the sanctity of the day, and by their evil example destroy the morals of the community and the best interests of society. "The keeper of an inn, tavern, or house of entertainment, who conducts himself in such a manner. . . as profanes the Lord's day, or violates public order and decorum, or shocks the religious sense or feelings of the neighborhood, is guilty of a nuisance at common law, and may be indicted, fined, imprisoned, and his house suppressed, according to the aggravated nature or enormity of his offense." (4 Del. 132, *Hall v. the State*.)

As to contracts made on the Sabbath the following decision was rendered in 1897: "In all contracts made on the Sabbath, as the parties are *pari delicto*, neither can assert rights thereunder; the policy of the law is that of absolute non-action. It leaves the parties exactly where they happen to be. The result is that the contract being executory is for all practical purposes void. Yet if one person receives the benefit of the labor of another thereunder, the law places the duty upon him to pay for it." (*Spahn v. Willman*, *Pennewill's Del. Reports*, Vol. 1, p. 125.) A note made on Sabbath, but delivered on another day is valid. (*Terry v. Platt*, 1 *Penn. Del. Rep.*, Vol. 1, p. 185.)

The law of this State is brief but comprehensive. The penalty, however, is much too light and has a weakening effect. The judicial opinions are few, but what there are give good support to the law.

FLORIDA. (1892).

The sections of the Florida law relating to the Sabbath are entitled, "Sunday law," and are as follows:

"2638. Whoever follows any pursuit, business or trade on Sunday either by manual labor or with animal or mechanical power, except

the same be work of necessity, shall be punished by a fine not exceeding fifty dollars.

"2639. Whoever keeps open store or disposes of any wares, merchandise, goods or chattels on Sunday, or sells or barter the same, shall be punished by a fine not exceeding fifty dollars. In cases of emergency or necessity, however, merchants, shop-keepers, and others may dispose of the comforts and necessities of life to customers, without keeping open doors.

"2640. Whoever employs his apprentice or servant in labor or other business on Sunday, except it be in the ordinary household business of daily necessity, or other work of necessity or charity, shall be punished by a fine not exceeding ten dollars for every such offense.

"2641. Whoever uses firearms by hunting game or firing at targets upon Sunday shall be punished by imprisonment not exceeding twenty days, or by fine not exceeding twenty-five dollars."

Section 1025 makes void the execution on Sabbath of any writ, order, judgment or decree, except when it appears on the sworn testimony of two respectable witnesses, that any person liable to any such writ, etc., intends to escape from the State under cover of protection of Sunday.

Section 3037 provides for the proper observance of the Sabbath in the State Prison, and for the instruction of the inmates in their moral and religious duties.

"Fishing for shad between sundown on Saturday afternoon and sunrise on Monday morning of every week is punishable by a fine not exceeding one hundred dollars, and by confiscation of the boat and fishing tackle used in such unlawful acts." (p. 348.)

The Sabbath law of Florida is brief and pointed and has many excellent features. The penalties generally are adequate. Few cases have reached the Supreme Court and in the opinions rendered there is but little relating to the great points considered in this exhibit.

IOWA. (1888 1902).

Chapter 12, section 5438, of the criminal code of Iowa is entitled "Breach of Sabbath." It is as follows:

"If any person be found on the first day of the week, commonly called Sabbath, engaged in any riot, fighting, or offering to fight, or hunting, shooting, carrying fire-arms, fishing, horse-racing, dancing, or in any manner disturbing any worshipping assembly, or private family; or in buying or selling property of any kind, or in any labor, the work of necessity and charity only excepted, every person so offending shall, on conviction, be fined in a sum not more than five dollars nor less than one dollar, to be recovered before any justice of the

peace in the county where such offense is committed, and shall be committed to the jail of said county until the said fine, together with the costs of prosecution, shall be paid; but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week, as the Sabbath, or to prevent persons traveling, or families emigrating, from pursuing their journey, or keepers of toll-bridges, toll-gates, and ferry-men from attending the same." (pp. 1574, 1575.)

Other sections declare that the issuing and serving of attachments, and of processes, and the issuing of executions, on the Sabbath, are permissible when necessary.

When the case of *Davis v. Fish* was before the District Court the charge was given the Jury and the verdict rendered on the Sabbath. The case was carried to the Supreme Court, which declared such proceedings to be utterly void. The Court said:

"A day so sacred, set apart for rest by the voice of wisdom, experience, and necessity; a day established by laws both human and divine, for public worship and private devotion, should be held in especial veneration by legal tribunals. Courts of justice should at least, by their practice and decisions, maintain the sanctity of that time-honored, and heaven-appointed institution." (1 Iowa, 406, 1848.)

In this opinion the Court recognizes, not only the sacred character of the day, but also the fact that it is an institution of Divine appointment.

While there are no other decisions in this State which deal with the constitutional basis of the law, there are a number that have value in the proper interpretation of the law.

'Contracts made on the Sabbath day are void. The general rule is that a contract made in violation of a statute and against the policy of the State, whether *malum prohibitum* or *malum in se*, is void, and cannot be enforced by action. Contracts for the sale of property do not come within the exceptions and are therefore illegal. The plea that as the statute does not in express terms prohibit such contracts but only imposes a penalty for making them, they cannot be treated as void, will not hold. The authorities are abundant that a penalty for an act implies a prohibition.' (*Pike v. King*, 16 Ia. 49, 1864.) 'Promissory notes executed on the Lord's day are void. This rule holds good with reference to notes executed in other States unless it is shown that the laws in such States are different from those of Iowa.' (*Sayer v. Wheeler*, 31 Ia. 112, 1870.)

Violators of the Sabbath law frequently plead the illegality of contracts made on the Sabbath to escape certain obligations. Of course those who do this have no regard for the sacredness of the

day, but after violating the law in carrying on worldly business with a neighbor plead the intervention of the law to aid them in wronging that neighbor. The Iowa records present a number of such cases. The following are specimens: Henry Johns sold a piece of land to Mary Skeels. The contract was drawn and delivered on the Sabbath, but bears date of another day. Mary Skeels sold the land to Mr. Bailey who immediately entered into possession. Johns sought to recover the land. His only plea was that the contract was made on the Sabbath and was therefore void. The Circuit Court of Grundy County awarded him possession of the land, but this was reversed by the Supreme Court. (45 Ia. 241, 1876.)

A case of a different kind was that of Gunderson v. Richardson, involving a horse trade. Two men traded horses on the Sabbath. One of them afterwards felt that he had been cheated. The Supreme Court held that he could not recover damages. Both parties were active participants in the violation of the law and the law leaves them where it finds them. (56 Iowa, 56, 1881.)

The following case came before the Supreme Court in 1882:

A man was riding along the highway on a business errand. A dog frightened his horse and he was injured. He brought suit for damages. The plea was made by the defendant that he could not recover because he was violating the law. The court decided otherwise.

A railroad company incurs the usual penalty for running trains on the Sabbath, and if an accident occurs whereby damage is done, liability will be determined by the same rules as if it had occurred on a secular day. (Tingle v. C. B. & Q. R. Co. 60 Ia. 333, 1882.)

The following case shows to what extent scoundrels will go in pleading the Sabbath law to shield themselves from just punishment. John H. Sherwood was tried and convicted of the crime of forgery before the Pottawattamie District Court. The forged note was drawn on a week day but bore the date of Sabbath. A part of the defense was that as the note bore the date of Sabbath it was therefore void and could not be used in evidence. The Supreme Court said: "A note made on Sunday, but in fact delivered on a week day is not void. . . . Now, while it is true that a note in fact made and delivered on Sunday is void, and could not be used in evidence, still, in a civil action, by making proper averments touching a mistake in the date, or that it was in fact delivered on a week day such a note would be admissible in evidence, and on proof that it was made or delivered on a week day, it would be the basis of a legal liability against a genuine maker. . . . We think that the false making of an instrument of this character, even though it bear date of Sunday, may be a forgery under our statute. . . . To hold otherwise would be not only in violation of the spirit and working of the statute, but would render the business of the forger profitable and successful. All he would have to do to escape

liability would be to date the instrument forged on Sunday." (*State v. Sherwood*, 90 Ia. 550, 1894.)

The opinions here quoted bring to light the fact that the Sabbath law is often violated in the making of contracts and no effort made to punish the guilty parties. But if either of them wishes to break the contract his plea is its illegality because made on the Sabbath. Moreover it appears that dishonest people take advantage of this law to cheat the unsuspecting and then take refuge behind the fact of the illegality of the contract. The law should be so framed as to catch all such rogues.

The Supreme Court of Iowa makes the following statement of a question that has been before the courts of many States and variously decided:

"If two persons are engaged in the violation of the Sunday law, and one is injured by the negligence or carelessness of the other, may the injured party recover if he did not otherwise, by his own negligence, contribute to produce the injury?" The Court answers as follows: "It may be conceded that the authorities upon this are in conflict: that the earlier cases in some of the New England States, as well as many later cases, have gone to great extremes in holding that parties who were injured while engaged in violating the Sunday law could not recover for injuries carelessly or negligently inflicted upon them by others. The unreasonableness of these views has been very justly criticized by all leading text writers upon the subject, and has met with the condemnation of the courts elsewhere. . . . We do not think that there is any sufficient reason why, if two persons are engaged in violating the Sunday law, and without any contributing cause one is injured, that he should be denied recovery. . . . To so hold would be offering a premium to negligence, and holding out as an inducement for carelessness the fact that Sunday violators owed no duty to each other as to the exercise of care to prevent accidents. . . . Why should the courts add to the violation of this law a penalty which the law itself has not affixed? If one violates the Sunday law he is amendable to the State—is subject to the punishment inflicted by statute." (*Gross v. Miller*, 93 Ia. 72, 1894.)

The question whether subscriptions for religious purposes, taken on Sabbath, are binding, has been before the Supreme Court of Iowa, in a form similar to that in which it came before the Supreme Court of Indiana. It is worthy of remark that this question usually is raised, not by some one who is zealous for the law, but by some one who has given a subscription to help pay a church debt or for some other religious purpose, and after-

wards tries to avoid meeting his obligation. Such a case came before the Supreme Court of Iowa in 1899. The Court said:

"The custom of taking offerings on the first day of the week has existed from time immemorial, and no one has supposed this to be prohibited by statute. If not, ought receiving promises for the payment of larger sums be deemed condemned thereby? Otherwise the deacons or others in passing the box or hat, and the minister in directing this to be done, are amenable to the penalties of the law. . . . Taking collections and subscriptions to carry on the work of a religious organization may not, strictly speaking, be deemed a part of religious worship; but these are means for its support, and come within the exception of the statute prohibiting any labor, except that of necessity or charity." (First M. E. Church v. Donnell, 110 Ia. 5.)

The law of this State would be improved by dividing it into sections. As it stands the exception in favor of seventh day keepers might be understood as giving them permission to do on the Lord's day everything enumerated in the law, even including rioting and fighting. A further improvement would be made by specifically prohibiting amusements. The penalty is too small. The opinions are of a high order of merit.

KANSAS. (1901).

Article 7 of Chapter 31 of the Kansas Code is entitled "Crimes against Public Morals and Decency." The sections on the Sabbath follow:

"2356. Every person who shall either labor himself, or compel his apprentice, servant or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding twenty-five dollars.

"2257. The last section shall not extend to any person who is a member of a religious society, by whom any other than the first day of the week is observed as the Sabbath, so that he observes such Sabbath, nor to prohibit any ferry-man from crossing passengers on any day in the week.

"2258. Every person who shall be convicted of horse-racing, cock-fighting, or playing at cards or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

"2259. Every person who shall expose for sale any goods, wares or merchandise, or shall keep open any ale or porter house, grocery or tippling shop, or shall sell or retail any fermented or distilled liquor, on

the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars.

"2260. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions or other articles of immediate necessity. (p. 478).

"2439. Every person who shall engage in hunting or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and upon conviction be fined in any sum not less than five nor more than twenty dollars."

The constitutionality of the Sabbath law was passed upon by the Supreme Court of Kansas in 1898 but without argument. The Court merely declared that the legislature has the power to make such laws as are necessary to preserve the public health and protect the public safety, and that this statute is within the municipal and police regulations.

As to the interpretation of the law the Supreme Court has held that the delivery of milk by a dairyman is a work of necessity, since the cows must be milked, and the milk disposed of while fresh. It is a work of necessity to customers, as much so as furnishing medicines to the sick, or food to guests at a hotel. (*City of Topeka v. Hempstead*. 58 Kan. 328, 1897).

As in Iowa so in Kansas the Supreme Court holds that any one injured while working on the Sabbath and it is shown that the injury is the result of the negligence of another he may recover damages. (*Kansas City v. Orr* 62, Kan. 61, 1900.)

It has been held by the District Court of Shawnee County that since the law of Kansas is similar to that of Missouri the opinion rendered in that State declaring baseball and other athletic sports to be lawful on the Sabbath declares the proper construction of the law in this State.

If the law as to games is rightly construed this is the principal point of weakness. As courts do not often reverse themselves the surest remedy is a statute making base ball and other sports unlawful.

MAINE. (1923).

Chapter 125 of the statutes of Maine is entitled "Disturbance of religious meetings and observance of the Lord's day." The sections relating to the latter are the following:

"Sec. 25. Whoever, on the Lord's day, keeps open his shop, workhouse, warehouse, or place of business, travels, or does any work, labor, or business on that day, except work of necessity or charity; uses any sport, game or recreation; or is present at any dancing, public diver-

sion, show or entertainment, encouraging the same, shall be punished by fine not exceeding ten dollars.

"26. If an innholder or victualler, on the Lord's day, suffers any persons, except travelers, strangers, or lodgers, to abide in his house, yard, or field, drinking or spending their time idly, at play or doing any secular business, except works of charity or necessity he shall be punished by fine not exceeding four dollars for each person thus suffered to abide; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offense, and upon a third conviction, he shall also be incapable of holding any license; and every person so abiding shall be fined not exceeding four dollars for each offense.

"27. The Lord's day includes the time between twelve o'clock on Saturday night and twelve o'clock on Sunday night.

"28. No person conscientiously believing that the seventh day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business on the first day of the week, if he does not disturb other persons." (pp. 933, 934).

Chapter 82, Section 115. "No deed, contract, receipt, or other instrument in writing, is void because dated on the Lord's day without other proof than the date of its having been made and delivered on that day."

"Sec. 116. No person who receives a valuable consideration for a contract, expressed or implied, made on the Lord's day, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration."

"Chapter 30, Sec. 27. Sunday is a close time, on which it is not lawful to hunt, kill or destroy game or birds of any kind, under the penalties imposed therefor during other close times; but the penalties already imposed for violation of the Sunday laws are not repealed or diminished."

"Chapter 81, Section 81. No person shall serve or execute any civil process on the Lord's day; but such service is void, and the person executing it is liable in damages to the party aggrieved, as if he had no process."

Formerly the law of Maine uncompromisingly made all contracts entered into on the Sabbath void. In the case of *Joseph G. Towle v. James Larabee*, the contention was about the payment of a note made on the Lord's day, given and received as the consideration for a horse, the contract of sale being entered into and the horse delivered on that day. The Supreme Court held that

"The law will not assist a party to enforce a contract made in violation of its own provisions. There can be no excuse for any attempt to destroy by a forced construction of language the effect of an enactment so suited to enable man to derive the benefit designed to be

bestowed upon him by Providence, in the consecration of the Lord's day to the duty of doing good and of seeking endless happiness, in accordance with the precepts of the gospel of our Lord Jesus Christ." (26 Me. 464, 1847).

In the case *Meador v. White* it was held that a loan of money made on the Lord's day is void, and that the promise to pay cannot be enforced. The Court however regretted that this was so. "The moral obligation to repay money loaned is the same, whether the loan be made on one day or on another. It is an unfortunate condition of the law when the violator of its commands is rewarded by it for such violation. The defendant and the plaintiff are alike guilty of a violation of law; the former in soliciting the loan, the latter in yielding to such solicitation. Both are liable to the penalty provided by the statute. But the defendant, while guilty with the plaintiff, and equally amenable to the penalties provided by the statute, is rewarded for his wrong doing by the refusal of the law to aid in the enforcement of a debt justly due. He is absolved from an indebtedness created at his own instance; while his associate in guilt, who yielded to his wishes, is liable to a double penalty, that inflicted by the law, and that arising from the non-payment of money loaned in addition to the sorrows of a regretful conscience. Juvenal indignantly says:

"Multi

Committunt eadem, diverso crimina fato;

Ille crucem pretium sceleris tulit, hic diadema."

So, now of two criminals guilty of the same offense, one is punished and the other rewarded by the law which creates the offense." (66 Me. 90, 1877).

A study of the laws of the different States and of the cases which have come before the Courts show that no little wrong has been done by giving the law this construction, and the tendency has doubtless been to render such a law odious. The Legislature of Maine provided a remedy for the evil by the enactment of section 116 of Chapter 82.

While the law of Maine forbids the service of a civil process on the Lord's day it allows the service of a criminal process.

A promissory note given on Sabbath is void, but if signed on that day and not delivered till another day it is valid.

A jury may reach a verdict on Sabbath and seal it up to be recorded on the next court day.

The law of this State as thus interpreted by the Courts is deserving of high praise. The exception, however, in favor of those who observe Saturday goes too far in allowing them to do business as well as to labor on the Lord's day.

MARYLAND. (1903).

"Sabbath Breaking" is the title of the sections of article 27 of the Maryland Code relating to "Crimes and Punishments." These sections are as follows:

"365. No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county.

"366. No person in this State shall sell, dispose of, barter, or, if a dealer in any one or more of the articles of merchandise in this section mentioned, shall give away on the Sabbath day, commonly called Sunday, any tobacco, cigars, candy, soda or mineral waters, spirituous or fermented liquors, cordials, lager beer, wine, cider or any other goods, wares or merchandise whatsoever; and any person violating any one of the provisions of this section shall be liable to indictment in any Court in this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum not less than twenty nor more than fifty dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than fifty nor more than five hundred dollars, and be imprisoned for not less than ten nor more than thirty days, in the discretion of the court, and his, her or their license, if any were issued, shall be declared null and void by the judge of said court; and it shall not be lawful for such person or persons to obtain another license for the period of twelve months from the time of such conviction, nor shall a license be obtained by any other person or persons to carry on such business on the premises or elsewhere, if the person, so as aforesaid convicted, has any interest whatever therein, or shall derive any profit whatever therefrom; and in case of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be imprisoned for not less than thirty nor more than sixty days, and fined a sum not less than double that imposed on such person or persons on the last preceding conviction; and his, her or their license, if any were issued, shall be declared null and void by the court, and no new license shall be issued to such person or persons for a period of two years from the time of such conviction, nor to any one else to carry on said business wherein he or she is in anywise interested, as before provided for the second violation of the provisions of this section; one half of all the fines to

be imposed under this section shall be paid to the State, and the other half to the informer; this section is not to apply to milk or ice dealers in supplying their customers, or to apothecaries when putting up bona fide prescriptions.

"367. It shall not be lawful to keep open or use any dancing-saloon, opera house, ten pin alley, barber saloon or ball alley within the State on the Sabbath day, commonly called Sunday; and any person or persons, or body politic or corporate, who shall violate any provisions of this section, or cause or knowingly permit the same to be violated by a person or persons in his, her or its employ, shall be liable to indictment in any court of this State having criminal jurisdiction, and upon conviction thereof, shall be fined a sum not less than fifty dollars nor more than one hundred dollars, in the discretion of the court, for the first offense; and if convicted a second time for a violation of this section, the person or persons, or body politic or corporate, shall be fined a sum not less than one hundred nor more than five hundred dollars; and if a natural person, shall be imprisoned not less than ten nor more than thirty days in the discretion of the court; and in the case of any conviction or convictions under this section, subsequent to the second, such person or persons, body politic or corporate, shall be fined on each occasion a sum at least double that imposed upon him, her, them or it on the last preceding conviction; and if a natural person, shall be imprisoned not less than thirty nor more than sixty days, in the discretion of the court; all fines to be imposed under this section shall be paid to the State." (pp. 690-692).

Chapter 273, 290, relates to hunting, etc., and is as follows: "No person whatsoever shall hunt with dog or gun on the Lord's day, commonly called Sunday, nor shall profane the Lord's day by gunning, hunting, fowling, or by shooting or exploding any gun, pistol or firearm of any kind, or by any other unlawful recreation or pastime, and any person violating the provisions of this section shall, for every such offense, upon conviction before any justice of the peace for the county, forfeit the gun, pistol or other firearm used in such violation, and be fined not less than five dollars nor more than thirty dollars, one-half such fine to go to the person causing the prosecution to be instituted, the other half to the school fund of the county, and upon failure or refusal to pay such fine, and the costs of prosecution, shall be committed to the jail of said county, and confined therein until said fine and costs are paid, not exceeding in any case a period of twenty days; provided, that any person so convicted shall have the right of appeal to the Circuit Court of said county, as in other cases, wherein said justices of the peace have final jurisdiction."

As early as 1834 a case came before the Court of Appeals in which the Divine warrant for Sabbath laws was clearly maintained. This was the case of *Kilgour v. Miles and Goldsmith*, relating to the non-fulfillment of a contract because the day set

for its fulfillment was the Sabbath. The defendants in their plea used the term "Sabbath day." Counsel for the appellant took the ground that "the averment that the day was the Sabbath," does not necessarily mean that it was Sunday. The Court gave the following opinion:

"The efforts of the Counsel to escape from these obvious difficulties, by taking a distinction between the 'Sabbath' (as the day is described in the plea), and the 'Lord's day,' as mentioned in the act of Assembly, or Sunday, cannot avail. The Sabbath is emphatically the day of rest, and the day of rest is the 'Lord's day,' or Christian Sunday. Ours is a Christian community, and a day set apart as the day of rest, is the day consecrated by the resurrection of our Saviour." (G. and J. 6, 268).

The constitutionality of this law was put to the test in 1894 in the case of *Judefind v. State*. This case came before the Circuit Court for Kent County, and was carried to the Court of Appeals. The argument against the constitutionality of the law was that it is in violation of the first paragraph of the fourteenth amendment of the Constitution of the United States and of article thirty-six of the Bill of Rights of the Constitution of Maryland. The clause in the Constitution of the United States referred to declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." The clause in the Bill of Rights in the Constitution of Maryland appealed to declares it to be the duty of every man to worship God in such manner as he thinks most acceptable to Him, that all persons are equally entitled to protection in their religious liberty, that "no person ought, by any law, to be molested in his person or estate on account of his religious persuasion, profession or practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights."

Judge Boyd in delivering the opinion of the court said:

"We have not the slightest hesitation in announcing that the law complained of is not in conflict with the constitution of the United States or of Maryland. . . . There have been numerous decisions in this country as well as elsewhere, sustaining such laws, and we have no desire to be the exception to the general rule.

"Nature, experience, and observation suggest the propriety and necessity of one day of rest, and the day generally adopted is Sunday.

"There are and always will be, honest differences of opinion as to how Sunday should be spent, but the advantages of having a weekly day of rest, 'from a mere physical and political standpoint,' are too apparent to permit us to doubt the propriety of having reasonable laws to regulate work on that day. Article thirty-six of our Declaration of Rights guarantees religious liberty; but the members of the distinguished body that adopted that Constitution never supposed they were giving a death blow to Sunday laws by inserting that Article. Those laws do not prohibit or interfere with the worship of God on any day other than Sunday, nor do they compel any one to worship on Sunday. . . . If the Christian religion is, incidentally or otherwise, benefited or fostered by having this day of rest, as it undoubtedly is, there is all the more reason for the enforcement of laws that help to preserve it. Whilst the courts have generally sustained Sunday laws as 'civil regulations,' their decisions will have no less weight if they are shown to be in accordance with divine law as well as human." (78 Md. 510, 1894).

In *Philadelphia, Wilmington & Baltimore Railroad Company v. Lehman and Brother*, cattle belonging to the plaintiffs were received from the B. & O. Railroad Company by the P. W. & B. Railroad Company to be transported over its road. An action was brought by the plaintiffs against the P. W. & B. Railroad Company upon the common liability of the latter as a common carrier, to recover damages resulting from an alleged delay in the transportation of the cattle. The cattle were received for shipment on Sabbath afternoon and detained till Monday morning.

The Court held that the carrying of the cattle on the Lord's day was a work of necessity and that the road was liable for damages. The Court said:

"Most, if not all, of the States of the Union have what are familiarly known as Sunday laws, and while they may differ in their phraseology and the penalties imposed, they are substantially the same in their general scope and provision;—all looking to keep the day sacred, and as one of rest from secular employments. . . . In this Court we have had no case analogous to the present; but, looking to what has been decided elsewhere, we have no doubt in concluding that our Sunday law, as found in the Code, Art. 30, Sec. 178, has no application to this case whatever." (56 Md. 209, 1881).

Inquests by coroner's juries, and commitments by coroner's magistrates of accused persons to jail, are not violations of the law. (74 Md. 153, 1891).

Maryland has had its share of cases in which violators of the law have attempted to escape obligations or punishment because contracts made on the Sabbath are void. The case of

Haack v. Knights of Liberty Social and Liberty Club, is in point. Haack was treasurer of the Club, and had money in his hands obtained from the sale of liquor on the Sabbath, the club existing partly for the sale of liquor and cigars, and furnishing entertainment on the Sabbath. Mr. Haack refused to deliver the money to the Club on the ground that these sales and entertainments were illegal. The Court said:

"We do not think the defendant should be allowed to escape liability in the case, upon any such pretexts. . . . The laws which the State has enacted to secure the due and orderly observance of Sunday, must, of course, be enforced, and so construed as to give them full effect, but not at the expense of all the rules of common honesty." (76 Md. 429, 1892).

The law of this State is among the very best. It is clear and specific in its prohibitions, and is forcefully sustained by the Supreme Court as resting on solid constitutional ground.

MICHIGAN. (1892).

Chapter 54 of the Michigan statutes is entitled "Observance of the First Day of the Week, and the Prevention and Punishment of Immorality." The following sections relate to the Sabbath:

"1. No person shall keep open his shop, warehouse or workhouse, or shall do any manner of labor, business or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take part in any sport, game or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages. And every person so offending shall be punished by fine not exceeding ten dollars for each offense.

"2. No tavern keeper, retailer of spirituous liquors or other person keeping a house of public entertainment, shall entertain any persons, not being travelers, strangers, or lodgers in his house, on the said first day of the week, or shall suffer any such person on said day to abide or remain in his house, or in the buildings, yards, or orchards or fields appertaining to the same, drinking, or spending their time idly, or at play, or doing secular business.

"3. Any person offending against any of the provisions of the last preceding section, shall be punished by a fine not exceeding five dollars for each person so entertained, or suffered so to abide or remain; and upon any conviction after the first; such offender shall be punished by a fine not exceeding ten dollars; and if convicted three times, he shall be afterwards incapable of holding a license; and every person so

abiding or drinking shall be punished by a fine not exceeding five dollars.

"4. No person shall be present at any game, sport, play, or public diversion, or resort to any public assembly, excepting meetings for religious worship or moral instruction, or concerts of sacred music, upon the evening of the said first day of the week; and every person so offending shall be punished by a fine not exceeding five dollars for each offense.

"5. No person shall serve or execute any civil process from midnight preceding, to midnight following the said first day of the week; but such service shall be void, and the person serving or executing process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

"6. If any person shall, on the said first day of the week, by rude and indecent behaviour, or in any other way, intentionally interrupt or disturb any assembly of people met for the purpose of worshipping God, he shall be punished by a fine not less than two, nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days.

"7. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties provided in this chapter, for performing secular business or labor on the said first day of the week, provided he disturb no other person."

Section 8 states that the first day of the week includes the time from midnight to midnight, and that no prosecution can be begun after the expiration of three months from the time when the offense was committed. (Vol. I, pp. 543-545).

In 1893 the following act was passed: "1. The people of the State of Michigan enact: That it shall be unlawful for any person or persons to carry on or engage in the act or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first day of the week commonly called Sunday except such person or persons shall be employed to exercise such art or calling in relation to a deceased person on that day.

"2. That it shall be unlawful for any such person or persons to keep open their shops or places of business aforesaid, on said first day of the week commonly called Sunday, for any of the purposes mentioned in section one of this act: Provided, however, that nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath and who actually refrain from secular business on that day."

The fine for violating this act is not less than ten nor more than twenty dollars, or imprisonment not more than thirty days, or both.

The constitutionality of this law was tested before the Supreme Court in 1893, in the case of *People v. Bellet*, *Bellet*

being on trial for violating the act relating to barbers. The Court said:

"The better reason for maintaining the police power to prohibit citizens from engaging in secular pursuits on Sunday is the necessity of such regulations as a sanitary measure. As to those employments which are noiseless, and harmless in themselves, and conducted in a manner not calculated to offend those who, from religious scruples, observe Sunday as the Lord's day, this necessity appears to be the only valid source of legislative power; and this is based upon the fact that experience has demonstrated that one day's rest is requisite for the health of most individuals, and not all individuals possess the power to observe a day of their own volition." (99 Mich. 151).

In the case of *Scougale v. Sweet*, the Supreme Court, in declaring games of base ball to be prohibited, said: "The right of the State to enact laws for the observance of the Sabbath is beyond the domain of discussion. Nearly every law that has been passed upon the subject has been contested in the courts. Upon no subject is there a greater unanimity in judicial opinions. . . . Whether they are enacted because of the necessity of a day of rest, or out of regard to the religious practices and beliefs of the people, or from both considerations, we need not consider. . . . It is the duty of the sheriff and police officers generally to enforce those laws which the people have enacted for the protection of their lives, persons, property, health and morals, including the laws for the observance of the Sabbath." (124 Mich. 311, 1900).

As to the interpretation of the law it was formerly held that all business transactions on Sabbath were void and could not be enforced. Two men traded horses on the Sabbath, and on the same day one of them gave the other a note for the amount of the difference in their value. The one who gave the note refused to pay, basing his refusal on the fact that the transaction was illegal. He was sustained by the Supreme Court, since "No case could be more clearly a matter of business within the statute; and no business transaction on that day more evidently demoralizing in its tendency and example." (2 Douglas 76).

In 1864 in the case of *Tucker v. Mowry* a different construction was placed upon the law. In this case Mowry had sold a horse to Tucker on the Sabbath. The question which arose was, since the contract was void, could Mowry by tendering the consideration received recover the horse? The Court held that he could. The following sentences show the line of reasoning: "We think it much more in accord with sound public policy to treat the contract as utterly void, and to allow the plaintiff, by tendering back what he has received (or doing what is in his power to place the vendee in statu quo), to recover back his property, than to refuse him a remedy, and thereby to affirm the contract as valid. To refuse all remedy in such cases would be to open a wide door to fraud. It would operate, not only as a trap to the ignorant and unwary, but as a direct encouragement to swindling. . . . We cannot fail to see that if all remedy were refused in such cases, a

shrewd and dishonest man, knowing his victim could obtain no legal redress, might, by fraudulent representations, or by tempting offers which he could well afford to make, obtain money or property to any extent without consideration or liability to pay.

"One object of the statute was to prevent the making of contracts on Sunday; but to refuse to sustain an action to recover back property sold on Sunday, would be offering a premium to the dishonest to make their contracts on that day." (12 Mich. 378).

In the case of *Allen v. Duffie*, Judge Cooley wrote an opinion in which all the other Justices concurred, with reference to the legality of subscriptions made on the Sabbath to pay off a church debt. After declaring that such acts are not works of necessity, he took up the question, are they works of charity? On this question he said:

"Charity is active goodness. It is doing good to our fellow men. . . It was never doubted so far as we know, that all the necessary or usual work connected with religious worship was work of charity. If it were not so, the minister who preaches, the organist and precentor, who furnishes the music, and the sexton, who cares for the building on Sunday, would be violating the law every day they performed service for their religious society, and not only would be precluded from recovering compensation, but might be punished for services which are proper in themselves, and for which the day is specially set apart. But their work is not illegal, because it is in a true sense, and indeed in the very highest sense, charitable. Religious societies are formed to do good to mankind. . . . The support of religious societies being in itself a charity, the general custom of such societies as to the methods by which the means of support may be collected may throw much light on the question, 'What is admissible?' The general sense of a Christian people has demanded and secured the law, and their method of observing the day must be some evidence of the sense in which the law is enacted. Now it is a matter of common observation that religious societies solicit moneys for their needs and take subscriptions at their regular meetings on the first day of the week. . . . Nobody has ever asserted, so far as we are aware, that the taking up of these Sabbath offerings was illegal and punishable under the statute." If a subscription to a church debt is illegal the judge declared, "the clergyman might be fined for appealing to his parishioners to be more liberal in their donations." (43 Mich. 1, 1890).

In the case of *The Turnverein Society v. Carter*, it was held that "A resolution adopted on Sunday by a society not a religious or charitable association authorizing the mortgaging of the society's real estate, is void, and it is a question of law for the Court whether the character of the society brings it within the exception to the statute upon the subject." (71 Mich. 608.)

The following deliverances show the policy of this State as to contracts made on the Lord's day:

"It is settled law in Michigan that a Sunday contract is a prohibited transaction, the illegality of which forbids it being made a sale by a mere delivery later."

A note drawn on the Lord's day is void. (96 Mich. 243.)

A bond signed on the Sabbath, but dated and made to take effect on a week day will protect an obligee who did not know that it was signed on the Sabbath. (Hall v. Parker, 37 Mich. 590, 1877.)

With the exception of the liberty allowed to Saturday keepers both to labor and transact business on the Sabbath, this law is of superior excellence. The opinions of the courts are of a high order.

MISSOURI. (1899).

The Sabbath law of Missouri is found in Chapter 15, article VIII. and is entitled "Offences against Public Morals and Decency." The following sections relate to the Sabbath:

"2240. Sabbath breaking. Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or who shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

"2241. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so as he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day of the week; nor shall said last section be extended or construed to be an excuse or defense in any suit for the recovery of damages or penalties from any person, company or corporation voluntarily contracting or engaging in business on Sunday.

"2242. Horse racing, etc., on Sunday.—Every person who shall be convicted of horse racing, cock fighting, or playing at cards or games of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

"2243. Selling goods on Sunday.—Every person who shall expose to sale any goods, wares or merchandise, or shall keep open any ale or porter house, grocery or tipping shop, or shall sell or retail any fer-

mented or distilled liquor on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor and fined not exceeding fifty dollars.

"Sec. 2244. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions or other articles of immediate necessity.

"2245. Barbering on Sunday.—That it shall be a misdemeanor for any person to carry on the business of barbering on Sunday. (1895).

"2246. That any one found guilty of violating section 2245 of this article shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned in the county jail not less than fifteen no more than thirty days, or both, in the discretion of the court. (Vol. 1. pp. 523, 624).

The following miscellaneous sections treat of various aspects of the question :

"370. . . Where the affidavit for an attachment states that the plaintiff will lose his claim unless the writ of attachment issues and be served on Sunday or on any legal holiday, the writ may be issued and served on that day."

Chapter 14 contains the following with reference to courts:

"1615. No Court to sit on Sunday.—No court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of the court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender, nor shall it prevent the issuing and service of any attachment in a case where a debtor is about fraudulently to secrete or remove his effects."

Chapter 22 has the following on dram-shops:

"3011. Any person having a license as a dram-shop-keeper, who shall keep open such dram-shops, or shall sell, give away or otherwise dispose of, or suffer the same to be done upon or about his premises, any intoxicating liquors, in any quantity, on the first day of the week, commonly called Sunday, or upon the day of any general election in this State, shall, upon conviction thereof, be punished by a fine not less than fifty nor more than two hundred dollars, shall forfeit such license, and shall not again be allowed to obtain a license to keep a dramshop for the term of two years next thereafter."

In chapter 65 serving writs, etc., is treated of:

"4683. No person on Sunday. . . . shall serve or execute any writ, process, warrant, order or judgment, except in criminal cases, or for a breach of the peace, or when the defendant is about leaving the county, or in any case of attachment when the debtor is about fraudulently to secrete or remove his effects or in any injunction case."

The constitutionality of the Missouri Sabbath law was decided by the Supreme Court in 1854, in the case of the State v. Ambs. Judge Scott delivered the opinion of the court. The following extracts are of weighty importance:

"Peter Ambs was indicted for keeping open an ale house on Sunday, and for selling intoxicating liquors on the same day. . . . The main question argued in the briefs of the counsel in this case was, the constitutionality of the law exacting the observance of Sunday, as a day of rest. It was maintained for the appellant, that the laws enjoining an abstinence from labor on Sunday, under a penalty, and prohibiting the opening of ale and beer houses, and selling intoxicating liquors on that day, were dictated by religious motives, and consequently could not be sustained, being inconsistent with the State constitution, which ordains that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others, in their religious worship; that no preference can ever be given by law to any sect or mode of worship.

"Those who question the constitutionality of our Sunday laws, seem to imagine that the constitution is to be regarded as an instrument framed for a State composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past; that unlike ordinary laws, it is not to be construed in reference to the state and condition of those for whom it was intended, but that the words in which it is comprehended are alone to be regarded, without respect to the history of the people for whom it was made.

"It is apprehended, that such is not the mode by which our organic law is to be interpreted. We must regard the people for whom it was ordained. It appears to have been made by Christian men. The constitution, on its face, shows that the Christian religion was the religion of its framers. . . . Long before the convention which framed our constitution was assembled, experience had shown that the mild voice of Christianity was unable to secure the due observance of Sunday as a day of rest. The arm of the civil power had interposed. The convention sat under a law exacting a cessation from labor on Sunday. The journal of the convention will show that this law was obeyed by its members as such, by adjournments from Saturday until Monday. . . . The framers of the constitution then recognized Sunday as a day to be observed, acting themselves under a law which exacted a compulsive observance of it. If a compulsive observance of the Lord's day, as a day of rest, had been deemed inconsistent with the principles contained in the constitution, can any thing be clearer than, as the matter was so plainly and palpably before the convention, a specific

condemnation of the Sunday law would have been engrafted upon it? So far from it, Sunday was recognized as a day of rest, when, at the same time, a cessation from labor on that day was coerced by a penalty. They, then, who engrafted on our constitution the principles of religious freedom therein contained, did not regard the compulsory observance of Sunday as a day of rest, a violation of those principles. They deemed a statute compelling the observance of Sunday necessary to secure a full enjoyment of the rights of conscience. How could those who conscientiously believed that Sunday is hallowed time, to be devoted to the worship of God, enjoy themselves in its observance amidst all the turmoil and bustle of worldly pursuits, amidst scenes by which the day was desecrated, which they conscientiously believed to be holy? The Sunday law was not intended to compel people to go to church, or to perform any religious act, as an expression of preference for any particular creed or sect, but was designed to coerce a cessation from labor, that those who conscientiously believed that the day was set apart for the worship of God, might not be disturbed in the performance of their religious duties. Every man is free to use the day for the purpose for which it is set apart or not, as he pleases. If he sees proper to devote it to religious purposes, the law protects him from the disturbance of others; if he will not employ himself in religious duties, he is restrained from interrupting those who do. Thus the law, so far from affecting religious freedom, is a means by which the rights of conscience are enjoyed." "Bearing in mind that our constitution was framed for a people whose religion was Christianity, who had long lived under, and experienced the necessity of laws to secure the observance of Sunday as a day of rest, how remarkable would it have been that they should have agreed to make common, by their fundamental law, a day consecrated from the very birth of their religion, and hallowed by associations dear to every Christian. . . .How can we reconcile the idea to our understanding, that a people professing Christianity would make a fundamental law by which they would convert Sunday into a worldly day?How startling would the announcement be to the people of Missouri that, by their organic law, they had abolished Sunday as a day of rest, and had put it out of the power of their legislators ever to restore it as such!" (20 Mo. 214).

In the case of the *State v. Granneman*, section 2245, was declared unconstitutional because it is special law. The Court said: "Barbering is labor, and the object of the act is to enforce an observance of the Sabbath, and to prohibit that kind of labor on that day. The policy of our laws is to compel the observance of Sunday as a day of rest, and if this may be done by a general law, applicable alike to all classes and kinds of labor, then the act falls within the inhibition of the paragraph of the constitution quoted, which prohibits the legislature from passing any local or special law, where a general law can be made applicable. That a general law prohibiting all kinds of labor on Sunday, may not only be passed, but that we have such a

law now upon our statute book, is indisputable." I. R. S. 1889, Sec. 3852. (132 Mo. 326, 1895).

Judge Ellison, of the Missouri Court of Appeals, made a contribution of considerable value to the argument for the constitutionality of Sabbath laws in the case of the City of St. Joseph v. Elliott. He said: "Whether laws enforcing the observance of Sunday be bottomed alone on matters spiritual and religious and have for their sole object the enforcement of religious duty, or whether such laws are merely the exercise of the State's police power regulating the customs, peace or health of the people, can make no practical difference to this defendant. These laws, under constitutions like ours, are everywhere upheld, though the reasons upon which they are sustained are various. So if defendant has been convicted on the theory that the law made him observe the Sabbath either from a religious duty to God, or a political duty to the State, or a social duty to his fellows, or all of these combined, can make no difference. Each of the foregoing have been given as reasons back of the law, and each leading to the one result of upholding the law, and convicting this defendant.

"It is not our province to decide this ordinance to be constitutional for one or other of these reasons, and we do not undertake to do so. But that it is proper to hold that it is an object of such laws to prevent the desecration of the Sabbath, there can be no doubt. To say otherwise would be to shut one's eyes to all history and to isolate one's self from his daily surroundings. Because no one can be compelled to do any act of religious service on Sunday, it by no means follows that he cannot be prevented from desecrating the day. For I apprehend that no man will be found with sufficient temerity to say that all Sunday laws in this country have not as a part, at least, of their object the protection of the observance of religious duties, and that the moving cause of their enactment was not in obedience to, and the result of, religious sentiment existing in the State where enacted."

"The truth is that some courts having concluded (perhaps without sufficient justification) that laws enacted for the observance of Sunday as a religious duty were repugnant to constitutions guaranteeing religious freedom, and yet determined to uphold them, have set about to find other reasons than those based on Christianity. These reasons Ringgold, in his work on the law of Sunday (p. 101), declares to be 'an afterthought of the courts,' that is to say, that it is an attempt to find a sanction for these statutes in considerations which have never been the moving causes of their enactment." (47 A. 418, 1891).

The law declares that no court shall be open or transact any business on Sabbath unless it be for the purpose of receiving a verdict and discharging a jury. In the St. Louis Criminal Court a man by the name of Green was tried and convicted of murder in the first degree. The charge to the jury was not completed till ten minutes after twelve on Saturday night. The court then took a recess till two o'clock when the verdict was received and the jury discharged. Appeal was taken, chief-

ly on this ground, to the Supreme Court. This Court held that the charge to the jury should have ended by midnight, and since it did not all the proceedings after that hour were illegal and void, and the cause was remanded for a new trial. (37 Mo., *State v. Green*, 466, 1866).

Where goods are selected and the prices settled on Sabbath, but according to the contract are not to be delivered till Monday, the contract cannot be regarded as made on Sabbath. (*Rosenblatt v. Townsley*, 73 Mo. 536, 1881).

It has been held that the statute prohibiting "horseracing, cock fighting, or playing at cards or games of any kind, on the first day of the week," does not prohibit "athletic games and sports." (*The St. L. Agr'l Ass'n v. Delana*, 108 Mo. 217, 1891).

The statutes of Missouri do not go so far as those of many other States in prohibiting the transaction of all worldly business. Promissory notes and deeds drawn on the first day of the week are valid. (*Roberts v. Barnes*, 127 Mo. 405, 1894, *Kauffman v. Hamm*, 30 Mo. 387, *More v. Clymer*, 12 Mo. App. 11).

Playing baseball is held not to be a violation of the statutes, because it is not an immoral game, and the games forbidden on the first day of the week are only such as are in their nature demoralizing. The contrary construction of the statute it was said would be "elastic enough to cover every game that ever was or ever will be invented, no matter whether it was harmless, promotive of physical or mental development or deleterious to both. It would prevent games of chess, backgammon, jacks, authors, proverbs, faro, keno, and poker alike, and when played on Sunday any one would have been as illegal as any other. Such a construction would have curtailed many of the pleasures of our people, without elevating them or improving their moral tone." (*Ex. parte Joseph Nect*, 157 Mo. 527, 1900).

According to the law of this State a motion for a new trial must be filed within four days, but courts must take notice of the calendar, and an intervening Sabbath is not to be counted. (*The State v. Gullette*, 121 Mo. 445, 1894).

The execution of a deed of trust on the Sabbath is not for that reason void. (*Robert v. Barnes*, 127 Mo. 405, 1894).

The law of Missouri like that of Kansas is interpreted as not prohibiting on the Lord's day base ball and other athletic sports. It needs amendment so as to make it clear that not only all immoral games without exception are prohibited, but that all public sports are also put under the ban. The first opinion quoted above is one of the most able ever delivered on this question. It makes clear the fact that Christianity is part of the common law. Much is added to the argument for Sabbath laws by this and some other opinions of the Missouri Courts.

NORTH DAKOTA. (1899).

Chapter 4 of the Penal Code of this State is entitled "Crimes against Religion and Conscience." The sections relating to "Sabbath Breaking" are as follows:

"6837. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified.

"6838. Any violation of this prohibition is Sabbath-breaking.

"6839. Under the term "day" as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

"6840. The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath-breaking.

"1. Servile labor.

"2. Public sports.

"3. Trades, manufactures and mechanical employments.

"4. Public traffic.

"5. Serving process.

"6841. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity and charity.

"6842. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

"6843. All shooting, sporting, horse-racing, gaming or other public sports, upon the first day of the week, are prohibited.

"6844. All trades, manufactures and mechanical employments, upon the first day of the week, are prohibited.

"6845. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

"6846. All service of legal process of any description, upon the first day of the week, is prohibited, except in cases of breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

"6847. Every person guilty of Sabbath breaking is punishable by a fine of not less than one dollar nor more than ten dollars at the discretion of the court, for each offense.

"6848. The fines prescribed in this chapter for profane swearing

and for Sabbath breaking may be collected in the manner prescribed by law, for collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

"6849. Every innkeeper, or person licensed to sell liquors, who sells or gives away any strong or spirituous liquors or wine, upon Sunday, is guilty of a misdemeanor.

"6850. Every master or other person engaged in navigating a steamboat, who allows any liquors mentioned in the last section to be sold on his boat on Sunday, while stopping at any wharf, landing, city or town in this State, is guilty of a misdemeanor."

North Dakota being one of the newer States not many cases have yet reached the Supreme Court. While North and South Dakota formed the Territory of Dakota a case with reference to what is lawful for juries and courts was rendered. It was held that:

"A jury that has retired to deliberate upon their verdict, may request and receive additional instructions on the Sabbath, or the judge may on that day upon his own motion have the jury brought in and re-instruct them, for the purpose of correcting a supposed error or mistake in his former charge." (1 Dakota, 197, 1875).

The law of this State, like some others in this class, allows the sale of certain articles of food on the Sabbath. It is doubtful whether the latitude allowed is necessary. Aside from the features here noted this is among the best of our Sabbath laws.

OHIO. (1903).

Part Four of the Ohio statutes contains the Penal Laws. Chapter 9 treats of "Offences against Chastity and Morals." The sections relating to the Sabbath are the following:

"7032. Whoever, being over fourteen years of age, engages in sporting, rioting, quarreling, hunting, fishing, or shooting, on Sunday, shall, on complaint made within ten days thereafter, be fined not more than twenty dollars, or imprisoned not more than twenty days, or both.

"7032a. Whoever on the first day of the week, commonly called Sunday, participates in or exhibits to the public with or without charge for admittance, in any building, room, ground, garden, or other place in this State, any theatrical or dramatic performance of any kind or description, or any equestrian or circus performance of jugglers, acrobats, rope dancing, sparring exhibitions, variety shows, negro minstrelsy, living statuary, ballooning, or any baseball playing, or any ten pins, or other games of similar kind or kinds, or participates in keeping any low or disorderly house of resort, or shall sell, dispose of or give away any ale, beer, porter, or spirituous liquors in any building appendant or

adjacent thereto, when any such show, performance, or exhibition is given, or houses or places is kept, he or she shall, on complaint made within twenty days thereafter, be fined in any sum not exceeding one hundred dollars, or be confined in the county jail not exceeding six months, or both, at the discretion of the court.

"7033. Whoever, being over fourteen years of age, engages in common labor on the first day of the week, commonly called Sunday; and whoever, being over fourteen years of age, shall open or cause to be opened any building or place for the transaction of business on the first day of the week, commonly called Sunday, or who shall require any person in his employ or under his control to engage in common labor on Sunday, shall, on complaint made within ten days thereafter, and upon conviction, be fined, for the first offense, twenty-five dollars, and for each subsequent offense such person shall be fined not less than fifty dollars nor more than one hundred dollars, and imprisoned not less than five days nor more than thirty days.

"But this section does not apply to or embrace works of necessity or charity, and does not extend to persons who conscientiously observe the seventh day of the week as the Sabbath, and who do in fact abstain, on that day, from the doing of the things herein prohibited on Sunday; nor shall it be so construed as to prevent families emigrating, from travelling, or watermen from landing their passengers, or keepers of toll-bridges, toll-gates or ferries from attending the same, on Sunday.

"7033-1. Any person who engages in the business of barbering on Sunday shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifteen dollars, and upon a subsequent conviction for a like offense shall be fined not less than twenty dollars, and not more than thirty dollars, or imprisoned in the county jail for a period of not less than twenty days nor more than thirty days, or be both fined and imprisoned at the discretion of the court." (Vol. 3, pp. 3390, 3391).

The clause in sec. 7032 relating to the opening of places of business was added only a few years ago, but the courts generally held that the expression "common labor" in the same section included buying, selling etc:

The first case to call forth a Supreme Court opinion on the constitutionality of this law was that of *Bloom v. Richards*. The question at issue was the validity of a contract made on the first day of the week. In two older cases such contracts were declared to be void. (15 O. R. 225, 1846; 18 O. R. 489, 1849). In this case they were pronounced valid, Judge Thurman delivering the opinion of the court. It was first maintained that neither in England nor America are such contracts void at common law, although the contrary opinion has sometimes been held

in both countries. Mr. Justice Thurman then presents an elaborate argument on the point in dispute in which he denies that Christianity is part of the common law, but upholds the constitutionality of the law as a police regulation. The following sentences are interesting though we may not wholly agree with some of the positions taken.

"Were such a contract void by the common law of England, it would not necessarily follow that it is void in Ohio. . . . The constitution of Ohio has declared that all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required, as a qualification to any office of trust or profit, it follows that neither Christianity, nor any other system of religion is a part of the law of the State. . . . We have no union of Church and State, nor has our government ever been vested with authority to enforce any religious observance, simply because it is religious. Of course, it is no objection, but, on the contrary, is a high recommendation, to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal and not over things spiritual. Thus the statute upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of this State, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty. For no power over things merely spiritual, has ever been delegated to the government, while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the constitution. Acts evil in their nature, or dangerous to the public welfare, may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion could shield a murderer, ravisher, or bigamist: for the community would be at the mercy of superstition, if such crimes as these could be committed with impunity, because sanctioned by some religious delusion.

"We are, then, to regard the statute under consideration as a mere municipal, or police regulation, whose validity is neither strengthened or weakened by the fact that the day of rest it enjoins is the Sabbath day. Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious

to be overlooked. It was within the constitutional competency of the General Assembly to require this cessation of labor, and to name the day of rest. It did so by the act referred to, and, in accordance with the feelings of a majority of the people, the Christian Sabbath was very properly selected. But, regarded merely as an exertion of legislative authority, the act would have had neither more nor less validity had any other day been adopted." Judge Thurman says that it may be consistent, in a country where Christianity is a part of the law, and in which there is an established Church, and an omnipotent parliament, to declare that "to allow men to make bargains on the Sabbath is to let them desecrate that holy day, and it should not be granted that the legislature would suffer that." But he declares "the General Assembly of Ohio is not, as we have shown, a guardian of the sanctity of any day. If it may protect the first day of the week from desecration, because it is the Christian Sabbath, it may, in like manner, protect the sixth because it is the holy day of the Mahomedan and the seventh because it is the Sabbath of the Jew and the Seventh Day Baptist." "It would, in the opinion of most Christians, be a far greater desecration of Sunday to go to an infidel lecture on that day, than to buy a tract of land; and yet the former is certainly not unlawful. The statute leaves a man to study atheism or the Bible on the Lord's day, as he may see fit, although in the judgment of most men, the former occupation is as vicious as the latter is laudable. There are various religious duties, the performance of which on Sunday is considered peculiarly appropriate; various occupations or amusements, harmless in themselves, but deemed by most Christians irreligious if indulged in on the Sabbath; yet the law neither enforces the one nor forbids the other. In a word, we repeat, that legally considered, Sunday is merely a day of rest. To the Christian it is far more. With him, it has a sanctity not derived from human laws, but stamped upon it by the Almighty. His observance of it is not the mere performance of a civil duty, but an obedience to a precept of the Most High. In this faith he is protected; the faith itself is regarded with respect; but the law does not enforce it." (2 O. S. R. 387, 1853).

In 1855 the merits of the Sabbath law of Ohio were again put to the test before the Supreme Court, in the case of Thomas McGatrick v. Charles Mason. (4 O. S. 566). Mason had requested his hired man McGatrick to assist him in placing certain railroad cars and trucks,—which he had sold and agreed to ship from Cleveland to Toledo—on a vessel; to do which it was necessary to raise them from the dock by the use of machinery and manual effort. McGatrick consented. The work was to be done the next day which was Sabbath, Nov. 15, as the vessel was about to sail, and the master would not take the cars etc., unless shipped on that day; and "it was a matter of great neces-

sity that they should be shipped as speedily as possible, as navigation was about closing." While raising one of the trucks, a part of the machinery gave way, owing to which the truck fell upon McGatrack, breaking both his legs. To recover damages for this injury, he brought suit against Mason.

The plea was advanced by Mason that McGatrack, when the injury happened, was in fault himself, being in the commission of an unlawful act. It became necessary for the court to argue this point. Judge A. G. Thurman used the following language in arguing the question, what is a work of necessity?

"In answering this question, we must always keep in mind, that it is no part of the object of the act to enforce the observance of a religious duty. The act does not to any extent rest upon the ground that it is immoral or irreligious to labor on the Sabbath, any more than upon any other day. It simply prescribes a day of rest from motives of public policy and as a civil regulation, and as the prohibition itself is founded on principles of public policy, upon the same principles, certain exceptions are made, among which are works of necessity and charity. In saying this, I do not mean to intimate that religion prohibits works of necessity and charity on the Sabbath; but merely to show that the principles upon which our statutes rest, are wholly secular; and that they are none the less so because they may happen to concur with the dictates of religion. Thus the day of rest, prescribed by the statute is the Christian Sabbath, yet so entirely does the act rest upon grounds of public policy, that, as was said in *Bloom v. Richards*, 2 O. S. R. 391, 392, it would be equally constitutional and obligatory, did it name any other day, and it derives none of its force from the fact that the day of rest is Sunday. . . . Nor will it do to limit the word 'necessity' to those cases of danger to life, health or property, which are beyond human foresight or control. On the contrary, the necessity may grow out of, or indeed be incident to a particular trade or calling, and yet be a case of necessity within the meaning of the act. For it is no part of the design of the act to destroy, or impose onerous restrictions upon any lawful trade or business; and hence under a similar statute it has been held in a sister State, that it is lawful to keep a blast furnace at work on Sunday, because it is a work of necessity. So, too, it has been held, that under special circumstances, a mill may grind on that day; and I think it will hardly be questioned, that a gas company may supply gas; a water company water; and a dairyman milk, to their respective customers, on that day."

In 1898 at the January term of the Supreme Court of Ohio the case of the *State v. Powell* was tried. In this case the effort was made to show that the statute making it unlawful to engage

in "any base ball playing" is unconstitutional. (58 O. R. 324—346). It was maintained by the counsel for the State, that the enacting of such a law "was plainly within the domain of the legislative power commonly called the police power."

"This statute under discussion does not forbid or interfere with any one in the worship of Almighty God 'according to the dictates of his own conscience.' We have never heard the contention, and do not expect to hear it, that playing base ball is an act of worship, which the conscience of any one requires to be performed on Sunday. It is not essential to the exercise of the police power of the legislature, that the matter in respect to which it is exercised must be in its nature injurious; or as the Court below is reported to have expressed it, a matter *malum in se*."

Judge Marshall in delivering the opinion of the court, among other things said:

"The policy of Sunday laws is based upon the observed fact, derived from long experience and the custom of all nations, that periods of rest from ordinary pursuits are requisite to the well-being, morally and physically, of a people. If there were no such regularly recurring periods, there is reason to believe that the masses would become morbid in mind, crime would multiply, and degeneracy likely ensue." "Religious liberty does not consist in the right of any sect to oppose its views to the policy of a government. Such a claim would end in simple intolerance of all not in accord with the sentiments of the particular sect. Those who, as a matter of religious faith, observe the seventh day of the week are not prohibited from doing so; but they cannot insist that others shall do so, nor refuse to observe the day fixed by the State for secular reasons." The Judge pointed out that the argument of the Counsel for Powell was based on the assumption that the purpose of the act is to enforce the observance of Sunday as a religious requirement. He said that "No doubt many who advocate Sunday observance, particularly the Christian ministry, do so from the persuasion that our Sunday laws are designed as religious observances only, and insist that they shall be more rigidly enforced that the people may be more accessible to the influence of the Christian pulpit. However, desirable this may be from a Christian standpoint, it is certain that it is not in the power of the Legislature to accomplish this by any direct legislation, so long as religious liberty is guaranteed, as it is, in our bill of rights. . . . A law enacted for sufficient reasons of a secular nature—as the public health, cannot be held invalid because there is a variety of religious notions upon the subject. Nor can the States be prevented from adopting certain civil regulations, recommended by a wise public policy, simply because found to be in accord with the teaching of some religion. There is probably no religious observance that could not be enforced as a secular duty without violating the guaran-

tee of religious liberty, where there are sufficient secular reasons for doing so, independent of what is ordained as a matter of religion. In general, where there are secular and religious reasons for the same observance or law, the observance or law may be adopted as a civil regulation by the legislature for the attainment of the secular purposes; and when enforced for these purposes alone, no one can complain of it simply because the observance or law finds support in the precepts of some religion. It is enjoined for secular and not religious reasons. It might be questioned whether the Jewish Sabbath was prescribed purely as a religious observance, and without any regard to the temporal welfare of the people. It must be remembered that the Jewish Government was in the nature of a theocracy, and its precepts were given without much regard to what was of a spiritual nature, and what was secular and related to the temporal government of the people alone."

In March 1898, in *State v. Goode et al*, the same question was considered. Judge Fisher delivered the opinion of the court. He said:

"The validity of the Sunday laws has been repeatedly passed upon and in clear and vigorous language sustained by our Supreme Court, not on the ground that the day is holy, and by Christians observed as a day for religious thought and worship, but on the ground that it is the day set by the State for rest, quiet and peace, for the welfare, health and happiness of all people, Jew, Christian and unbeliever. . . . In exercising the power to name a day of rest, the legislature could have named any other day in the week, and required its observance. That it named Sunday is not strange; in fact being a Christian people, it would have been passing strange indeed, had any other day than Sunday been named.

"When the Pilgrim Fathers landed at Plymouth Rock, they brought with them not only the spirit of religious liberty—the right to worship Almighty God according to the dictates of one's own conscience—but they brought also, as well, the Christian Sabbath, and the one became as much a part of the organic or fundamental law of the land as the other, and from the very beginning of the establishment of the Colonial Governments down to the present time, the right to regulate the observance of the one, as a fixed period of rest and cessation from labor, has been as broadly recognized as has been the right of absolute freedom of religious worship.

"While the right to enjoy absolute religious liberty and the right to appoint a day of rest and regulate its observance have gone hand in hand from the very formation of the government, it has never been questioned that the broadest enforcement of the one in any way conflicts with, or hinders the broadest enjoyment of the other, because the day fixed for rest is the Sabbath day." (5 Nisi Prius Reports, 179, 1898.)

The cases already cited in which the constitutionality of the law is maintained set forth with considerable explicitness the interpretation of the law. But few additional cases need therefore to be given.

In *Swisher v. Williams* the effort was made to void a deed because executed on the Lord's day. The Court held that the law was violated, both parties partaking of the sin. But it was added,

"The law does not require of us to enable either party to add to the sin by breaking the faith pledged on that day, and commit a fraud out of assumed regard for the Sabbath day." (Wright's Reports, 754, 1834.)

In *Nagle v. Brown* it was held that "It is not unlawful in this State to travel upon public highways, for pleasure merely, upon the Sabbath day. The due and legal observance of the Sabbath day is regulated by statute. Act of March 30, 1864, Swan & Saylor 289. In addition to 'Common labor (works of necessity and charity only excepted), the statute makes it unlawful for any person of fourteen years or upward to be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing or shooting.' Beyond these inhibitions the observance of the day is left to the conscience and religious convictions of the citizen; and in our judgment the innocent and healthful exercise of riding or driving, is not within the meaning of the terms of the inhibition." (37 O. R. 7, 1881.)

In 1885 at the January term of the Ohio Supreme Court, the question was decided whether or not the publication of the preliminary and other ordinances, with respect to a street improvement, in a newspaper of general circulation, in accordance with the terms of the statute, is a valid and legal publication, although such paper is published only on Sunday." (*Hastings v. Columbus*, and *Shuffin v. Columbus*. 42 O. R. 585). In these cases the Court said:

"Even if publication in a Sunday newspaper is not such publication as the statute contemplates; still where the newspaper is of general circulation in the municipal corporation and it is shown to be probable that notice of the proceeding reached all interested therein, the irregularity of such publication in a Sunday newspaper does not go to the power to assess, but brings the case within the curative provisions of the municipal code of 1869, §550; Rev. Stats, §2289."

Most people on reading the Ohio Sabbath law would pronounce it equal to the best. Its prohibitory clauses comprehend most forms of Sabbath desecration, it is not weakened by a lengthy list of exceptions, its penalties are adequate. But on reading some of the judicial opinions fears begin to arise lest no sufficient constitutional basis be left for it to rest upon. Of a thousand opinions examined relating to the Sabbath laws of the different States, that of Judge Thurman is the only one that denies that Christianity is part of the common law. Such a denial is often made by attorneys in pleading cases of violation of laws against Sabbath desecration, profanity, and other vices, but it is a rare thing to find it in a judicial opinion. This point is more fully considered in Chapter VIII., but it should be here observed that when this fact is denied men enter upon a course of the wildest kind of illogical reasoning. It is cause of profound gratitude that in 1898, forty-five years after Judge Thurman handed down his opinion, an opinion of the opposite kind was rendered by Judge Fisher. While he does not in so many words say that Christianity is part of the common law he says what means the same thing when he declares that the Christian Sabbath is as much a part of the organic or fundamental law of the land as is religious liberty. As the case now stands Ohio is in the front rank both as to the substance of its Sabbath law and the character of the opinions by which it is upheld.

OKLAHOMA. (1893).

The law of Oklahoma on "Sabbath Breaking" is found in Article 4, entitled "Of Crimes against Religion and Conscience," it is the same as the law of North Dakota. The penalty, however, is one dollar.

PENNSYLVANIA. (1894).

"Sunday" is the title of the Sections of the law of this State relating to the day of rest. They are as follows:

"1. No person or persons upon the first day of the week, shall serve or execute, or cause to be served or executed, any writ, precept, warrant, order, judgment or decree, except in case of treason, felony or breach of the peace; but the serving of any such writ, precept, warrant, order, judgment or decree, shall be void, to all intents and pur-

poses whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, precept, warrant or order, judgment or decree at all.

"2. No part of any act of assembly heretofore passed, shall be construed to require any canal or railroad company to attend their works on the Sabbath days, for the purpose of expediting or aiding the passage of any boat, craft, or vehicle along the same; any clause or clauses in their respective charters, imposing a penalty for not aiding boats, crafts or vehicles to pass within a certain time, to the contrary notwithstanding.

3. If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted), shall use or practice any unlawful game, hunting, shooting, sport or diversion whatsoever on the same day, and be convicted thereof, every such person so offending shall, for every such offense, forfeit and pay four dollars, to be levied by distress; or in case he or she shall refuse or neglect to pay the said sum, or goods and chattels cannot be found, whereof to levy the same by distress, he or she shall suffer six days' imprisonment in the house of correction of the proper county; Provided, always, That nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bakehouses, lodging-houses, inns and other houses of entertainment, for the use of sojourners, travelers or strangers, or to hinder watermen from landing their passengers, or ferrymen from carrying over the water travelers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessities of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day. *

"4. Provided always, That every such prosecution shall be commenced within seventy-two hours after the offense shall be committed.

"5. It shall be lawful for the select and common councils of the city of Philadelphia, the corporation of the district of Southwark and the commissioners of the incorporated part of the Northern Liberties, respectively, to make, ordain and pass such ordinance or ordinances as they may judge proper for the better regulation of the markets holden in the said city and districts aforesaid, on the first day of the week, commonly called Sunday.

"6. So much of the act passed the 22d day of April, one thousand eight hundred and ninety-four, entitled 'An act for the prevention of vice and immorality, and for other purposes,' as relates to the sale of

*In 1867 the restriction upon the delivery of milk was repealed so far as it relates to the County of Allegheny.

the necessaries of life, on the first day of the week, commonly called Sunday, so far as respects the city and districts aforesaid, be and the same is hereby repealed.

"7. All persons who are found drinking and tippling in ale-houses, taverns or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense forfeit and pay one shilling and six pence to any constable that shall demand the same, to the use of the poor; and all constables are hereby empowered and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks, or bind them to their good behavior as to him shall seem requisite. And the keepers of such ale-houses, taverns or other public house or place, as shall countenance or tolerate any such practices, being convicted thereof, by the view of a single magistrate, his own confession, or the proof of one or more credible witnesses, shall, for every offense, forfeit and pay ten shillings, to be recovered as and for the uses above said.

"8. Provided always, That nothing in this act be construed to prevent victualling-houses or other public house or place from supplying the necessary occasions of travellers, inmates, lodgers or others, on the first day of the week, with victuals and drink in moderation, for refreshment only; of which necessary occasion for refreshment, as also moderation, the magistrate before whom complaint is made, shall be judge; any law, usage or custom in this province to the contrary notwithstanding.

"9. It shall not be lawful for any person or persons, to sell, trade or barter in any spirituous or malt liquors, wine or cider, on the first day of the week, commonly called Sunday; or for the keeper or keepers of any hotel, inn, tavern, alehouse, or other public house or place knowingly to allow or permit any spirituous or malt liquors, wine or cider, to be drank on or within the premises or house occupied or kept by such keeper or keepers, his, her or their agents or servants, on the said first day of the week.

"10. Any person or persons violating the provisions of the foregoing section, shall, for each and every offense, forfeit and pay the sum of fifty dollars, one-half of which shall be paid to the prosecutor, and the other half to the guardians of the poor of the city or county in which suit is brought, or in counties having no guardians of the poor, then to the overseers of the poor of the township, ward or borough in which the offense was committed; to be recovered before any mayor, alderman, burgess or justice of the peace, as debts of like amount are now by law recoverable, in any action of debt brought in the name of the commonwealth, as well for the use of the guardians of the poor (or for the overseers of the poor, or the township, ward or borough, as

the case may be) as for the person suing: Provided, That when any prosecutor is himself a witness, on any trial under the provisions of this section, then the whole penalty or forfeiture shall be paid to the guardians or overseers as aforesaid: And provided further, That it shall be a misdemeanor in office, for any such mayor, alderman, burgess or justice of the peace, to neglect to render to the said guardians of the poor and prosecutor the amount of such penalty, within ten days from the payment of the same.

"11. In addition to the civil penalties imposed by the last preceding section, for a violation of the provisions of the first section of this act, every person who shall violate the provisions of that section, shall be taken and deemed to have committed a misdemeanor, and shall, on conviction thereof, in any criminal court in this commonwealth, be fined in any sum not less than ten, nor more than one hundred dollars, and be imprisoned in the county jail for a period not less than ten, nor more than sixty days, at the discretion of the court.

"12. All penalties, fines and forfeitures imposed, incurred or paid, under the act to which this is a supplement, except so far as part thereof is payable to the prosecutor, shall be paid over to the guardians, directors or other representatives of the poor of the city, district or county in which the offense was committed. (Brightly's Purdon's Digest, Vol. 2, pp. 1950-1953.)

"A supplement, for the better regulation of the Sabbath. 1. That the mayors of the cities of Pittsburgh and Allegheny, and the burgesses of the several boroughs in the county of Allegheny, shall have and exercise all the powers of justices of the peace and aldermen, in all cases of violation of the first section of an act to prevent the sale of intoxicating liquors on the first day of the week, commonly called Sunday, approved on the twenty-sixth day of February, Anno Domini one thousand eight hundred and fifty-five: Provided that such mayors and burgesses shall be subject to the proviso in the second section of said act; and in case any person or persons convicted before any mayor, burgess, alderman or justice of the peace of a violation of the first section of an act to prevent the sale of intoxicating liquors on the first day of the week, commonly called Sunday, approved on the twenty-sixth of February, Anno Domini one thousand eight hundred and fifty-five, shall refuse or neglect forthwith to pay the fine lawfully imposed for such violation, with costs, and no goods or chattels can be found whereof to levy the same by distress, he, she or they shall be committed to the common jail of the proper county for a term of not less than ten, nor more than thirty days, at the discretion of the mayor, burgess, alderman, or justice of the peace before whom such conviction shall have been had.

"2. That the mayors and burgesses mentioned in the first section of this act, shall have and exercise all the powers of justices of the peace and aldermen, in all cases of violation of the first section of the act approved the twenty-second of April, Anno Domini one thousand seven hundred and ninety-four, entitled, "An act for the prevention of

vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," and in all actions for penalties for violation of acts of assembly, commonly known as *qui tam* actions.

"3. That any person violating the provisions of the first section of said act for the suppression of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation, approved April twenty-second, Anno Domini one thousand seven hundred and ninety-four, within the county of Allegheny, being summarily convicted thereof before any mayor, burgess, justice of the peace or alderman, shall forfeit and pay the sum of twenty-five dollars with costs, and in default of payment, or of goods to levy upon to satisfy the same, shall be committed to the county prison for not less than ten, nor more than thirty days." (P. L. 321, 1855.)

Section 17 of the chapter on "Game" declares that "There shall be no hunting or shooting or fishing on the first day of the week, called Sunday; and any person offending against the provisions of this section shall be liable to a penalty of twenty-five dollars." (Vol. 1, p. 946.)

The following was enacted in 1897:

"1. There shall be no hunting or shooting on the first day of the week called Sunday, and any person offending against the provisions of this section shall be liable to a penalty of twenty-five dollars for each and every offense, or by imprisonment in the county jail for a period of one day for each dollar of penalty imposed. (Brightly's Supplement, 325.)

The constitutionality of the Pennsylvania Sabbath law was put to the test in 1817 in the case of the *Commonwealth v. Wolf*, and again in 1848 in the case of *Specht v. Commonwealth*. The law was upheld in both cases. In the latter case the contention in behalf of the plaintiff, who was a Seventh Day Baptist, was that the law is unconstitutional on these grounds:

"It treats the first day of the week as a holy or sacred day, and if the legislature can direct that religious observance, there is no limit to their power over religious subjects. If they 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."

Judge Bell in giving the opinion of the Court said: "The constitution of this State secures freedom of conscience and equality of religious rights. No man, living under the protection of our institutions, can be coerced to profess any form of religious belief, or to practice any peculiar mode of worship, in preference to another. In this respect, the Christian, the Jew, the Mohammedan, and the Pagan, are alike entitled to protection. Nay, the Infidel, who madly rejects all belief in a Divine Essence, may safely do so, in reference to civil punishment,

so long as he refrains from the wanton and malicious proclamation of his opinions with intent to outrage the moral and religious convictions of a community, the vast majority of whom are Christians. "Though it may have been a motive with the law-makers to prohibit the profanation of a day regarded by them as sacred—and certainly there are expressions used in the statute that justify this 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. . . . "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 observances, 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, but 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 urged, with apparent conviction of its truth, that to compel men to refrain from labor, solely from regard to the imputed holiness of a particular day, is, within the meaning of the constitution, to 'control' the religious observance, 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. So long as no attempt is made to force upon others the adoption of the belief entertained by the governing power, or to compel a practice in accordance with it, so long is conscience left in the enjoyment of its natural right of individual decision and independent religious action. There is nothing to prevent the unrestrained expression of an adverse belief. . . . The error of the plaintiff's position is that it confounds the reason of the prohibition with its actual effect, and thus mistakes the mere restraint of physical exertion for the fetters that clog the freedom of mind and conscience." "It intermeddles not with the natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences; it compels none to attend, erect, or support any place of worship, or to maintain any ministry against his consent; it pretends not to control or to interfere with the rights of conscience, and

it establishes no preference for any religious establishment or mode of worship. It treats no religious doctrine as paramount in the State; it enforces no unwilling attendance upon the celebration of Divine worship. It says not to the Jew or Sabbatarian, You shall desecrate the day you esteem as holy, and keep sacred to religion that we deem to be so. It enters upon no discussion of rival claims of the first and seventh days of the week, nor pretends to bind upon the conscience of any man any conclusion upon a subject which each must decide for himself. It intrudes not into the domestic circle to dictate when, where, or to what god its inmates shall address their orisons; nor does it presume to enter the synagogue of the Israelite, or the church of the Seventh-day Christians, to command or even persuade their attendance in the temples of those who especially approach the altar on Sunday. It does not, in the slightest degree, infringe upon the Sabbath of any sect, or curtail their freedom of worship."

"The only remaining ground upon which the plaintiff in error attacks the validity of the statute, is found in the assumption that, in conscience, he is as fully bound to attend to his secular affairs upon the first six days of the week, as to cease from labor on the seventh. Were this so, the law which compels him to inaction upon one of the six might well be regarded as an invasion of his conscientious convictions. But for this supposed article of his faith, his counsel refers us to no other warrant than that command of the decalogue which teaches, '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.' But without other evidence than the mere suggestion of counsel, we cannot believe that the religious sect to which the plaintiff in error belongs, have so construed this commandment as to make it imperative on its members, literally, to labor on every day of the week other than the seventh. Such is not rationally its meaning, nor is it that assigned to the word by the ancient people to whom it was originally delivered by the Deity. From the beginning even until now, it is regarded by them as intended to set apart a day of religious rest, but not as commanding six days of labor. Within six days the Israelite was directed to do all his work, in order that he might devote the seventh, uninterruptedly, to the service of God, but it was never imagined that he was under an imperative obligation to fill up each day of the other six with some worldly employment"

"His Honor, Judge Coulter, concurred in the judgment of the court, as to the constitutionality of the act of Assembly but dissented from the grounds assumed in the argument. He held it to be constitutional, because it guarded the Christian Sabbath from profanation; and, in the language of the act, prohibited work or worldly employment on the Lord's day, commonly called Sunday; and not because of the mere usefulness of the day as a day of rest and cessation from worldly labor." (8 Pa. 312).

Again in the case of *Johnston v. the Commonwealth* the constitutional ground of Sabbath laws was thoroughly considered. Judge Woodward, in giving the opinion of the court, said:

"If we decide that necessity and charity mean convenience (and this is the essence of the demand), we emasculate the statute, and sweep away the guards which the legislature threw around, not only the morals of society, but the physical health and well-being of both men and beasts. If Sunday be thus surrendered to the fierce rivalry of efforts for promoting the convenience of the public, it might as well be blotted from the calendar of days. But we have no right to give up this institution. It has come down to us with the most solemn sanctions, both of God and man, and if we do not appreciate it as we ought, we are, at the least, bound to preserve it. We have no power to repeal the Act of 1794, nor to make its exemption of works of charity and necessity include works of mere convenience. Our duty requires us to construe the statute so as to accomplish its purpose, which was to enforce an observance of Sunday, instead of obliterating it.

"Rest and the public worship of Almighty God, were the primary objects of the institution, both as a divine and civil appointment. . . .

"Our fathers who planted in our fundamental law the assertion of those immortal truths, that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, that no man can be compelled to attend, erect, or support any place of public worship, and that no human authority can in any case whatever control or interfere with the rights of conscience, enacted also the statutes of 1705, 1786 and 1794, for the suppression of worldly employments on Sunday. So far from conflicting with those invaluable rights of conscience, they regarded such statutes as indispensable to secure them. It would be a small boon to the people of Pennsylvania to declare their indefeasible right to worship God according to the dictates of their consciences amid the din and confusion of secular employments, and with desecrations on every hand of what they conscientiously believe to be hallowed time. These statutes were not designed to compel men to go to church, or to worship God in any manner inconsistent with personal preferences; but to compel a cessation of those employments which are calculated to interfere with the rights of those who choose to assemble for public worship. The day was set apart for a purpose, and the penal enactments guard it, but they leave every man free to use it for that purpose or not. If he wish to use it for the purpose designed, the law protects him from the annoyance of others—if he do not, it restrains him from annoying those who do so use it. Thus the law, without oppressing anybody, becomes auxiliary to the rights of conscience.

"And there are other rights intimately associated with the rights of conscience, which are worth preserving. The right to rear a family

with a becoming regard for the institutions of Christianity, and without compelling them to witness hourly infractions of one of its fundamental laws—the right to enjoy the peace and good order of society and the increased securities of life and property which result from a decent observance of Sunday—the right of the poor to rest from labor, without diminution of wages, or loss of employment—the right of beasts of burden to repose one-seventh of their time from their unrequited toil—these are real and substantial interests which the legislature sought to secure by this enactment; and when has legislation aimed at higher objects?" (22 Pa. 102, 1853).

In *Omit v. Commonwealth*, involving the right of a licensed innkeeper to sell liquor on the Sabbath, the Supreme Court held that such sales are forbidden. The licensing of taverns for a year does not give the right to sell for each of the three hundred and sixty-five days. "As well might it be urged that a contract for hiring for a year would compel a laborer to work on Sundays, or that an auctioneer who is licensed under Acts of Assembly for a year, might pursue his business on the fifty-two Sundays of the year." "Sunday cannot be given up. Strangers and travelers have no light to demand hospitality at such a price. Rest one day in seven was enjoined by the precept and example of the Author of our existence and government, founding itself on Divine appointment, has made it a civil institution. 'For the ease of creation,' said our old Act of 1705, as well as that people may enjoy religious privileges, the first day of the week shall be observed. They justly regarded it as essential to religious freedom, as well as to physical health and strength. It is an institution deeply seated in the religious effections of the community, and one of the foundations of public morals, and of our political fabric. The policy of no such system as that of licensed inns can prevail to abridge it of its proportions or its power." (21 Pa. 426, 1853.)

In the case of *Mahoney v. Cook* the Supreme Court said: "The declaration that Christianity is part of the law of the land, is a summary description of an existing and very obvious condition of our institutions. We are a Christian people, in so far as we have entered into the Spirit of Christian institutions, and become imbued with the sentiments and principles of Christianity; and we cannot be imbued with them, and yet prevent them from entering into and influencing, more or less, all our social institutions, customs and relations, as well as all our individual modes of thinking and acting. It is involved in our social nature, that even those among us who reject Christianity cannot possibly get clear of its influence, or reject those sentiments, customs and principles which it has spread among the people, so that, like the air we breathe, they have become the common stock of the whole country, and essential elements of its life.

"It is perfectly natural therefore, that a Christian people should have laws to protect their day of rest from desecration. Regarding it as a day necessarily and divinely set apart for rest from worldly employments, and for the enjoyment of spiritual privileges, it is simply

absurd to suppose that they would leave it without any legislative protection from the disorderly and immoral. The sentiment that sustains it must find expression through those who are elected to represent the will of their constituents." (26 Pa. 342, 1855). This was a suit to recover damages for the wrecking of a boat on Sabbath in a navigable stream by an obstruction placed there by the defendant. Damages were awarded.

In the *Commonwealth v. Nesbit* the Supreme Court again upheld the law, saying:

"We are not forgetting that the public acts of our Pennsylvania ancestors abound with declarations in favor of liberty of conscience, and that some regard these declarations as inconsistent with the Sunday laws. But a little reflection shows that they indicate the moral ideal to which all government ought to approach as nearly as possible, rather than a positive principle of legislation. And in applying such declaration, we must bear in mind, that they proceed from an earnestly Christian people, and must receive a practical interpretation.

"They never thought of tolerating paganism or the principle of ecclesiastical supremacy in civil affairs, on the ground of liberty of conscience. They could not admit this, as a civil justification of human sacrifices, or parricide, or infanticide, or thuggism, or of such modes of worship as the disgusting and corrupting rites of the Dyonisia, and Aphrodisia, and Eleusinia, and other festivals of Greece and Rome. . . .

"Every Christian man is sure that it is his religion that has suppressed the pagan customs just alluded to, and that to it is due the large advance in justice, benevolence, truth, and purity that belongs to modern civilization; that it has purified and elevated the family relations; that it has so elevated the moral standards of society, that the indecencies, and cruelties, and cheats of paganism are now condemned by custom and by law, as crimes. And he is very sure that the Sabbath and its institutions were the prominent means of this progress, and are essential to its maintenance and continuance.

"How, then, is it possible for a Christian people to avoid protecting such a day and its institutions. If there are men who oppose them as superstitions, let them at least respect them as essential constituents of the people's life, which cannot possibly be laid aside at will. If strangers to our institutions dislike these particular ones, let them accord a reasonable respect to us, and indulgence to our customs, and they will soon be reconciled to both, and find other matters more needing their reforming efforts. . . . By our Sunday laws, and our other laws against vice and immorality, we do not mean to enforce religion; we admit that to be impossible. But we do mean to protect our customs, no matter that they may have originated in our religion; for they are essential parts of our social life. Instinctively, we defend and protect them. It is mere social self-defense, and not a matter of choice." (34 Pa. 398, 1859).

There is no ambiguity in the language used in the case of *Common-*

wealth v. Eyer when it was declared that "Sabbath-breaking is a violation of a divine as well as a human law." (1 S. and R. 347).

In 1867 one of the most important cases that has arisen in Pennsylvania came before the Supreme Court of that State. This was the case of Sparhawk v. Union Passenger Railway Co. This company, having constructed a street railway in Philadelphia, began running its cars on Sabbath. Sparhawk and others brought a bill seeking to have this act declared unlawful, and asking for an injunction restraining the company from running its cars on the Sabbath, on the ground that it deprived them of their right to a quiet Sabbath and interrupted the worship of God. Kenton, a stockholder in the company also brought a similar suit. The case was first heard by the Supreme Court at Nisi Prius, and the injunction was granted. Judge Strong delivered the opinion of the court. He declared:

"Christianity is part of the common law of this State. In saying this I utter no new doctrine. . . . But if Christianity is a part of the common law, it carries with it a civil obligation to abstain on the Lord's day from all worldly labor and business, except works of necessity and mercy. Christianity without a Sabbath would be no Christianity."

... "The legislature has not exempted from the prohibition acts which may conduce to the convenience, or contribute to supply the necessities, of individuals, or even large portions of the people. It must be presumed they considered what inconveniences would follow a prohibition of worldly labor on the Lord's day. In view of them, as well as of the evils flowing from the absence of a prohibition of such labor, they enacted the statute of 1794. Their controlling object was to protect the community against vice and immorality. This they attempted to do by declaring illegal all worldly labor and business, except works of necessity and charity. But they did not overlook public and individual convenience. In the proviso of the act they declare how far worldly labor might be done, not necessary to the agent, but contributing to the necessities of others. The enumeration in the proviso of things allowed to be done, shows what was intended by excepting works of necessity from the prohibitory clause.

"If it was not meant by the act to forbid work which might be a convenience or even a necessity in some sense to others than the laborer, the proviso is entirely superfluous. It is plain, however, that when they excepted works of necessity, they meant works of necessity to him who does them, and not to others. If this is not so, the act is without force. There is very little, if any worldly business that does not subserve the convenience and even the necessities of some part of the community. Food, clothes, shelter and furniture are undoubted necessities. But may the agriculturist justify his ordinary worldly

business on Sunday by the plea that he is thereby furnishing food for the hungry? May the cotton-mills, woolen-mills, and clothing establishments of the country be driven, as usual, and without cessation, on the Lord's day, because they are thus contributing to provide clothing for those who need it? Is the business of the carpenter or cabinet-maker to move on through the seven days of the week, uninterruptedly and according to law, because others may need houses or furniture? May the chemist keep his laboratory in full operation on Sunday, because medicines are necessary? All these questions, and a multitude of others of similar character, must be answered in the affirmative, if running railway cars on Sunday on city passenger railways is a work of necessity within the meaning of the exception in the act of 1794. It may be doubted whether keeping theaters and places of public amusement open on Sunday might not be justified by the same line of argument.

"Pews in churches are real property, recognized as such by the law. They are the subject of sale, and they often bring prices equal to the value of many small farms. An action may be maintained for disturbance of their enjoyment. But the whole value of a pew consists in the facilities it affords for joining in public worship, and for receiving the instruction given in churches. To render it unfit in any way for the purpose for which such property is designed or used, is its destruction, and it may amount as fully to an irreparable private wrong as is any unlawful act against which a chancellor enjoins."

The defendants put in answers to these bills, admitting the running of the cars, but denying that this was a violation of the law. Testimony was taken on their behalf, from ministers, physicians and others, to show that the running of the cars on the Sabbath was necessary in attending to sick and going to places of worship, affording recreation to poor people living in badly ventilated neighborhoods, etc.

It was agreed that all of the affidavits, etc., read by either party, or presented at the argument of the motions for preliminary injunctions, should be considered as proof, taken in both cases before an examiner, and that decrees pro forma be made in the cases in favor of the plaintiffs, in accordance with the prayer of each bill, and the case certified to the Supreme Court in banc, the injunction granted to remain until the entry of the final decree.

The temporary injunction was dissolved by the Supreme Court. But in so doing Judge Thompson who delivered the opinion on the first bill, said:

"I fully concede that the opinion of my Brother Strong at Nisi Prius, and the law and authorities referred to by him, establish very

clearly, that the business of running passenger cars on the Lord's day, commonly called "Sunday," to use the language of the Act of 1794, is a violation of that act; and I agree that it is within its penalties."

It was held however that the damage to property was not such as to warrant the issuing of an injunction. On the second bill a similar opinion was rendered by Judge Woodward. (54 Pa. 401, 1867).

In *Commonwealth v. Teaman* before the Court of Quarter Sessions a charge was brought of disorderly conduct in selling newspapers on the Sabbath. In rendering its decision the Court said:

"The design of the law is to secure not only a day of rest, but as it is termed in the act of 1705, a day on which 'the people may devote themselves to religious and pious exercises.' Those who choose to avail themselves of the privileges are to be protected from disturbance and molestation by others who disregard them. . . . The crying of newspapers in the public streets on Sunday is a breach of the peace. As well might the oysterman cry his oysters, or the charcoal man ring his bell. The peace of Sunday may be disturbed by acts which, on other days, cannot be complained of—such acts as interfere with the rights which the law vouchsafes to the people who desire to conserve that day as a period of religious observance and of rest from worldly business." (1 Phil. 460, 1853).

In 1893 it was declared in *Commonwealth v. Matthews* that "Selling Sunday newspapers is a performance of worldly employment within the meaning of the act and does not come within the exceptions of the act as works of necessity." (152 P. S. 166, 1893).

In *Commonwealth v. Houston* it was held that "A manager, director and stockholder of a corporation which publishes a newspaper on Sunday may be convicted under this act; and this though he is never at his office on Sunday, nor doing any work on that day." (C. C. 395).

"Carrying on the business of selling milk in an open store to all who may call for it is a worldly employment, and not within the proviso permitting the delivery of milk."

"The proviso, in terms, places milk and all the necessities of life on the same footing. If you can sell milk on Sunday as a worldly employment or business, you can sell sugar, tea, butter, bread and every other article of food ordinarily used and necessary for human comfort and enjoyment."

Delivery does not in any sense comprehend a sale, and the business of delivering articles is entirely distinct from the business of selling them." (Com. v. Martin, 7 Pa. C. C. 154, 1889.)

A subscription for the erection of a church is a work of charity and is within the exception. (*Dale v. Knipp*, 98 Pa. 389, 1881).

"It is a violation of the act to charge compulsory prices for admission to a camp-meeting on Sunday." (Com. v. Weidner, 4 C. C. 437, 1888).

In *Splane v. Commonwealth* the Court of Common Pleas Number 1,

of Allegheny County, held that "Selling soda water as a beverage on Sunday in connection with drugs or other goods is a violation of the Act of 1794." "It was urged by counsel for defendant upon the argument of this case that the proviso to the Act of 1705, which declares that 'nothing in this act shall be construed to prevent victualling houses, or other public house or place from supplying the necessary occasions of travelers, inmates, lodgers or others, on the first day of the week, with victuals and drink in moderation for refreshment only,' would apply to a druggist, store-keeper or confectioner, or other person who furnished drinks, such as soda water or lemonade. . . . It can hardly be said with any regard to the significance of language that a drug store falls within the proviso as to the character of the place where the victuals were to be dressed, or that soda water is within the ordinary meaning of the word 'victuals.' It would sound somewhat strangely to hear one designate the 'charging' of a soda fountain and the drawing of a glass of soda water for use as 'dressing victuals.' " (35 P. L. J. 102, 1887.)

In upholding this opinion the Supreme Court, to which the case was carried, declared that "Few acts upon our statute books are of more importance to the welfare of the good citizens of this Commonwealth than the act of 1794. The weekly day of rest is, from a mere physical and political standpoint, of infinitely greater value than is ordinarily supposed, since it not only affords a healthful relaxation to persons in every position of life, but throws a strong barrier in the way of the degradation and oppression of the laboring classes, who, of all others, need this ever recurring day of rest and relief from weekly toil. It is, therefore, neither harsh nor unjust that men of capital should be required to obey those statutes which have been wisely ordained for the protection of the Sabbath." (35 P. L. J. 256, 1888.)

The Court of Quarter Session of Allegheny County, in *Commonwealth v. Burry*, involving the sale of ice cream, cakes, pies, lunches, etc., on the Sabbath day by a baker, declared that "the business conducted by the defendant, that is, the sale of ice cream, cakes, pies, lunches, etc., is a worldly employment prohibited by the Act of 1794, and not within the exceptions to the Act. . . . A stated day of rest is essential to the 'ease of creation,' for the recreation of man and beast. If such a day were not enforced by law, the greed of man would force the utmost amount of labor from all men whose necessities subject them to their will, as they would from the beast who has no will to oppose them. It is legislation designed to protect the weak against the strong, and, as such, should have the hearty support of all men who regard their own interest and the cause of humanity. The courts have always regarded it as wise legislation, which is entitled to a fair interpretation and full enforcement." (C. C. 481, 1888.)

This case was appealed to the Supreme Court and the opinion sustained. (1 *Mona.* 89, 1889.)

It is held that the sale and delivery of ice—at least in a great city during the heat of summer—is a work of necessity within the exception to the Act of 1794. (*Com. v. Linaugh*, 13 D. R. 486, 1894.)

In view of the conditions and usages of the present time, the running of street cars in a large city and its suburbs on Sunday is a work of neces-

sity, and is not a violation of the Act of 1794. (Com. v. Berks County Prison Warden, 11 D. R. 45, 1901.)

"Repairing a railroad track on Sunday is a work of necessity and charity. (Com. v. Fields, 4 C. C. 434.) "So is the sale of railroad tickets for the purpose of attending a religious campmeeting." (Com. v. Fulton, Ibid, 429.)

"For a licensed inn-keeper to sell cigars on Sunday either to his guests or strangers" is a violation of the act. (Baker v. Com. 5 C. C. 10).

It is a violation of the law "to pump water out of oil wells on Sunday as a matter of convenience and profit." (Com. v. Funk, 9 C. C. 277).

"Operating a steamboat on Sunday for the carrying of excursionists, is worldly employment which is prohibited." (Com. v. Rees, 10 C. C. 545).

The value of the Sabbath law was maintained by the Supreme Court, in the case of Friedebom v. Commonwealth in the following terms:

"There are but few of our statutes which in principle are of more importance than the act of the 22d of April, 1794, commonly called the "Sunday act," in that it recognizes the first day of the week as a Sabbath of rest for the well disposed and religious people of our Commonwealth, and we can entertain but little respect for those who wilfully and persistently violate its prescriptions. Against all such its penalty should be enforced until they are taught that a respect for its provisions may at least be profitable from a pecuniary point of view. The fine imposed is but light, far too light, indeed, to prevent the violation of the statute by great corporations and heavy capitalists, who regard their own profit rather than the public welfare." (113 Pa. 242, 1886).

In this case Friedebom was charged with selling to six different persons, quantities of cigars, tobacco, cider, spruce beer and candy, and had been fined by a justice of the peace for each person to whom he sold. The Supreme Court held that there can be but one violation of the law by the same person in one day and consequently but one fine can be imposed.

In the Supreme Court, during the January term of 1891 the case of Commonwealth v. Waldman was heard. (25 C. 89). Waldman was charged with violating the Sabbath law of the State by keeping his barber shop open and in full operation on the first day of the week. It was maintained that this was done for the accommodation of persons who cannot get shaved upon Saturday; and persons whose beards are so strong that they are shaved every day in order to be cleanly. Judge Pennypacker in his opinion said of the law of 1794:

"It was enacted immediately after the visitation of Philadelphia by the yellow fever in 1793, at a time when that scourge was widely regarded as a punishment inflicted upon the community because of increasing levity and worldliness, and its object plainly was by the imposition of penalties to compel the observance of Sunday. . . . It is quite clear that he (the defendant) was influenced by the usual motives which govern men when following their worldly vocations, the securing of trade, the gathering in of compensation, and the laying away of profit. If the position so strenuously and ably urged by counsel for the defendant were sound, it would result in the entire abrogation of the act of 1794, because the same process of reasoning would throw open substantially all the avenues of business life. In a large community such as this, there can always be found some hungry to whom the baker may supply bread, some needy to whom the tailor may furnish clothing, and some wanderer in want of transportation. And, to extend the thought further, the baker cannot bake without coal, and the railway cannot carry without iron. If there are persons so closely tied to their occupations during the week that they cannot find sufficient time to get shaved except upon Sundays, the same want of time will prevent them from seeking the shoemaker, the plumber, and the forgerman upon the ordinary days of labor."

The numerous cases here cited will give but an inadequate idea of the controversy that has been and still is carried on in Pennsylvania over the Sabbath law. Repeated efforts have been made to secure an opinion by the Supreme Court against its constitutionality. These have all failed. The law has been uniformly upheld, sometimes on one ground and sometimes on another. Frequently the Divine authority back of the law has been set forth. Still more frequently has the law been sustained because Christianity is part of the common law.

In recent years enemies of the law seem to have abandoned the attack on the line of its constitutionality and have turned their attention to the legislature, hoping that amendments might be secured that would practically annul the better part of the law. The most recent of these efforts proposed the following:

"Be it enacted etc. hereafter it shall be lawful to sell Drugs, Medicines, Soda and Mineral Waters, and other harmless and non-intoxicating drinks, Bread, Oysters, Cakes, Pastry, Ice Cream, Candy, Milk, Fruit, Cigars, and Tobacco and to prepare, print and sell Newspapers on the first day of the week, commonly called Sunday."

The Christian citizens of the State, however, made their voices heard in opposition to this proposal, as they had done to like proposals in former years, and the bill was killed in the Com-

mittee to which it had been referred. With the exception of the inadequate penalty of four dollars except in Allegheny County where it is twenty-five, this law ranks as one of the best, and some of the judicial opinions are among the most profound.

SOUTH DAKOTA (1903).

Chapter 4 of the Penal Code of this State is entitled "Crimes against Religion and Conscience." The sections relating to "Sabbath Breaking" are as follows:

"39. The first day of the week being by general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

"40. Any violation of this prohibition is Sabbath-breaking.

"41. Under the term 'day' as employed in the phrase 'first day of the week,' in the seven sections following, is included all the time from midnight to midnight.

"42. The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath-breaking:

"1. Servile labor.

"2. Public sports.

"3. Trades, manufacturers and mechanical employments.

"4. Public traffic.

"5. Serving process.

"43. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity and charity.

"44. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

"45. All shooting, sporting, horse-racing, gaming or other public sports, upon the first day of the week, are prohibited.

"46. All trades, manufacturers and mechanical employments, upon the first day of the week, are prohibited.

"47. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week is prohibited, except that meats, milk and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

"48. All service of legal process of any description, upon the first day of the week, is prohibited, except in cases of breach of the peace,

or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

"49. Every person guilty of Sabbath breaking is punishable by a fine of one dollar for each offense.

"50. The fines prescribed in this chapter for profane swearing and for Sabbath breaking may be collected in the manner prescribed by law, for collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

"51. Every inn-keeper, or person licensed to sell liquors, who sells or gives away any strong or spirituous liquors or wine, upon Sunday, is guilty of a misdemeanor.

"53. Every master or other person engaged in navigating a steam-boat, who allows any liquors mentioned in the last section to be sold on his boat on Sunday, while stopping at any wharf, landing, city or town in this State, is guilty of a misdemeanor."

The Supreme Court of the State of South Dakota has declared that "Payments fully made for Sunday labor cannot be recovered on the ground of the invalidity of a contract for Sunday labor. The courts will neither assist in enforcing such contract, nor in recovering what has been paid under it, but will leave the parties where they have put themselves, they being in *pari delicto*." (5 S. D. 299, 1894).

It was held that "Where parties meet on Sunday, and talk over and substantially agree upon the terms of a purchase and sale of a pair of horses, during which representations are made by the seller which would constitute a warranty of soundness, and then agree that they should meet again on the next day, when secured notes should be given for the purchase price, and the horses then transferred to the purchaser, which was done, the warranty took legal effect, as such, only when the trade was completed and the property in the horses passed to the purchaser, and was not void, as a Sunday contract." (6 S. D. 221, 1894).

The statute of South Dakota is weak principally in the ridiculously low fine of one dollar.

TENNESSEE. (1896.)

Chapter 11 of Title 12 of the Code of Tennessee is entitled "Of Violating the Sabbath, Profanity." The following sections relate to the Sabbath:

"3029. If any merchant, artificer, tradesman, farmer, or other person shall be guilty of doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his children or servants, acis of real necessity or charity excepted, on Sunday, he shall, on due convicition thereof before any justice of the peace of the county, forfeit and pay three dollars, one half to the person who will sue for the same, the other half for the use of the county.

"3030. It shall be a misdemeanor for any person to carry on the business of barbering on Sunday in Tennessee; and any person found guilty of violating this section shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned in the county jail not less than fifteen nor more than thirty days, or both, in the discretion of the court.

"3031. Any person who shall hunt, fish or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties as those who work on the Sabbath." (pp. 684, 685).

Section 2013 forbids the selling of any article of traffic on the Sabbath within view of any worshipping assembly in such manner as to disturb such assembly.

Section 5671 forbids the retail of spirituous liquors on the Sabbath.

Civil processes may be issued on the Sabbath if the defendant is removing or is about to remove himself or property beyond the jurisdiction of the court of justice applied to.

In 1883, in the case of *Mayor, etc., of Nashville v. Lynch*, the constitutionality of Sabbath laws was considered. Judge Cooke delivered the opinion of the Court affirming the right of the city to pass such ordinances, but Justice Freeman supplemented this with an opinion in which he said:

"Far back in the life and law of the people from whom we derive our descent, whose usages and traditions have been handed down to us as our own, we have everywhere, for a thousand years and more, a recognition of the Christian Sunday as one of the institutions as characteristic of our social organism as is the marriage institution, and that to a single wife. That the peculiar view of the sanctity of the day characterizing the opinions of many have been carried to extreme lengths, and embodied a spirit of fanatical zeal for the day simply, may be conceded." "Be this as it may, the day has been observed in some form, and kept up among us and the people from whom we derive our institutions, for more than a thousand years. Its ordinary uses are well known, and these follow as implications, and become part of the institution itself, subject to such civil regulation and modification as may be deemed best conducive to promote the ends of a society in which such an institution exists, and is to be perpetuated.

"The due regulation of such an institution, with such traditions and usages as have for so long accreted around it, would naturally be such as tended to aid the ends supposed to be desirable, and advanced by such observances as had grown up among us, or had been transmitted from other days to us.

"But there is another view of this question which I wish to present. It is well known, as any other universally seen fact, that on Sunday our people in the main habitually attend some one of the many

Christian churches in country or town, which make up another well known feature of the great civilization of which we are a part. That in these churches there is carried on in some one or other of forms recognized by these various churches public services, in which the leading elements are worship of the one God of Christendom. . . . Who can estimate lightly (as we sometimes hear all this spoken of) the universal influence of all this moral and religious teaching upon the life of our people?. . . . That a sound morality is essential to the higher life of every community is conceded by us. That to conserve and strengthen such morality is as a matter of public policy one of the most, if not the supremely desirable end of social regulation, would not be hard to demonstrate. . . . It being clear that the moral culture of our people as a mass is almost entirely derived, either directly or indirectly from the influence brought to bear on the public conscience, through the agency of the religious institutions for worship and teaching, which do their work on Sunday, it follows that any regulation tending to increase the efficiency of these agencies is one of vital public concern, and demanded by the best interest of society. If all the occupations of a great city, or even a village, were permitted to be carried on as usual on this day consecrated to worship and moral teaching, then it needs no argument to show that such interruptions to such exercises would continually occur, prevention of attendance on the part of thousands who would otherwise attend, that this mighty source of moral influence would be weakened and greatly enfeebled in its beneficent work. No community can afford to permit any burden on the religious instruction and moral life of its people without an injury and deterioration that will tend to increase crime and give vice dominance unless it will follow the path that leads toward destruction to all the highest and most sacred interests for which society is organized. . . . I am prepared to say all private gain must and should be subordinated to the higher moral ends in which is enshrined so much of the best interests of the great social organization which serves the end of giving protection to life, liberty, property and reputation of all." (12 Lea 499).

Again the constitutionality of the law was put to the test in 1899 in the case of *Breyer v. the State*. In this case the Supreme Court said:

"It is very evident that the judicial sanction of Sunday laws, though they have been attacked on many points, has been very nearly unanimous. That such laws are not repugnant to fundamental constitutional principles is now so universally established in every jurisdiction in which such laws have been attacked, that it would seem to be settled as fully as judicial decisions can settle anything. (18 Pick. 103).

An effort to obtain a deliverance against the constitutionality of the law requiring barbers to close their shops on Sabbath was unsuccessful. (102 Tenn. 103).

This court values the moral influence of the Sabbath upon the pub-

lic. In *Gunter et. al. v. the State* it was declared that "Flagrant violations of the Sabbath day do tend to debauch the public morals." (1 Lea, 129, 1878).

Whether the law applies to those who keep another day as the Sabbath was decided affirmatively in *Parker v. the State*. The Court said:

"The statute makes it unlawful for any one of the enumerated classes to follow his ordinary secular avocation on the Sabbath day because it is immoral and is of pernicious effect, and though it may be conceded a single offense may be liable only to the penalty prescribed by the statute, yet a succession of such acts becomes a nuisance and is indictable." "The defendant offered to prove that he belonged to a 'Christian sect' who keeps the seventh, instead of the first day of the week, as Sunday. A general prohibition against doing worldly business on the Lord's day extends to persons who conscientiously observe the seventh day of the week as the Christian Sabbath." (16 Lea. 476).

It is illegal to deliver on Sabbath goods sold on Saturday. "If we should hold a contrary view, any merchant who was pressed for time, or with a rush of business, might separate and mark purchases on the night of Saturday, and delay delivery until the next day, and thus spend the Sabbath in winding up the business of the week or day preceding. (19 Pick 726).

The publication of a city ordinance in a Sunday paper is valid. "It is the purpose of the publication of an ordinance to bring it to the attention of the public, and it appears that the publication in a Sunday newspaper is the most effective notice that could be given in the City of Knoxville" (*Knoxville v. Knoxville Water Com.* 107 Tenn. 647).

There has been some hesitancy by the Supreme Court, as to the legality of contracts made on the Sabbath. In *Amis v. Kyle*, it was held that a note given on Sabbath is valid, and that a contract to deliver horses on a certain date and that date falling on Sabbath might be lawfully fulfilled on that day, the giving of notes and the delivery of horses not being the ordinary callings of the parties. (2 Yerger 31, 1820).

At the time this opinion was rendered the law forbade labor in one's ordinary calling only.

At a later date however, doubt was thrown on the correctness of this opinion, the court merely declaring that if such contracts are to be held void they must be technically completed on the Lord's day, and reserving its opinion whether for that reason they are void. (6 Lea. 288, 1880).

The law of this State would be improved by raising the penalty for violating section 3029 from three to twenty-five dollars.

UTAH.

The Penal Code of Utah contains the following sections on

Sabbath observance in a chapter entitled "Of Crimes and Offences against good morals."

"4514. Every person who, on Sunday, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining any bull, bear, cock, or prize fight, horse race, circus, gambling house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance, cellar, or other place of musical, theatrical, or operatic performances, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.

"4515. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than one hundred dollars.

"4516. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding houses, baths, restaurants, taverns, livery stables, or retail drug stores for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation.

"4519. Every person who performs any unnecessary labor, or does any unnecessary business on Sunday, is guilty of a misdemeanor, and shall be fined in any sum not exceeding twenty-five dollars.

The constitutionality of the Sabbath law of Utah was affirmed by the Supreme Court in 1902 in *State v. Sopher*. The Court declared that "General laws prohibiting the transaction of business on the first day of the week are so uniformly upheld by the Courts as a legitimate exercise of the police power of the State that it is unnecessary to cite or discuss authority in support thereof. It is only upon special statutes, or special exceptions to general so-called Sunday laws, that the constitutionality of such enactment is seriously called in question."

In this case Sopher was charged with keeping open his barber shop on the Lord's day, and the plea set up was that the law prohibiting the keeping open of a barber shop is unconstitutional.

While in a few States such special laws are held unconstitutional they are generally sustained, and the Court sustained the Utah law. (25 Utah. 318).

CHAPTER IV.

LEGISLATION WEAKENED BY NUMEROUS EXCEPTIONS.

In this chapter will be considered those States whose Sabbath laws, after making general prohibitions of labor, business and pleasure seeking on the first day of the week, take away much of the efficiency of the prohibitory clauses by the introduction of needless exceptions.

ALABAMA. (1896.)

The sections of the law of this State relating to the Sabbath are the following:

"5542. Any person, who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing or racing on that day, must, for the first offense, be fined not less than ten, nor more than twenty dollars, and, for the second, or any subsequent offense, must be fined not less than twenty, nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months; but the provisions of this section do not apply to the running of railroads, stages, or steamboats, or other vessels navigating the waters of this State, or any manufacturing establishment which requires to be kept in continual operation.

"5543. Any person, who opens, or causes to be opened, for the purpose of selling or trading, any public market house or place on Sunday, or opens, or causes to be opened any stall or shop therein, or connected therewith, or brings anything for sale or barter to such market or place, or offers the same for sale therein on that day, or buys or sells therein on that day (including live stock or cattle), must, on conviction, be punished as prescribed in the preceding section.

Any place where people assemble for the purchase and sale of goods wares and merchandise, provisions, cattle, or other articles, is a market house or place within the meaning of this section." (Vol. 2, p. 84.)

"1749. All contracts made on Sunday, unless for the advancement of religion, or in the execution, or for the performance of some work of charity, or in the case of necessity, are void."

Section 1759 declares Sunday to be a legal holiday and paper falling due on that day is to be held as due on the next succeeding business day.

Section 2943 declares that "attachments may issue and be executed on Sunday, if the plaintiff, his agent, or attorney, in addition to the oath prescribed for the issue of such process, make affidavit that the defendant is absconding, or is about to abscond, or is about to remove his property from the State, and give bond required in this article."

The constitutionality of a municipal ordinance of Mobile, entitled, "An act to regulate the observance of the Christian Sabbath day," was upheld in the case of *Frolickstein v. Mayor of Mobile*, in 1867. *Frolickstein* was a Jew and kept a store. He sold goods on the first day of the week for which he was indicted. In his defense the act charged was admitted, but the plea was advanced, that being a Jew, and believing in the Seventh day of the week as the Sabbath, he also believed that by the law of Moses he was required to work the other six. A law forbidding this, it was contended, violates that provision of the State Constitution which declares that no person shall, "upon any pretense, whatever, be hurt, molested, or restrained, in his religious sentiments or persuasions."

"The law does not hurt, molest, or restrain the appellant, in the entertainment or expression of what he regards as a religious sentiment or persuasion. It simply prohibits the performance of an act, which he supposes to be required by a religious duty. It cannot be that the Constitution designed to exclude from the prohibitory power of legislation every act, which a sentiment or persuasion, regarded by any one as of a religious character, may dictate. Such a doctrine would lead to the constrained toleration of crime, equally abhorrent to the Jew and the Christian. . . . It would be subversive of good government to subordinate the power of restraining acts prejudicial to the public welfare, and productive of social injury, to the convictions of each individual as to the acts which religious sentiment may demand. . . . The legally constrained abstinence from certain worldly employments on the first day of the week cannot be justified upon the ground, that such abstinence is enjoined by the Christian religion. The legislature is under constitutional restrictions against compelling

the observance of a Christian, or Jewish, or any other religious institution because it is such. But the legislature is not prohibited from making municipal regulations, because they have the sanction also of a religious society. The legislation on the subject of abstaining from worldly employments on the first day of the week is referred to the police power of the legislature. It has its sanction in the teaching of experience, that the general welfare and the good of society require a suspension of labor and business for one day in seven, and that that day should be one of uniform observance. The exercise of the power to enforce this theory of public good would not infringe the constitution, whether the designated day should be the Christian or the Jewish Sabbath."

As to the contention that the divine law as understood by the Jew, required him to work six days in the week, the Court said: "However much we may respect the conscientiousness and religious devotion of the appellant, we cannot regard the rule which he prescribes for himself, otherwise than as an industrial regulation, which is not required by a sentiment in fact religious, although so conscientiously regarded by him." (40 Ala. 725.)

In 1842, in the case of *Cotton v. Huey & Company*, the Supreme Court declared with reference to the law as follows:

"The obvious design of the Legislature was to prevent the spread of vice and immorality by the desecration of the first day of the week to common secular purposes, unless justified by the necessity of the case. In addition we are clearly of opinion that the service of an attachment is within the letter of the prohibition." (4 Ala. 56.)

The following year in the case of *O'Donnell et al v. Sweeney* this Court said: "It is evidently to promote morality and advance the interests of religion by prohibiting all persons from engaging in their common and ordinary avocations of business, or employment, on Sunday, unless impelled by necessity, or engaged in acts of charity." (5 Ala., 467).

In 1850, in the case of *Hooper v. Edwards*, involving the case of a debtor leaving the State on the Sabbath to avoid paying his debts, the court held that a settlement made with him by the creditor, who followed and overtook him, is valid though made on the Sabbath. The Court said:

"This act was passed to prevent vice and immorality, and while we must give it such construction as will carry out the intention of the Legislature in its enactment, and prevent the desecration of the first day of the week to common secular business, we must not on the other hand so construe it, as to make it a shield and protection to those, who, under cover of it, would remove their property out of the State, or place it beyond the reach of their creditors." (18 Ala. 280.)

In 1897 it was declared by this Court that "Since the law recog-

nizes an exception in favor of works of necessity or charity, contracts, expressed or implied, for the performance of works of charity on the first day of the week, or in cases of necessity are not void but enforceable." (*Sloss Iron and Steel Co. v. Harvey*. 116 Ala. 656.)

In the same year it was decided that "any selling on Sunday except for the advancement of religion, or in the execution or for the performance of some work of charity, or in case of necessity, is, under the statute, void. A sale with closed doors would be as invalid as a sale with open doors." (*Wadsworth v. Dunnan*, 117 Ala. 661.) A bond signed by the makers on Sabbath but not delivered till a week-day is valid. (117 Ala. 575.)

A member of a Barbers' Association caused the arrest of other members for violating the Sabbath law. The association resolved to expel him on the ground that he was guilty of conduct tending to the injury of his fellows. He took the matter into court and the Supreme Court declared that he could not be expelled in this ground. (*Manning v. Klein*, 1 K. & A. 210.)

Were it not for the exceptions attached to Section 5542 this would be an admirable law. The opinions of the Supreme Court give the statute strong support.

KENTUCKY. (1903.)

The following Sections of the law of Kentucky relate to the Sabbath:

"1303. Any person who shall, on Sunday, keep open a bar-room or other place for the sale of spirituous, vinous or malt liquors, or who shall sell or otherwise dispose of such liquors, or any of them, on Sunday, shall be fined not less than ten nor more than fifty dollars for each offense. (p. 578.)

"1321. No work or business shall be done on the Sabbath day, except the ordinary household offices, or other work of necessity or charity, or work required in the maintenance or operation of a ferry, skiff or steamboat, or steam or street railroads. If any person on the Sabbath day shall himself be found at his own, or any other trade or calling, or shall employ his apprentices, or other person, in labor or other business, whether the same be for profit or amusement, unless such as is permitted above, he shall be fined not less than two nor more than fifty dollars for each offense. Every person or apprentice so employed shall be deemed a separate offense. Persons who are members of a religious society, who observe as a Sabbath any other day in the week than Sunday, shall not be liable to the penalty prescribed in this section, if they observe as a Sabbath one day in each seven, as herein provided.

"1322. That any person who engages in the business of barbering on Sunday shall be deemed guilty of a misdemeanor, and, upon con-

viction thereof, shall be fined not more than five dollars, and upon a second conviction for a like offense, shall be fined not less than ten dollars and not more than twenty-five dollars, or imprisoned in the county jail for a period of not less than five days nor more than ten days, or be both fined and imprisoned, at the discretion of the court.

"1323. If any person shall hunt game, with a gun or dogs, on the Sabbath, he shall be fined not less than five nor more than fifty dollars for each offense. (pp. 582, 583.)

"1369. No spirituous liquors shall be kept or sold in any room where a billiard, pigeon-hole or pool table is kept; nor shall any game be played on such table on Sunday." (p. 591.) The penalty is sixty dollars fine and forfeiture of license.

"4567. A writ of habeas corpus, or process on a charge of treason, felony or, for a riot or breach of the peace, or upon an escape out of custody, may be executed on Sunday. (p. 1598.)

Prosecutions under this law must be begun within six months after the offense is committed.

The construction of the act forbidding labor on the Sabbath was passed upon by the Court of Appeals in 1851 in the case of *Ray, etc., v. Catlett and Buck*. Petition was brought by the latter upon a note executed to them by George W. and William W. Ray. The defendants plead that the note was executed on the Sabbath for drugs purchased on that day. Judge Marshall in delivering the opinion of the Court said:

"One object of the statute was to secure the observance of that decorum and quiet which, in a Christian country, is due to the Christian Sabbath; another object was to secure to all laborers, and especially to apprentices and slaves, which include all classes of persons who are in the employment of others, one day of rest in seven." "We are not prepared to decide that the mere execution and delivery of a note, or its mere acceptance, on Sunday, is laboring in any trade or calling, unless it be a part of some other transaction done also on Sunday, which may be regarded as labor in some trade or calling. And if the mere execution and delivery of a note could be deemed such labor, we are satisfied that its mere acceptance could not, and the person accepting it would not be involved in any consequence of a breach of the law by the other, unless he knew that the note had been made, as well as delivered on Sunday." "Our statutes protect religious worship from disturbance, but can neither compel attendance upon it, or contribute toward its maintenance nor any devotional duties or observances. And we are satisfied that the particular clause now in question had no other object in view but that of enforcing decorum and quiet on a day regarded as holy by a large portion of the community, and of securing rest from labor on that day (unless where some other day is

kept as a religious observance), to all persons employed to labor for others. It is quite probable that the Legislature did not think of any effect which this provision might have upon isolated transactions of a private nature, or indeed on other transactions in the form of contracts." (12 B. M. 532, 1851.)

A contract made on the Sabbath day having for its consideration the performance of work on that day, which is prohibited by law, cannot be enforced. (*Slade v. Arnold* 14 Ky. 287, 1853.)

In the case of *Murphy v. Thompson* the Court of Appeals said, "Our statute does not merely prohibit a person from doing work on the Sabbath day, in his own trade or calling, but the prohibition embraces work or business in his own or any other trade or calling, and applies to every description of secular labor or business, except the ordinary household offices of daily necessity, or other work of necessity or charity.

"Exchanging, or as it is usually termed, swapping horses, is as much a trade or business as selling a horse, or any other commodity would be. It is a violation of the statute when done on the Sabbath day. . . . It is a well established doctrine of law, that where a statute has in view the protection of the public morals, a contract arising out of any particular act, infringing its provisions, cannot be supported, although the statute merely inflict a penalty for the doing of the act, and do not expressly declare the contract unlawful. In such a statute, a penalty implies a prohibition." (14 Ky. 419, 1854.)

The following from an opinion by the Court of Appeals is of value in showing that the Sabbath is not to be classed with holidays:

"The Christian Sabbath is wisely recognized as 'a day of rest,' to be devoted to religious contemplation and observance, free from secular disturbance." "In both the popular and the legal sense, a holiday is a day dedicated by usage, not to rest and religious devotion, but to amusement and festivity, marked by the general liberty and hilarity of all classes of the people." "In this country certain memorable days—as, for example, the 4th of July and Christmas—have been long and emphatically observed as holidays, but Sunday never." (*Moore v. Hagan*, *Duvall's Reports*, 437, 1866.)

A bail bond executed on Sabbath for the appearance of a person accused of crime, is binding on the sureties. (5 Ky. 309, 1869.)

A note signed on Sabbath but not delivered on that day is valid, the person to whom it is payable not being a party to the illegal act, (*Dahoney, etc., v. Dahoney*, 7 Bush. 217, 1879.)

The publication of ordinances in no other than Sunday papers is not such a publication as the law approves. This matter came before the Court of Appeals in the case of *Ormsby v. City of Louisville*. The Court said: "A publication of the levy ordinances on Sunday, and on no other day, before seeking to enforce them is not such a publica-

tion as the charter requires, or the law of this State approves. It is not a judicial day, nor is it a day upon which any work, labor, or calling can be legally pursued, unless of necessity or charity." "The publication is a violation of law, and no citizen is bound by any law known to us to read secular newspapers on Sunday to entitle himself to the benefits which may flow from publications contained in them. If he chooses he may refuse to read them on Sunday altogether, and none of his legal rights will be thereby forfeited." (79 Ky. 197, 1880.)

In *The Commonwealth v. The Louisville and Nashville Railroad Company* the Court of Appeals declared as follows with respect to the running of trains on the Lord's day:

"The law regards that as necessary which the common sense of the country in its ordinary mode of doing business regards as necessary: Railroad companies, as carriers of passengers, furnish at this day almost every accommodation to the traveller that is to be found in the hotels of the country. His meals, as well as sleeping apartments are often furnished him, and to require the train, when on its line of travel, to delay its journey, that the passengers may go to a hotel to enjoy the Sabbath, where the same labor is required to be performed for him as upon the train, or to require him to remain on the train and there live as he would at the hotel, would certainly not carry out the purpose of the law, and besides, the necessity for reaching his home or place of destination must necessarily exist in so many instances as to make it indispensable that the train should pursue its way. So of the trains transporting goods, merchandise, live stock, fruits, vegetables, etc., that, by reason of delay, would work great injury to parties interested. A private carriage, in which is the owner or his family, driven by one who is employed by the month or the year to the church in which the owner worships, or to the home of his friend or relative, on the Sabbath, is not in violation of the statute. So in reference to the use of street railroads in towns and cities on the Sabbath day. Those who have not the means of providing their own horses or carriages travel upon street cars to their place of worship, or to visit their friends and acquaintances; and such is the apparent necessity in all such cases, that no inquiry will be directed as to the business or destination of the traveler, whether in the one case or the other, nor will an inquiry be directed as to the character of the freight being transported; nor will the person desiring to hire the horse from the livery stable be compelled to disclose the purpose in view in order to protect the keeper from the penalty of the law. Such employments are necessary and not within the inhibition of the statute." (80 Ky. 291, 1882.)

In the case of *Louisville & Nashville Railroad Co. v. Commonwealth*, the Court held that "the company would be excusable for repairing any part of its track on the Sabbath day that was suddenly

rendered unsafe where delay might endanger the safety of passengers or property in its charge, and where, if it failed to make the repairs on that day because of the fact that it was the Sabbath day, and injury were to befall the passengers or property in its charge in consequence of such failure, the company would be responsible. But this rule does not apply to the making of the ordinary repairs of its track that, having in view the safety of the passengers and property in charge, can be done on any other day than Sunday with equal safety." (92 Ky. 114, 1891.)

A person injured in crossing a railroad track while returning from work on Sabbath is not deprived of redress, as the same injury would have happened on any other day in like circumstances. (91 Ky. 434, 1891.)

The exceptions mentioned in Section 1321 have a weakening effect and open the way for gross desecrations of the Lord's day. Otherwise the law is commendable. The opinions of the Supreme Court, especially those declaring the purpose of the laws, the one distinguishing the Sabbath from mere holidays and the one declaring legal notices in Sunday papers to be prohibited, are valuable.

LOUISIANA. (1904.)

"Sunday Law" is the title of the act of this State relating to the first day of the week. It is as follows:

"1. That from and after the 31st day of December, A. D., 1886, all stores, shops, saloons, and all places of public business, which are or may be licensed under the law of the State of Louisiana, or under any parochial or municipal law or ordinance, and all plantation stores, are hereby required to be closed at twelve o'clock on Saturday nights, and to remain closed continuously for twenty-four (24) hours, during which period of time it shall not be lawful for the proprietors thereof to give, trade, barter, exchange or sell any of the stock or any article of merchandise kept in any such establishment.

"2. That whoever shall violate the provisions of this act, for each offense, shall be deemed guilty of a misdemeanor, and on trial and conviction, shall pay a fine of not less than twenty-five dollars, nor more than two hundred and fifty dollars, or be imprisoned for not less than ten days nor more than thirty days, or both, at the discretion of the Court; provision of this act shall not apply to newsdealers, keepers of soda fountains, places of resort for recreation and health, watering places, and public parks, nor prevent the sale of ice.

"3. That the provisions of this act shall not apply to newspaper offices, printing offices, book stores, drug stores, apothecary shops, undertaker shops, public and private markets, bakeries, dairies, livery

stables, railroads, whether steam or horse, hotels, boarding houses, steamboats and other vessels, ware-houses for receiving and forwarding freights, restaurants, telegraph offices and theaters, or any place of amusement, providing no intoxicating liquors are sold in the premises; provided, that stores may be opened for the purpose of selling anything necessary in sickness and for burial purposes; provided, that nothing in this act shall be construed so as to allow hotels or boarding houses to sell or dispose of alcoholic liquors, except wine for table use on Sundays; and provided, further, that no alcoholic, vinous or malt liquors shall be given, traded or bartered or sold or delivered in any public place on said day, except where actually administered or prescribed by a practicing physician in the discharge of his professional duties in cases of sickness; in such case the physicians administering intoxicating liquors may charge therefor.

"4. That all laws or parts of laws contrary to or inconsistent with the provisions hereof, be and the same are hereby repealed." (Vol. 1, pp. 399, 400.)

The City of Shreveport, La., passed an ordinance providing that all business houses in the city should be closed from and after 9 o'clock A. M., on Sabbath, the ordinance not to apply to drug stores, hotels, barber shops, restaurants and livery stables. In the case of the City of Shreveport v. Levy, the defendant, a Jew, having been convicted in the Recorder's Court, and fined for selling goods on Sabbath, the Supreme Court said:

"If the ordinance stopped here, perhaps it might do very well, but it goes on and provides further that it shall not apply to any person or persons doing business in the city who close up their places of business on Saturdays, and keep them closed during the whole day.

"It is admitted in the record that a large proportion of persons engaged in mercantile pursuits in the city of Shreveport are Jews, many of whom observe the Jewish Sabbath. Before the constitution Jews and Gentiles are equal; by the law they must be treated alike, and the ordinance of City Council which gives to one sect a privilege which it denies to another, violates both the Constitution and the law, and is therefore null and void." (26 La. 671, 1874.)

The Sabbath Law of Louisiana was enacted in 1886. Its constitutionality was tested in the following year in the case of State ex rel. Walker and Merz v. Judge. The following were the grounds on which its unconstitutionality was charged: It violates Art. 4 of the State Constitution which prohibits the passage of any law "respecting the establishment of religion or prohibiting the free exercise thereof; that it violates the Fourteenth Amendment of the Constitution of the United States which forbids any State to "make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States, that it violates both State and National Constitution in depriving citizens of life, liberty or property without due process of law, and denies to some the equal protection of the law. None of these objections was sustained. The Court said on the first of these objections:

"If the object of this law were to compel the observance of Sunday, as a religious institution, because it is the Christian Sabbath, to be kept holy under the ordinances of the Christian religion, we should not hesitate in declaring it to be violative of the above constitutional provision. It would violate equally the religious liberty of the Christian, the Jew and the infidel, none of whom can be compelled by law to comply with any merely religious observance, whether it accords with his faith and conscience or not. . . . The statute is to be judged precisely as if it had selected for the day of rest any day of the week other than Sunday; and its validity is not to be questioned because, in the exercise of a wise discretion, it has chosen that day which the majority of the inhabitants of the State, under the sanction of their religious faith, already voluntarily observe as a day of rest."

As to the second objection the Court held that the privileges and immunities referred to were those belonging to citizens as citizens of the United States, not as citizens of one of the States.

As to the third the Court replied by upholding the law as a police regulation, quoting with approbation the following paragraph from Tiedeman on Police power, page 181.

"Whatever the metaphysicians or theologians may tell us about free will, in the complex society of the present age, the individual is a free agent to but a limited degree. He is in the main but the creature of circumstances. Those who most need the cessation from labor are unable to take the necessary rest, if the demands of the trade should require their uninterrupted attention to business. And if the law did not interfere, the feverish, intense desire to acquire wealth, inciting a relentless rivalry and competition, would ultimately prevent, not only the wage-earners, but likewise the capitalists and employers themselves, from yielding to the warning of nature, and obeying the instincts of self-preservation by resting periodically from labor. Remove the prohibition of law and this wholesome sanitary regulation would cease to be observed."

As to the charge that the act denies to some the equal protection of the law, the Court said: "The law leaves the Jew at entire liberty to observe his own religious Sabbath, but it is not bound to take cognizance of individual religious beliefs as a ground of exemption from the operation of general laws."

"Uniformity in the day fixed is essential to the successful execution of the law, which would be rendered much more difficult if a different day of rest were assigned to various classes, besides the in-

convenience to the business interests of the community which would result from the partial suspension of trade on several different days." (39 La. 132.)

In *State v. Fernandez*, it was held that "the Sunday Law operates uniformly throughout the State, and cannot be construed so as to authorize to be done, in one place, on Sundays, that which it forbids to be done, on that day, in all other places." The law of Louisiana exempts public markets from the prohibition of the law. In this case *Fernandez* kept a grocery in the market. The Court held that as the grocery business is prohibited elsewhere it cannot be carried on in a public market. (39 La. 538, 1887.)

A question as to the interpretation of the law came before the Supreme Court in 1896, in *State v. Gelpi*. Mr. Gelpi represented a social club, incorporated, "established for the improvement of the members, and for social enjoyment and pleasure." Within the precincts of the club there is a place where liquors are distributed to members only. The treasurer testified that the revenues of the club are all derived from the dues paid by the members and from the sale of liquors to them. He also testified that these revenues are applied to the payment of the expenses of the club, and that the sales are not made with a view to profit. The club rooms were open and liquor sold on the Sabbath. But the plea was made that since the club was private, no liquor being sold to any but members, and since no profit was made from the sales, the club was not subject to the prohibitions of the Sabbath law.

The Court had no difficulty in reaching the conclusion that the club was private, but held that the bar of such a club is bound by the same law as applies to other bars, and is therefore required to close on the Sabbath. (48 La. 520.)

The list of exceptions enumerated in the law of Louisiana is so formidable and some of the things excepted are so objectionable that serious doubts might be entertained as to the law's utility. It might be better for the people to engage in some of the things prohibited than to spend the day in the enjoyment of the things excepted.

Although the law is sustained as constitutional the court surely errs in stating that it is to be judged as if any other day of the week had been selected as the day of rest. This statement overlooks entirely the fact that the Sabbath occurring on the first day of the week is a civil institution, and that the observance of it on that day is part of the common law of the land. With all its imperfections, however this law must have some good points as is evident from some of the cases that have arisen.

MASSACHUSETTS. (1902.)

"Of the Observance of the Lord's Day" is the title of that portion of the statutes of Massachusetts relating to the Sabbath found in Chapter 98. It is as follows:

"1. Whoever, on the Lord's day, is present at a game, sport, 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 upon the Lord's day, shall be punished by fine not exceeding five dollars for each offense.

"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.

"3. The provisions of the preceding section shall not be held to prohibit the manufacture and distribution of steam, gas or electricity, for illuminating purposes, heat or motive power, nor the distribution of water for fire or domestic purposes, nor the use of the telegraph or the telephone, nor the retail sale of drugs and medicines, nor articles ordered by the prescription of a physician or mechanical appliances used by physicians or surgeons, nor the retail sale of tobacco in any of its forms by licensed inn-holders, common victuallers, druggists and newsdealers whose stores are open for the sale of newspapers every day in the week, nor the letting of horses and carriages or of yachts and boats, nor the running of steam ferry boats on established routes, nor the running of street railway cars, nor the preparation, printing and publication of newspapers, nor the sale and delivery of newspapers, nor the wholesale or retail sale and delivery of milk, nor the transportation of milk, nor the making of butter and cheese nor the keeping open of public bath houses, nor the making or selling by bakers or their employes, before ten o'clock in the morning and between the hours of four o'clock and half-past six o'clock in the evening, of bread or other food usually dealt in by them, nor the carrying on of the business of bootblacks before eleven o'clock in the forenoon.

"4. Whoever conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall not be liable to the pen-

alties of section two for performing secular business and labor on the Lord's day if he disturbs no other person.

"5. The provisions of the preceding sections shall not be held to prohibit the giving, being present at, or taking part in, on the Lord's day, 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, or a free open air concert given by a city or town, or by license of the Mayor and Aldermen of a city or the selectmen of a town, upon a common, public park, street or square.

"6. Whoever, keeping a house, shop, cellar or place of public entertainment or refreshment, entertains therein on the Lord's day any persons other than travellers, strangers, or lodgers, or suffers such persons on said day to abide or remain therein, or in the yards, orchards, or fields appertaining to the same, drinking or spending their time idly or at play, or in doing any secular business, shall be punished by a fine of not more than fifty dollars for each person so entertained or suffered so to abide or remain; and upon subsequent conviction, by a fine of not more than one hundred dollars; and if convicted three times, he shall thereafter be disqualified to hold a license.

"7. An innholder or other person who, being licensed to keep a place of public entertainment, entertains or suffers to remain or be in his house, yard or other places appurtenant, any person other than travellers, strangers or lodgers in such house, drinking and spending their time there, on the Lord's day, or on the evening preceding the same, shall be punished by a fine of not more than five dollars for each offense.

"8. A civil process shall not be served or executed on the Lord's day, and such service if made shall be void, and the person who serves or executes it shall be liable in damages to the person aggrieved in like manner as if he had no such process.

"9. Whoever, on the Lord's day, behaves rudely or indecently within the walls of any house of public worship shall be punished by a fine of not more than ten dollars.

"10. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be commenced within six months after the offense was committed.

"11. Sheriffs, constables, and grand jurors shall inquire into and inform of all offenses against the provisions of this chapter, and cause the same to be enforced.

12. Whoever, on the Lord's day, discharges any firearm for sport or in the pursuit of game, or attempts to take or catch any fish by using a hook, line, net, spear or other implement, shall be punished by a fine not more than ten dollars. Prosecutions under the provisions of this section shall be commenced within thirty days after the time the offense was committed.

"13. Any innholder, common victualler or person keeping or suf-

fering to be kept in any place occupied by him implements such as are used in gaming, in order that, the same may for hire, gain or reward be used for purposes of amusement, who, on the Lord's day, uses or suffers to be used any such implements upon any part of his premises, shall for the first offense be punished by a fine of not more than one hundred dollars or imprisonment for not more than three months; and for each subsequent offense by imprisonment for not more than one year; and in either case shall further recognize, with sufficient securities, in a reasonable sum for his good behaviour, and especially that he will not be guilty of any offense against the provisions of this Section for three months after the date of his recognizance.

"14. The board of railroad commissioners may authorize the running, on the Lord's day, of such steamboat lines and such trains upon any railroad, as, in the opinion of the board, the public necessity and convenience requires, having regard to the due observance of the day.

"15. The board of railroad commissioners may, if in their opinion the public necessity, convenience, health or welfare so requires, authorize the running of steamboats on the Lord's day for the entire year or any part thereof, upon such conditions as they deem judicious to prevent disorderly conduct or the disturbance of public worship, and may at any time revoke such authority.

"16. The Lord's day shall include the time from midnight to midnight.

"17. The provisions of this chapter shall not constitute a defense to an action for a tort or injury suffered by a person on the Lord's day. (Vol. 1, pp. 830, 832).

In *Pearce v. Atwood* the Supreme Court of Massachusetts upheld the law in the following words:

"It is true, that from the fourth command in the Decalogue it may be inferred, that one day in seven was, according to the divine will, to be set apart as a day of rest from labor. But none will contend, that the day therein sanctified is the day which Christians are bound to keep as holy time; or that any of the rigid laws of Moses are now in force. It is enough to observe, that, by the universal consent of Christians, another holy day has been substituted, and that works of necessity and charity are not profanations of the Christian Sabbath."* (13 Mass. 324).

In 1877 the constitutionality of the law was upheld in *Commonwealth v. Has*. The charge against Has was that he kept his shop open on the first day of the week. His plea was that he was a Jew and kept the seventh day, and was therefore en-

*While it is the opinion of many that the Fourth Commandment specifically designates the seventh day of the week as holy time, and while a few believe that that day should still be observed, the true view is that this commandment requires the observance of the seventh day after six of labor, the day to be observed being elsewhere designated. This topic is more fully considered in chapter IV, p. 222.

titled to exemption from the law's prohibition. The Court said:

"Keeping open a shop is in itself a solicitation to do business, and thus an invitation to commit acts which the Legislature has treated as violations of the day. While those, who, for conscientious reasons, observe the seventh day of the week as the Sabbath, may do business or perform labor which does not interfere with others, they are not entitled by keeping open their shops to invite the violation of the provisions of the act, even if the ordinary business is shopkeeping. It is, however, contended that, if the true construction of the statute is that it forbids to one, who conscientiously observes the seventh day of the week as the Sabbath, the privilege of keeping open his shop on the first day of the week, it is unconstitutional and in derogation of the Eleventh Amendment to the Constitution of the Commonwealth, which provides that 'no subordination of any one sect or denomination to another shall ever be established by law.'

"This act has been so frequently recognized in both civil and criminal cases, and its various provisions have been so often the subject of judicial decisions, that its constitutionality can hardly be considered an open question. It is essentially a civil regulation, providing for a fixed period of rest in the business, the ordinary avocations and the amusements of the community. If there is to be such a cessation from labor and amusement, some one day must be selected for the purpose; and even if the day thus selected is chosen because a great majority of the people celebrate it as a day of peculiar sanctity, the legislative authority to provide for its observance is derived from its general authority to regulate the business of the community and to provide for its moral and physical welfare. The act imposes upon no one any religious ceremony or attendance upon any form of worship, and any one, who deems another day more suitable for rest or worship, may devote that day to the religious observance which he deems appropriate. That one who conscientiously observes the seventh day of the week may also be compelled to abstain from business of the kind expressly forbidden on the first day, is not occasioned by any subordination of his religion, but because as a member of the community he must submit to the rules which are made by lawful authority to regulate and govern the business of that community." (122 Mass. 40).

What are works of necessity is a question to which much attention has been given.

A decision of considerable importance was rendered by the Supreme Judicial Court of Massachusetts in 1809, in the case of *Commonwealth v. Knox* (6 Mass. 76). A contract had been made by the postmaster-general with Josiah Paine for carrying the Mail between Portland and Boston, on each day of the week. James Knox, the servant of Paine, was arrested for unlawfully

travelling, with a stage carriage for passengers, through the town of Newburyport, on the Lord's day. The case reached the Supreme Court, and that court in defining works of necessity said:

"By necessity cannot be understood physical necessity; for a case in which any man is physically obliged to travel, can hardly be imagined. But a moral fitness or propriety of travelling, under the circumstances of any particular case, may be deemed necessity within this section; and a fortiori, when the travelling is necessary to execute a lawful contract, it cannot be considered as unnecessary travelling, against the prohibition of the statute.

"It may be said that the postmaster-general is not obliged by law to contract with any person to carry the mail on the Lord's day. This is true; but he has authority to make such contract, and there may be times, as in case of war or insurrection, when this authority should be exercised. And at all times it is within his discretion whether to exercise it or not."

In 1849, in *Flagg v. the inhabitants of Millbury*, it was held that a defect in the public highway which may endanger the limbs and lives of travellers, if discovered on the Lord's day, should be immediately repaired. (4 Cush. 243).

An opinion of more than usual value, given in a case in which the law was violated by parties collecting sea weed on the Sabbath, was handed down in 1867. In defining works of necessity and charity the Court said:

"It is no sufficient excuse for work on the Lord's day, that it is more convenient or profitable if then done than it would be to defer or omit it. If a vessel had been wrecked upon the beach it would have been lawful to work on Sunday for the preservation of property which might be lost by delay. But if the fish in the bay or the birds on the shore happened to be uncommonly abundant on the Lord's day, it is equally clear that it would furnish no excuse for fishing or shooting on that day." "The deposit of seaweed upon the shore by the waves, if not constant, is frequent. The collecting of it on the beach as it is found there from time to time is one of the ordinary branches of agricultural labor. We therefore think that the work of the defendants (collecting seaweed) was not a work of necessity." (97 Mass. 410).

Many cases have come before the Courts of Massachusetts requiring an interpretation of the law as it relates to various business transactions. The following will show the construction placed upon the law by the Supreme Court:

In *Geer v. Putnam* it was held that "it is no bar to the recovery of judgment on a promissory note that it was made on Sunday." (10 Mass. 311, 1813).

Later opinions do not seem to be in harmony with this. In *Clapp v. Hale* it was held that a payment made on a promissory note on the Sabbath will not take it out of the operation of the statute of limitation. (112 Mass. 368, 1873).

In *Pattee v. Putnam* it was held that action cannot be maintained on a bond which was executed on the Lord's day neither from necessity nor charity. (13, Met. 284, 1847).

A guarantee for the fulfillment of a lease executed and delivered on the Lord's day is void. (10 Cush. 257, 1852).

An action cannot be maintained for a deceit practiced in a horse-trade on the Lord's day. (*Robson v. French*, 12 Met. 24, 1847).

The principle involved in all such cases is stated as follows: "One who has himself participated in a violation of law cannot be permitted to assert in a court of justice any right founded upon or growing out of the illegal transaction. . . . It is upon this principle that a bond, promissory note or other executory contract, made and delivered upon the Lord's day, is incapable of being enforced, or, as is sometimes said, absolutely void, as between the parties." (*Cranson v. Goss*, 107 Mass., 439, 1871).

The case of *Stevens v. Wood* (127 Mass. 123, 1879), illustrates the method sometimes taken by dishonest people to avoid paying their debts:

Wood gave a promissory note to Fletcher. Fletcher, being away from home, and finding that the note would soon be barred by the statute of limitations, sent it to his friend Ball either to collect or have it renewed. Wood gave Ball a new note on Sabbath but dated on a secular day, and Ball in due time delivered it to Fletcher, who signed it over to Stevens. Neither Fletcher nor Stevens knew that the note was drawn on Sabbath. Wood in making and delivering the note on the Lord's day intended to defraud. The Supreme Court held that the transaction between Wood and Ball was illegal, that Fletcher could not maintain an action thereon, nor could Stevens, and that the purpose of Wood was immaterial.

A contract to furnish music by a band seven days in the week is illegal. (*Stewart v. Thayer*, 168 Mass. 519, 1897).

Previous to the passage of Section 17 of the Massachusetts Sabbath law many suits came before the courts for damages on account of injuries received while travelling on the Lord's day. The question involved was whether or not the travelling was necessary. This section allows damages in any case in which the injury was the result of the carelessness or negligence of the transportation company. Formerly the Massachusetts Courts uniformly held that unless the travelling was a matter of necessity or charity damages could not be recovered.

One of the most important of such cases was that of *Bucher*

v. Fitchburg Railroad Company, or *Bucher v. Cheshire Railroad Company* as it is known in the United States Courts, the case having been carried to the Circuit Court of the United States for the District of Massachusetts. Mr. Bucher was injured while travelling on the Lord's day. His plea was that he was hastening to Boston where he expected important word from a sick sister, and that the travelling was therefore necessary. The Supreme Judicial Court of Massachusetts held that there was no evidence that he was travelling either from necessity or charity. (131 Mass. 156, 1881.)

When the case came before the United States District Court it was held that the Courts of the United States are to adopt and follow the decisions of the highest courts of a State in questions which concern merely the constitution or laws of that State. It was clear that the Courts of Massachusetts uniformly interpreted the law as indicated above, and although the District Court of the United States did not approve of the interpretation it was still under obligation to follow it. Justices Harlan and Field dissented from this view, holding that in such cases United States Courts were free to render opinions according to their own views of justice. (125 U. S. 555, 1887.)

While there are some excellent features in the Sabbath law of Massachusetts, and while some of the judicial opinions add something to the argument for such laws, it must be confessed that both the law and the opinions are quite disappointing. The long list of exception to the operation of the prohibitory clauses, some of which would be included under the clause relating to works of necessity and charity, greatly weakens the law by mentioning many things which are not matters of necessity and charity, and which interfere with the peace and quietness of the day. This State at one time had one of the best of Sabbath laws. Now it has one of the worst.

With a very few exceptions, the opinions of the Supreme Court display only a mediocre standard of ability. They are chiefly concerned with the maintaining of a hereditary view of the law as applied to contracts and travelling on the Lord's day, and that view is almost entirely annulled by recent legislation. It may be that the effort of the courts to uphold the traditional view had something to do with the adoption of the exceptions

whereby that view has become ancient history. In the cases of contracts made on the Sabbath involving fraud, would it not be far better, while holding the contract illegal, to allow action against the one who in addition to violating the Sabbath law has also violated the law against fraud? Not to do so brings this law into disrepute as a screen to shield dishonest people.

MINNESOTA. (1891.)

The Section of the Penal Code of Minnesota relating to the Sabbath are entitled, "Of Crimes against Religious Liberty and Conscience." They are as follows:

"6178. The Sabbath.—The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

"6179. Sabbath breaking.—A violation of the foregoing prohibition is Sabbath breaking.

"6180. Sunday defined.—Under the term "day," as employed in the phrase "first day of the week," when used in this chapter, is included all the time from midnight to midnight.

"6181. Labor on Sunday.—All labor on Sunday is prohibited excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health or comfort of the community. Provided however, that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity.

"6182. Persons observing another day as a Sabbath.—It is a sufficient defense to a prosecution for servile labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

"6183. Public Sports.—All shooting, hunting, fishing, playing, horse racing, gaming, or other public sports, exercises or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.

"6184. Trades, manufactures, and mechanical employments.—All trades, manufactures, and mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

"6185. Public traffic.—All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the

morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day.

"6186. Serving process on Sunday prohibited.—All service of legal process of any kind whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute.

"6187. Punishment of Sabbath breaking.—Sabbath breaking is a misdemeanor, punishable by a fine not less than one dollar and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both." (Vol. II, pp. 499, 500).

The constitutionality of the Minnesota Sabbath law was affirmed by the Supreme Court in 1875, in the case of the State v. Ludwig. Mr. Ludwig, a saloon keeper in Minneapolis, was charged with selling liquor on the Sabbath in violation of a city ordinance which required saloons to be closed on that day. He was first tried before a justice of the peace and found guilty. He appealed and the case finally reached the Supreme Court. Mr. Ludwig's plea was that the law is unconstitutional, but its constitutionality was affirmed as follows:

"It is unnecessary for us, at this time, to consider to what extent the legislature may, in harmony with the constitution, make laws recognizing the Christian Sabbath, and regulating its observance. All the authorities concur that the legislature may by law establish, as a civil and political institution, the first day of the week as a day of rest, and may prohibit, upon it, the performance of any manner of labor, business or work, except only works of necessity and charity, and may prohibit anything which tends to injure the public morals, or disturb the peace and good order of the day." (21 Minn. 202).

The constitutionality of the law was put to the test again in 1898, in the case of the State v. Petit. Mr. Petit was tried for keeping open a barber shop on Sabbath. The case was carried to the Supreme Court. The only question raised was the constitutionality of the law. The following extracts are instructive:

"In some states it has been held that Christianity is part of the common law of this country, and Sunday legislation is upheld, in whole or in part, upon that ground. Even if permissible, it is not necessary to resort to any such reason to sustain such legislation. The ground upon which such legislation is generally upheld is that it is a sanitary

measure, and as such a legitimate exercise of the police power. It proceeds upon the theory, entertained by most of those who have investigated the subject, that the physical, intellectual and moral welfare of mankind requires a periodical day of rest from labor, and as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest and recreation, as this causes the least interference with business or existing customs.

"It is sometimes said that mankind will seek cessation of labor at proper times by the natural influences of the law of self-preservation; also that, if a man desires to engage on Sunday in any kind of work or business which does not interfere with the rights of others, he has an absolute right to do so, and to choose his own time of rest as he sees fit. The answer to this is that all men are not in fact independent and at liberty to work when they choose. Labor is in a great degree dependent upon capital, and, unless the exercise of power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise.

"The object of the law is not so much to protect those who can rest at pleasure as to afford rest to those who need it, and who, from the conditions of society, could not otherwise obtain it. Moreover, if the law was not obligatory upon all, and those who desired to do so were permitted to engage in their usual vocation on Sunday, others engaged in the same kind of labor or business might, against their wishes, be compelled by the laws of competition in business to do likewise." (74 Minn., 376).

The effort was also made to have the law declared unconstitutional because it specially mentions the keeping open of barber shops and declares it not to be a work of necessity or charity. The contention was that this was "class legislation."

The Court held that "under the original statute, what were works of necessity or charity was largely left to be decided as a question of fact, which would often be a question for the jury. The effect of the amendment (of 1887) was to make this a question of law, instead of fact, as to keeping a barber shop open. In the exercise of the police power in establishing a day of rest, a very large discretion must be allowed to the legislature in determining what kinds of labor or business should be prohibited, and what are and what are not works of necessity or charity." (74 Minn. 376).

The Supreme court of Minnesota, in 1881, gave a decision as to responsibility for accidents occurring on the Sabbath in connection with acts forbidden by the statute. A young man was drowned in the St. Croix River while engaged on an excursion on the Sabbath. His mother entered suit to recover damages. The defendant contended that the deceased was engaged in an

unlawful act, and damages could not therefore be recovered. The Court said:

"The defendants' liability is not affected by the fact that the injury resulting in his death occurred while deceased was engaged on an excursion with other passengers upon defendants' steamboat in violation of the Sunday law." "The defendants on that day occupied the relation of common carriers of passengers, and their general obligation to use such care and diligence as the law enjoins is not limited by the contract with the passengers, nor with the person who engaged the use of the boat and the services of the crew for that day, but is governed by considerations of public policy. That the undertaking was unlawful does not touch the question." "The suggestion that if the deceased had not joined the excursion he would have escaped, may perhaps serve to enforce a valuable lesson which finds a sanction in law and morals, but as between him and the defendants he was rightfully there." (*Opsahl v. Judd*. 30 Minn. 126).

Under the statute as it was prior to 1886, the publishing and selling of newspapers on the Sabbath was illegal. The law was amended in that year so as to permit their sale in a quiet and orderly way.

In the case of *Handy v. St. Paul Globe Publishing Company* in which action was brought to recover damages for breach of contract, the Court said:

"Unless the issuing and circulating a newspaper on Sunday is, within the meaning of the statute, a work of necessity, it is prohibited by it as much as any other business or work. The newspaper is a necessity of modern life and business, but it does not follow that to issue and circulate it on Sunday is a necessity. There are a great many other kinds of business just as necessary; many, indeed most kinds of manufactures and mercantile business are indispensable to the present needs of men, but no one would say that, because necessary generally, the prosecution of such business on Sunday is a work of necessity." (41 Minn. 188).

In *Ward v. Ward*, the court gave the following liberal interpretation of the law as revised in 1886.

"There is no inhibition in the statute upon a private casual sale." "The statute does not cover or affect contracts or casual sales made privately, and without violating, or tending to produce a violation of, the public order and solemnity of the day. It was not designed to forbid business transactions which in no manner affect the rights of others who are properly observing the day." (75 Minn. 269).

Some of the exceptions in section 6185 introduce an element of weakness into an otherwise excellent law.

The opinion rendered in *State v. Petit* would be stronger if,

instead of denying the necessity of basing the constitutionality of the statute on the proposition that Christianity is part of the common law, this ground had been unquestioningly set forth. The plea for the law on the laboring man's account is admirable. The distinction made concerning necessity in *Handy v. S. Paul Globe* show great clearness of perception and should have restrained the legislature from legalizing Sunday newspapers.

MISSISSIPPI. (1892.)

"Crimes and misdemeanors," is the title of Chapter 29 of the Code of Mississippi. The Sections relating to the first day of the week are entitled, "The Sabbath." They are as follows:

"1291. If any person on the first day of the week, commonly called Sunday, shall himself labor at his own or any other trade, calling or business, or shall employ his apprentice or servant in labor or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall, on conviction, be fined not more than twenty dollars for every offense, deeming every apprentice or servant so employed as constituting a distinct offense; but nothing in this section shall apply to labor on railroads or steamboats.

"1292. A merchant, shopkeeper, or other person, shall not keep open store, or dispose of any wares or merchandise, goods or chattels, on Sunday, or sell or barter the same; and every person so offending shall, on conviction, be fined not more than twenty dollars for every such offense; but this shall not apply to apothecaries or druggists who may open their stores for the sale of medicines.

"1293. If any person shall engage in, show forth, exhibit, act, represent, perform, or cause to be shown forth, acted, represented or performed, any interludes, farces or plays of any kind, or any games, tricks, ball-playing of any kind, juggling sleight of hand, or feats of dexterity, agility of body, or any bear-baiting or any bull-fighting, horse-racing, or cock-fighting, or any such like show or exhibition whatsoever, on Sunday, every person so offending shall be fined not more than fifty dollars.

"1294. If any person shall hunt with a gun or with dogs, or fish in any way on Sunday, he shall, on conviction, be fined not less than five dollars nor more than twenty dollars.

"1295. It shall not be lawful for a person having a license to sell vinous or spirituous liquors, to keep open the dram-shop, bar, or place where such liquors are sold, or to sell any such liquors, on the first day of the week, commonly called Sunday; and a person so offending shall be liable to a fine of not less than fifty dollars nor more than

one hundred dollars for each offense, or shall be imprisoned therefor not exceeding thirty days in the county jail or both." (pp. 373, 374).

The proper construction of this law was considered in the case of *Miller v. Lynch*. (38 Miss. 344, 1860). A settlement between these two men of certain business transactions was made on the Sabbath, and a note given Miller by Lynch for a balance due him. On this note action was brought, and the defense was that the note was executed on Sabbath and therefore void. The case was carried to the High Court of Errors and Appeals. In rendering its decision this court called attention to the difference between our Statutes and that of England 29, Car. II. Ch. 7, Sec. 2. The latter says, "No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity or charity only excepted). But the Statute of Mississippi forbids labor at his own or any other trade or calling." In this case the Court held the note to be void.

A case similar to this was that of *Kountz v. Price et al.* The court in speaking of contracts made on Sabbath said:

"Such contracts are not only positively prohibited by the law of the land, but they are generally admitted, in Christian communities, to be in violation of the law of God. Sound morality would, therefore, appear to dictate that enactments of the legislature, founded, as this manifestly is, on the divine law, should at least have the same force, and be held at least as inviolable, as the ordinary statutes prohibiting acts merely on grounds of social or political convenience." "Contracts made on Sunday are void because they are made on that day, which is prohibited. It is the time of the act done, that vitiates it." (40 Miss. 341, 1866.)

In the case of *Block v. McMurry*, the court defined what is signified by a contract made on Sabbath being void:

"When it is declared that the Sunday contract of sale is void, the precise extent of that doctrine practically is, that the courts will not give the remedies of the law to assist either party engaged in the illegal transaction. They will not help the seller to recover the price; nor can the buyer maintain an action on any warranty, deceit, or fraud in the sale." "The law observes a strict and impartial neutrality: it will not interpose at the solicitation of either party, but says to both; 'This transaction was a violation of the statute; both of you are equally guilty, and each of you must remain in the position in which you have placed yourselves.' " (56 Miss. 217, 1878.)

The meaning of the exception to the law was passed upon by the Supreme Court in the case of *Telegraph Co. v. McLaurin* in 1892.

A murder had been committed at Cleveland, Miss., on Sabbath, and a telegram to McLaurin, an attorney in Vicksburgh, was placed in the hands of the Telegraph Company, and paid for the day of the murder, asking him to go to Cleveland to defend the murderer in the preliminary hearing. The message was not sent till the next day, and McLaurin sued the company for damages and won the suit. The Supreme Court said that in law courts the word necessity is not regarded in the same sense as it is in the Shorter Catechism, but in an "enlarged meaning of necessity so as to embrace social necessity." "It may be that the true view is that if a telegraph company should, in a spirit of piety or regard for the law, refuse to receive a message for transmission on Sunday, and was sued for that, and invoked the law of God and the State as a defense, it would find this ample protection against a claim for damages; but that the piety which admits of open offices and receipt of messages and pay for their dispatch on Sunday, should be equal to the duty of transmission and delivery, as on other days."

The law of Mississippi, were it not for the exception in favor of railroads and steamboats, would be one of the best.

NEW JERSEY. (1895.)

"Vice and Immorality" is the title of the Sections of the New Jersey Code relating to the Sabbath. They are as follows: .

"1. That no travelling, worldly employment or business, ordinary or servile labor or work either upon land or water (works of necessity and charity excepted), nor shooting, fishing (not including fishing with a seine or net, which is hereafter provided for), sporting, hunting, gunning, racing, or frequenting of tippling-houses, or any interludes or plays, dancing, singing, fiddling or other music for the sake of merriment, nor any playing at football, fives, nine-pins, bowls, long-bullets or quoits, nor any other kind of playing, sports, pastimes, or diversions, shall be done, performed, used or practiced, by any person or persons within this State, on the Christian Sabbath, or first day of the week, commonly called Sunday; and that every person, being of the age of fourteen years or upwards, offending in the premises, shall for every such offense, forfeit and pay, to the use of the poor of the township in which such offense shall be committed, the sum of one dollar; and that no person shall cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, meat, fish, goods, or chattels, upon the first day of the week, commonly called Sunday, or sell or barter the same, upon pain that every person so offending shall forfeit and pay to the

use of the poor of the township where such offense shall be committed, the sum of two dollars, . . . and if any person offending in the premises shall be thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offense shall have been committed, commanding him to levy the said forfeitures or penalties by distress and sale of the goods and chattels of such offenders, and to pay the money therefrom arising to the overseers of the poor of the township where the said offense or offenses shall have been committed, for the use of the poor thereof; and in case no such distress can be had, then every such offender shall, by a warrant under the hand and seal of the said justice, be committed to the common jail of the said county, or to the jail of any city or town corporate within the same, for a term not exceeding ten days, to be certainly expressed in warrant; and further, that if any person shall be found fishing, sporting, playing, dancing, fiddling, shooting, hunting, gunning, travelling, or going to or returning from any market or landing with carts, wagons or sleds, or behaving in a disorderly manner, on the first day of the week, called Sunday, it shall be lawful for any constable, or other citizen, to stop every person so offending, and to detain him or her till the next day, to be dealt with according to law: provided always, that no person going to or returning from any church or place of worship, within the distance of twenty miles, or going to call a physician, surgeon, or midwife, or carrying a mail to or from any post office, or going express by order of any public officer, shall be considered as travelling within the meaning of this act; and provided also, that nothing in this act contained shall be construed to prohibit the dressing of victuals in private families or in lodging houses, inns and other houses of entertainment for the use of sojourners, travelers, or strangers; and provided further, that it shall and may be lawful for any railroad company in this State to run one passenger train each way over their roads on Sunday, for the accommodation of citizens of this State.

"2. No person shall on the first day of the week, called Sunday, cast, draw, or make use of any seine or net, for the purpose of catching fish in any pond, lake, stream or river, within the territorial limits or jurisdiction of this State, or be aiding or assisting therein; and every person offending in the premises shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation; forfeit and pay the sum of fourteen dollars for

every such offense." (In case of non-payment goods may be levied on as in Section 1 and if there are no goods to levy on the offender may be committed to jail till the fine and costs are paid.)

"3. If any stage or stages shall be driven through any part of this State on the first day of the week, called Sunday, except sufficient reason shall be offered to show that it be done in cases of necessity or mercy, or in case of carrying the mail to or from any post-office, the driver or drivers, the proprietor or proprietors of such stage or stages, shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed.....forfeit and pay the sum of eight dollars for every such offense. (In case of non-payment the provisions of Section 2 apply.)

"4. No wagoner, carter, drayman, drover, butcher, or any of his or their servants, shall ply or travel with his or their wagons, carts or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep or swine, in any part of this State, on the first day of the week, called Sunday, under the penalty of two dollars for every offense....."

5. No writ, process, warrant, order, judgment or decree, shall be served on Sabbath. (Vol. 3, pp. 3707-3709).

In 1884, it was enacted that "It shall be lawful for any court or county officer to publish any notice or advertisement, now required by law to be published in any newspaper in this State, in any Sunday newspaper which has been published in such county for the period of at least one year."

In 1881 an act was passed authorizing boards of trustees, directors, commissioners, or other corporate authorities of incorporated camp-meeting or seaside resorts to regulate and restrain the running of trains and cars of all kinds within their premises, and also to regulate and restrain the landing of persons on piers within their premises.

In 1811 the Supreme Court of New Jersey said that it was not prepared to say that all contracts made on Sunday are void. (1 and 2. N. J. 526.) In 1890 the Court of Chancery declared, without qualification, such contracts to be void.

In 1818, in the case of *Van Riper v. Van Riper*, which involved the question of the rendering of a verdict by a lower court on the Sabbath, the Supreme Court said:

"When the jury are so unfortunate as not to agree until they encroach on the Lord's day, it is a work of necessity then to receive their verdict." Justice Rossell in concurring said, "Although it is the solemn duty, both of courts and juries, so to arrange their business, and so to discharge their duties, as never to encroach in the smallest degree on the Sabbath, if it be possible to avoid it; yet where the jury have been compelled to reach the morning of that day before their verdict was prepared, I see no mode of proceeding so proper as

to receive the verdict, dismiss the jury and parties, and at such future day as may be convenient and proper, take the subsequent proceedings." (1 South, 156.)

When the time for the performance of a contract falls on Sabbath a compliance on the following day will be a sufficient performance. (27 N. J. 68.)

In 1862 in the case of *State v. Williams* the Supreme Court said: "The legislation of this State, from an early period, has been directed to the object of preserving to its citizens a quiet day of rest and worship upon one day of the seven, and now the sale of spirituous and fermented liquors on Sunday is absolutely prohibited, even to those licensed to keep an inn. Conduct, therefore, which may be allowable on other days, if permitted on Sunday, may make a house disorderly; because it is greatly to the benefit of all classes of the community, and especially of those earning their bread by daily labor, that it should be set apart for quiet repose and religious observances." (1 Vroom, 102, 1862.)

The Court of Errors and Appeals in 1889 in a case involving an accident to a woman travelling on the railroad on Sabbath, said:

"Nor was the plaintiff's violation of the Sunday law, in a legal sense, the cause of her injury." "The rule may be considered as settled, that a railroad company, having accepted a passenger, is under an obligation to take due and reasonable care for his safety, and that that obligation arises by implication of law independent of contract." (23 Vroom, 169.)

To show how common it has been for Sabbath breakers to try to avoid duties involved in contracts made on the Sabbath by pleading the prohibitions of the law, it may be noted that even after the passage of the law allowing railroads to run one passenger train each way on Sabbath, railroad companies tried escape liability for damages in case of accidents, by setting up the plea that the people injured were travelling in violation of law. The courts, however, allowed damages. (46 N. J. 7.)

In 1901 the Supreme Court held that "every transaction which, if performed on a week day would be enforceable in a court of justice, if performed on Sabbath is void, and cannot be validated by ratification; but an express promise afterwards made on the basis of the consideration emanating from the tainted contract is binding." (66 N. J. 367.)

The exception made to the law in favor of legal notices in Sunday papers is the chief element of weakness in this otherwise excellent statute. The opinions of the courts do not take up the

constitutional grounds of the law, but the interpretations given are in the main to be commended.

NEW YORK. (1892.)

The Penal Code of the State of New York, Title X., Chapter I., treating of crimes against Religious Liberty and Conscience, contains the following summary of the Sabbath Laws of the State :

"259. The Sabbath.—The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

"260. Sabbath breaking.—A violation of the foregoing prohibition is Sabbath-breaking.

"263. Servile labor.—All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

"264. Persons observing another day as a Sabbath.—It is a sufficient defense to a prosecution for work or labor on the first day of the week, that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

"265.—Public sports.—All shooting, hunting, fishing, playing, horse-racing, gaming or other public sports, exercises or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.

"266. Trades, manufacturers and mechanical employments.—All trades, manufacturers, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community

"267. Public traffic.—All manner of public selling or offering for sale of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco in places other than where spirituous or malt liquors are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day.

"268. Serving process on Sunday prohibited.—All serving of legal process of any kind whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatever.

"269. Sabbath-breaking.—Sabbath-breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both, but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days.

"270. Forfeiture of commodities exposed for sale.—In addition to the penalty imposed by the last section, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this chapter shall be forfeited. Upon conviction of the offender by the justice of a county, or by a mayor, recorder or alderman of a city, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city.

"271. Remedy for maliciously serving process.—Whoever maliciously procures any process in a civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

"272. Compelling adoption of a form of belief.—An attempt by means of threats or violence, to compel any person to adopt, practice or profess a particular form of religious belief, is a misdemeanor.

"273. Preventing performance of religious acts.—A person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

"274. Disturbing religious meetings.—A person who willfully disturbs, interrupts or disquiets any assemblage of people met for religious worship, by any of the acts enumerated in the next section, is guilty of a misdemeanor.

"275. Id; definition of the offense.—The following acts, or any of them, constitute disturbance of a religious meeting:

"1. Uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise, either within the place

where such meeting is held, or so near it as to disturb the order and solemnity of the meeting;

"2. Engaging in, or promoting, within two miles of the place where a religious meeting is held, any racing of animals or gaming of any description;

"3. Obstructing in any manner, without authority of law, within the like distance, free passage along a highway to the place of such meeting.

"276. Processions and parades.—Punishment.—All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or fire-arms, or other disturbing noise. At a military funeral, and at the burial of a national guardsman or of a deceased member of an association of veteran soldiers, or of a disbanded militia regiment, music may be played while escorting the body, but not within one block of a place of worship where service is then celebrated.

"A person willfully violating any provision of this section is punishable by fine not exceeding twenty dollars, or imprisonment not exceeding ten days, or by both.

"277. Theatrical and other performances.—The 'performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, trial of strength, or any part or parts therein, or any circus, equestrian, or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances or rope dancers, on the first day of the week, is forbidden; and every person aiding in such exhibition, performance or exercise, by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition or performance or exercise, or who assents to the use of the same for any such purpose, if it be so used, is guilty of a misdemeanor.

"In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars; which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the people of this State, to recover. Besides this penalty, every such exhibition, performance or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner or lessee, using or letting such building, garden, rooms, place or other structure, or consenting to such exhibition, performance or exercise. (pp. 70-74.)

"Sunday papers.—1. All contracts or agreements of any nature

with the publishers or proprietors of any paper dated, published or issued on the first day of the week shall be as valid, legal and binding, as contracts made with newspapers dated or published on any other day of the week. (General Laws, Vol. 3, p. 3848.)

"Barbering prohibited; exceptions; penalties.—1. Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days, nor more than twenty-five days, or be punishable by both such fine and such imprisonment at the discretion of the court or magistrate; provided, that in the City of New York, and the village of Saratoga Springs, barber shops or other places where a barber is engaged in shaving, hair cutting, or other work of a barber, may be kept open, and the work of a barber may be performed therein until one o'clock of the afternoon of the first day of the week. (General Laws, Vol. 3, pp. 3848, 3849.)

Liquor may not be sold on the Sabbath, except by druggists on physicians' prescriptions and by hotel keepers to guests.

Private contracts made on the Sabbath are valid. (*Batsford v. Every*, 44 Barb. 618).

One of the oldest cases in which the constitutionality of this and other moral statutes was upheld was the famous blasphemy case of the People against Ruggles. Justice Kent delivered the opinion of the court.

It was contended by Counsel for Ruggles that the offense charged is not punishable by the law of New York, because "Christianity did not make a part of the common law of this State." The Court said:

"Christianity, in its enlarged sense, as a religion revealed and taught in the Bible, is not unknown to our law. The statute for preventing immorality consecrates the first day of the week, as holy time, and considers the violation of it immoral. This was only the continuation, in substance, of a law of the colony which declared, that the profanation of the Lord's day was 'the great scandal of the Christian faith.' " (8 Johnston 290, 1811.)

The Superior Court in 1859, called attention to the fact that the statute "explicitly recognizes the first day of the week as 'holy time.' " The Court also said that the Scripture passages found in Mark 16:2; Matthew 28:1; Luke 24:1; and John 21, with the phrase, the Lord's Day, used in Rev. 1:10; the practice of assembling of Christians recorded in 1 Cor. 16:2, and the usage of Christians traced back to remote antiquity, "Constitute an argument of irresistible force, to

prove that the Jewish Sabbath was superseded; that the day of the resurrection was substituted, and that the great injunction of the ancient law to keep it holy, was applicable to this new day of a greater deliverance. Ecclesiastical history is uniform to show that its observance as a rule for all who profess themselves Christians, has been recognized and transmitted by the practice of apostles, the obedience of the disciples, the recognition of canons, and the edicts of emperors, monarchs and States, from the earliest rise of Christianity through all the ages of its progress." (4 Bosworth, 298, *Campbell v. The International Life Assurance Society of London.*)

In 1860, in the New York Superior Court the constitutionality of the act prohibiting certain exhibitions and plays within the city and county of New York, on Sabbath, was sustained. The Court said:

"The learned counsel of the plaintiffs has entered largely into the question of the origin and sanction of the Christian Sabbath. It may not be essential, but it is far from being irrelevant, to the decision of the present case, to sustain the divine authority of the institution." The restriction placed upon the use on the Lord's day, of property of all kinds, including cattle in agricultural labor, the selling of merchandise, and of premises for certain specific purposes, is held not to be in violation of the constitution. "The restriction in each instance rests upon the principle of the preservation of good order, and the public morality and peace." (20 *Howard's Practice Reports*, 76, 1860.)

A most important decision was rendered by the Supreme Court of New York at the February term of 1861, in the case of *Gustav Lindenmuller v. the People*. (33 Barb. 548-578.) In this opinion the entire question of Sabbath legislation was considered in a most thorough manner, and it has ever since been regarded as settling most of the disputed points. It is constantly referred to and quoted by courts of all grades both in New York and in other States. It will be in place therefore to make liberal extracts from it for the purpose of showing the basis of Sabbath legislation in New York and other States which belong to this division. The statement of the case is as follows:

On the 5th day of July, 1860, the defendant, Mr. Lindenmuller, was indicted in the Court of Oyer and Terminer of the City and County of New York for an alleged misdemeanor in giving theatrical exhibitions on Sabbath. The exhibitions were given in premises hired for the purpose "of giving dramatic entertainments therein daily, including Sundays," "During the week the receipts were not sufficient to pay the expenses, but on Sunday largely exceeded the expenses." "The counsel for the defendant asked the court to direct the jury to acquit

the defendant, on the ground that the act under which the indictment was framed was unconstitutional and void. The Court refused so to direct the jury, but on the contrary charged the jury that said act was constitutional and valid. To which charge the counsel for the defendant excepted. The jury rendered a verdict of "Guilty."

Before the Supreme Court the counsel for the plaintiff in error endeavored to show the unconstitutionality of the Sabbath law on the following grounds: (1) "The law in question is in violation of section 6, article 1 of the constitution of this State, which provides that no person shall be deprived of life, liberty or property without due process of law." (2) "The statute in question is in violation of Section 10 of Article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts." (3) "The statute in question is not valid on the ground that it is a police regulation." (4) This statute is unconstitutional, because it is in violation of Article 1, Section 3, of the Constitution of the State of New York, which provides that 'The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be allowed in this State to all mankind.' 'The effect of this statute is to discriminate in favor of those who keep the first, in contradistinction to those who keep the seventh day of the week. This statute cannot be successfully maintained on the ground that Christianity is a part of the common law of the State, and therefore the Legislature has a right to enact laws for its due observance. Christianity is not a part of the common law of this country, there being here no union of Church and State as in England.'

The extracts are sufficient to show on what grounds it was sought to have the law declared unconstitutional.

Judge Allen in delivering the opinion of the court said:

"The constitutionality of the law under which Lindenmuller was indicted and convicted does not depend upon the question whether or not Christianity is a part of the common law of this State. Were that the only question involved, it would not be difficult to show that it was so, in a qualified sense—not to the extent that would authorize a compulsory conformity in faith and practice, to the creed and formula of worship of any sect or denomination, or even in those matters of doctrine and worship common to all denominations styling themselves Christian, but to the extent that entitles the Christian religion and its ordinances to respect and protection, as the acknowledged religion of the people. Individual consciences may not be enforced; but men of every opinion and creed may be restrained from acts which interfere with Christian worship, and which tend to revile religion and bring it into contempt. The belief of no man can be constrained, and the proper expression of religious belief is guaranteed to all; but this right, like every other right, must be exercised with strict regard to the equal

rights of others; and when religious belief or unbelief leads to acts which interfere with religious worship, and rights of conscience of those who represent the religion of the country, as established not by law, but by the consent and usage of the community, and existing before the organization of the governments, their acts may be restrained by legislation, even if they are not indictable at common law. Christianity is not the legal religion of the State, as established by law. If it were, it would be a civil or political institution, which it is not; but this is not inconsistent with the idea that it is in fact, and ever has been, the religion of the people. This fact is every where prominent in all our civil and political history, and has been, from the first, recognized and acted upon by the people, as well as by Constitutional Conventions."

The judge next stated that Christianity is part of the common law of England, and that that common law, as it was in force when the constitution of 1776-1777 was adopted, continued to be the common law of the State, except such parts of it as were repugnant to the constitution. That the Sabbath law is not repugnant to that constitution or any that has been adopted since, he proceeded to show: "It would be strange that a people, Christian in doctrine and worship, many of whom or whose forefathers had sought these shores for the privilege of worshipping God in simplicity and purity of faith, and who regarded religion as the basis of their civil liberty, and the foundation of their rights, should, in their zeal to secure to all the freedom of conscience which they valued so highly, solemnly repudiate and put beyond the pale of the law, the religion which was dear to them as life, and dethrone the God who, they openly and avowedly professed to believe, had been their protector and guide as a people."

The judge then states that the Declaration of Independence was prefixed as a part of the Constitution of 1777, and that in that document there is an appeal "to the Supreme Judge of the World," and an expression of "firm reliance on the protection of Divine Providence." Every constitution of the State since framed contains an acknowledgment of Almighty God. The opinion then proceeds: "The several constitutional conventions also recognize the Christian religion as the religion of the State, by opening their daily sessions with prayer, by themselves observing the Christian Sabbath, and by excepting that day from the time allowed to the governor for returning bills to the Legislature. . . . They did, therefore, prohibit the establishment of a State religion, with its enabling and disabling statutes, its test oaths and ecclesiastical courts, and all the pains and penalties of nonconformity, which are only snares to the conscience, and every man is left free to worship God according to the dictates of his own conscience, or not to worship him at all as he pleases. But they did not suppose they had abolished the Sabbath as a day of rest for all, and of Christian worship for those who were dis-

posed to engage in it, or had deprived themselves of the power to protect their God from blasphemy and revilings, or their religious worship from unseemly interruptions. Compulsory worship of God in any form is prohibited, and every man's opinion on matters of religion, as in other matters, is beyond the reach of law. No man can be compelled to perform any act as a duty to God; but this liberty of conscience in matters of faith and practice is entirely consistent with the existence, in fact, of the Christian religion, entitled to and enjoying the protection of law as the religion of the people of the State, and as furnishing the best sanctions of moral and social obligations. The public peace and public welfare are greatly dependent upon the protection of the religion of the country, and the preventing or punishing of offenses against it, and acts wantonly committed subversive of it."

He then shows that previous to the Constitutional Convention of 1821, courts had declared Christianity to be part of the common law. An amendment was proposed to the Constitution of the State "to the effect that the judiciary should not declare any particular religion to be the law of the land." This amendment was rejected, the majority holding "that the Christian religion was engrafted upon the law, and entitled to protection as the basis of our morals and the strength of our government. "Within the principles of the decision of the People v. Ruggles, as thus interpreted and approved and made a part of the fundamental law of the land by the rejection of the proposed amendment, every act done maliciously, tending to bring religion into contempt, may be punished at common law, and the Christian Sabbath, as one of the institutions of that religion, may be protected from desecration by such laws as the legislature, in their wisdom, may deem necessary to secure to the community the privilege of undisturbed worship, and to the day itself that outward respect and observance which may be deemed essential to the peace and good order of society, and to preserve religion and its ordinances from open reviling and contempt—and this not as a duty to God, but as a duty to society and to the State.

"But as a civil and political institution, the establishment and regulation of a Sabbath is within the just powers of the civil government. With us, the Sabbath, as a civil institution, is older than the government. The framers of the first Constitution found it in existence; they recognized it in their acts, and they, did not abolish it or alter it, or lessen its sanctions or the obligations of the people to observe it." But if this had not been so, the civil government might have established it. It is a law of our nature that one day in seven must be observed as a day of relaxation and refreshment, if not for public worship. . . . The Christian Sabbath is then one of the civil institutions of the State, and to which the business and duties of life are, by the common law, made to conform and adapt themselves. The

same cannot be said of the Jewish Sabbath, or the day observed by the followers of any other religion." "The existence of the Sabbath day as a civil institution being conceded, as it must be, the right of the legislature to control and regulate it and its observances is a necessary sequence."

"The act complained of here compels no religious observance, and offenses against it are punishable not as sins against God, but as injurious to and having a malignant influence on society."

It should be stated that the Court of Appeals, not the Supreme Court, is the highest court in New York, but the decision in this case was expressly approved in *Neuendorff v. Duryea* (69 N. Y. 557), and was referred to as one "which has never been questioned in a court of higher or equal authority," and "as declaring the law of this State." In the case of *the People v. Havnor* (149, N. Y. 195, 1896), it was referred to as the leading case upon the subject in which Judge Allen discussed the common law as well as legislation affecting the Sabbath with great force and clearness.

In *People v. Dennin*, the Supreme Court gave an interpretation of the law which was afterwards controverted by the Court of Appeals. Dennin had been convicted of Sabbath-breaking by the Court of Sessions of Queens County. The act charged was playing ball on private grounds. The case was appealed to the Supreme Court. This Court held that Section 265 prohibiting "all shooting, hunting, fishing, playing, etc., upon the first day of the week," is to be interpreted by Section 259, which declares that the law prohibits the doing on that day of acts "which are serious interruptions of the repose and religious liberty of the community. It was further declared that "The essential character of the crime was wanting. There was nothing to disturb the repose of the community." (35 Hun. 327, 1885.)

In *People v. Moses* the Court of Appeals, the highest court in the State, affirmed the constitutionality of the law. Moses had been convicted of Sabbath-breaking in a court held by a Justice of the Peace in Orange County. The conviction was affirmed upon appeal to the Court of Sessions of that county. Appeal was taken to the Supreme Court, which also affirmed the conviction. Moses next appealed to the Court of Appeals. The act claimed to be a violation of the law was fishing from a boat in a pond in view of the public highways and private residences. His plea was that the pond was private property, belonging to a club of which he was a member, and that his acts were not, therefore, public, and did not constitute "serious interruption of the repose and religious liberty of the community."

The court, in upholding the law, said, "The Christian Sabbath is one of the civil institutions of the State, and that the legislature for

the purpose of promoting the moral and physical well-being of the people, and the peace, quiet and good order of society, has authority to regulate its observance, and prevent its desecration by any appropriate legislation is unquestioned."

The plea set up by Moses that the pond being private property, the act was private and therefore not a violation of the law, was disposed of by quoting the law and showing that some acts are prohibited on Sabbath altogether, and one of these is fishing. "That is absolutely prohibited on Sunday everywhere and under all circumstances," said the Court.

In announcing this opinion occasion was taken to declare the opinion in the case of *People v. Dennin* incorrect. In that case it was held that playing ball in private grounds on the Sabbath, does not constitute a violation of the statute. But the Court of Appeals declared that it is condemned by the principles which lie at the bottom of the Sunday laws. (140 N. Y. 214, 1893.)

In *People v. Havnor*, the constitutionality of the "Act to regulate barbering on Sunday" was involved. The plea of the defendant was that it deprived him of liberty by preventing him from carrying on a lawful occupation as he wished, and also of his property by preventing the free use of his premises and tools. In sustaining the law the Court of Appeals said:

"During the history of our State many laws have been passed which, to some extent, have interfered with the right to liberty and property, but their accord with the Constitution has seldom been questioned, and when questioned, has been generally sustained." The power of taxation and the right to preserve the public health and morals, to confine the insane and those afflicted with contagious diseases, are here mentioned. "The sanction for these apparent trespasses upon private rights is found in the principle that every man's liberty and property are, to some extent, subject to the general welfare, as each person's interest is presumed to be promoted by that which promotes the interest of all. The inconvenience to some is not regarded as an argument against the constitutionality of the statute, as that is an incident to all general laws. Sunday statutes have been sustained as constitutional almost without exception, the most notable instance to the contrary, *Ex parte Newman* (9 Cal. 502), decided by a divided court in an early day in California, having been subsequently overruled by the courts of that State.

"While works of charity and necessity have usually been excepted from the effect of laws relating to the Sabbath, and sometimes, also, those persons who keep another day of the week, still quiet pursuits have not, even when they can be carried on without the labor of others, because general respect and observance of the day, as far as practicable, have been deemed essential to the interest of the public,

including as a part thereof those who prefer not to keep the day, as their health and morals are entitled to protection, even against their will, the same as those of any other class in the community." (149 N. Y. 195, 1896.)

Sunday concerts and lectures are lawful, but to sell refreshments and exhibit curiosities in connection with them is not permitted. (*Koster v. Board of Police.*)

A person who by means of false representations obtains the goods or property of another cannot escape liability on the plea that the wrong was done on the Sabbath. (*O'Shea v. Kohn*, 33 Hun. 114, 1884.)

The act forbidding barbering on the Lord's day is constitutional. (*People v. Buttlng*, 13 Misc. 587.)

Were it not for the numerous exceptions, including the sale of soda water, ice cream, tobacco, newspapers, etc., this would be an admirable law. The judicial opinions are unexcelled.

TEXAS. (1896.)

"Sunday Laws" is the title of Chapter 2 of Title 7 of the Criminal Code of Texas. It is as follows:

"196. Working on Sunday.—Any person who shall hereafter labor, or compel, force, or oblige his employees, workmen, or apprentices to labor, on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday within one-half mile of any church, schoolhouse or private residence, shall be fined not less than ten nor more than fifty dollars."

"197. The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steam-boats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties, or their agents to whom said goods are delivered; nor to stages carrying the United States' mail or passengers; nor to founderies, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons travelling; nor to ferrymen, or keepers of toll bridges; keepers of hotels, boarding houses, and restaurants, and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons.

"198. Any person who shall run or be engaged in running any horse race, or who shall permit, or allow the use of any nine or ten-pin alley, or who shall be engaged in match-shooting, or any species of gaming for money or other consideration, within the limits of any

city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars.

"199. Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employee of any such person, who shall sell or barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement, on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term, place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives, and places of like character, with or without fees for admission." (Vol. 1, pp. 84, 85.)

Article 391 gives city councils the right to close saloons and all places where liquors are sold, and places of amusement and business, on Sabbath.

Article 1184 says, "No civil suit shall be commenced, nor shall any process be served on Sunday."

Article 3544 makes it the duty of the chaplains of penitentiaries "to preach once every Sunday to convicts" and "to inculcate in them sound principles of religion and morality.

Articles 3560 and 3591 declare that no labor shall be exacted of convicts on Sabbath.

The constitutionality of Sabbath laws in Texas was passed upon by the Supreme Court of that State in 1867. The following extracts from the Report in the case of *Gabel v. Houston* are instructive.

"Peter Gabel was a lager-beer distiller and seller of the beverage in the city of Houston. Peter partook of the notion, quite prevalent among a large and influential class all over the United States, that whatever may be lawfully done on week days may be done on Sundays; and that all laws restricting the vending of liquors and other drinks on Sundays, and drinking and jollyng over them, are infringements upon liberty and natural right; that they violate the rights of conscience and religion; and that such laws are an infraction of the Constitution of the United States and of the State, and are void." The City of Houston had passed the following ordinance: "If any person or persons shall, on Sunday, in any public house, room, building, or enclosure, or in any storehouse or bar-room, in said city, sell, or furnish for use, any spirituous, vinous, or malt liquors of any kind, such person shall be deemed guilty of a misdemeanor, and shall pay a fine of not less than \$20, nor more than \$50 for each and every such offense, to be recovered with costs, as in case of other breaches of the city ordinances." Under

this ordinance Mr. Gabel was convicted. The case was first tried before the Mayor and recorder, as justices of the peace, then before the district court and finally before the Supreme Court. Mr. Gabel was found guilty and the constitutionality of the ordinance was upheld. The Supreme Court said: "It will not be denied that such an ordinance conduces to the good order and tranquility of a city when it enforces obedience to the rules of sobriety and decency within its limits, even more rigorously upon Sunday than other days; for the people, from custom if not from law, desist upon that day from labor, and observe it as a day of rest, and, if tempted with the presence of the grog-shop vender of ardent spirits and malt liquors, may fall into the vice of intoxication, and consequent riots, and breaches of the peace, and other outlawry, and greatly disturb the peace and tranquility of the orderly and well-disposed inhabitants of the city upon that day, which should be kept holy, free from vice and worldly pursuits.

"The Constitution of the Republic of Texas, under which this charter was granted, reads as follows, to wit: 'No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience.'

"Section 4. Article 1, of the State Constitution of 1845, reads as follows, viz.: 'All men have a natural and indefeasible right to worship God according to the dictates of their own consciences; no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; no human authority ought in any case whatever to control or interfere with the right of conscience in matters of religion; and no preference shall ever be given by law to any religious societies or mode of worship. But it shall be the duty of the legislature to pass such laws as may be necessary to protect every religious denomination in the peaceable enjoyment in their own mode of public worship.'

"We are equally well satisfied that the ordinance complained of is not obnoxious to either of these constitutional provisions, but, in fact, has the effect to protect the inhabitants of Houston in the unmolested enjoyment of these religious privileges, secured by these sections of the Constitution of the Republic and State.

"That all people of this country shall have the right to worship God according to the dictates of their own consciences, or not at all, if they prefer, and that the government shall not establish any religion for the people to obey, or prohibit the free exercise thereof, appears to be now the settled American doctrine, well established in the organic law of the nation and the States. None here shall be compelled to observe the Jewish, Mohammedan, Catholic, or Protestant form of religion, or to embrace any at all. All are free to embrace any religious denomination, civilized or pagan, that his judgment or taste may dictate as the best or preferable for him.

"When we consider the attributes of the Deity and of future rewards and punishments, and the temporal welfare of society, government can hardly consider itself entirely free from the fostering care and protection of religion, as connected with the personal, social, and domestic virtues of the people; but to what extent government may go in the support and protection of religion, with safety and propriety, may be a subject of much contrariety of opinion with statesmen and publicists.

"The vast majority of our people profess a belief in the Christian religion, and its existence has been recognized by the constitution framed by them. The followers of that faith have from its earliest existence and foundation regarded and kept Sunday as a day of rest, free from labor and devoted to religious worship. And those not attached to any religious denomination have habitually kept that day as one of rest from secular pursuits; and its observance, as a day of rest and holy, has for centuries become more than habit or custom; it has become a sentiment, engrafted into our very social organism, to be observed and respected by all—without the sanction of law or decrees of courts. And, as a civil regulation, it has been considered important for the physical well-being of society that Sunday be observed as a day of rest from labor, in order that the mind and body may repose, that the former may recover or retain its wonted elasticity and vigor, and the latter may recuperate and be prepared for more arduous and protracted exertions in manual labor. And in this view the observance of Sunday, by a suspension of all secular pursuits, may, with great propriety, be enforced by civil law.

"The observance of Sunday we believe essential to a full enjoyment of religious exercises by the various denominations, in the spirit of the Constitution of the State quoted above. How could a religious set of people worship in a city, crowded with a busy population, and in the midst of the confusion, noise and bustle of worldly business, and the practices deemed by them unholy, and a sacrilegious desecration of that holy day?

"The right to worship God according to the dictation of the conscience has not at all been interrupted; nor is it enjoined upon any inhabitant of the city to attend the religious exercises of any denomination; and he may decline to attend any, and amuse himself with the metaphysical reflections and deductions of the infidel. He is not required to attend, erect or support any place of worship, or to maintain any ministry, directly or indirectly, contrary to his conscience. His rights of conscience, his religious principles, and practices under them, are not at all infringed or impaired; nor does the ordinance pretend to give any preference to any religion or mode of worship." "It does prevent him from following a tippling occupation in the city on Sunday, by which crowds of persons may be congregated at a public house, and, under the influence of intoxication, may commit riots and

breaches of the peace, to the great annoyance of others, who may feel it their religious duty to desist from labor, attend worship, and keep the day holy; and we see a propriety and due respect for the sentiments or customs of our people manifested in the rule that compels a cessation from labor on Sunday, in order that not only man and beast may recuperate, and be restored to health and mental and physical vigor, but that those who, in good faith, may desire to keep that day holy for the worship of God may remain undisturbed in the exercise of their religious duties; and any law that tends to this result cannot be considered repugnant to the Constitution." (29 Texas, 335.)

Again in 1888, in the case of *Ex Parte Sundstrom* before the Court of Appeals, the constitutionality of the law was upheld. (25 App. 133.)

In the case of *Elsner v. The State*, the Supreme Court said: "The object of the legislature was to forbid all secular employments on the Sabbath not excepted in the act under which the defendant is indicted. The disregard of the Sabbath, the refusal to recognize it as a day sanctified to holy purposes, constitutes the offense. The particular act alleged is no offense, but becomes so only when done on the Sabbath. (30 Texas, 524.)

The proper construction of the Sabbath law was passed upon by the Court of Appeals in 1880. (8 Texas Court of Ap. 313, *Albrecht v. the State*.)

"The obvious intention of the legislature, as manifested in Art. 186, of the Penal Code, was to prevent altogether the barter and sale of merchandise on Sunday, and to prohibit all merchants, grocers, dealers in wares or merchandise, or traders in any lawful business whatever, from desecrating the Sabbath, and distracting with their avocations the peace and quiet of other portions of the community, who might desire, from religious or other considerations, to devote the day to the worship of God, and to entire rest from their daily employments."

No action can be maintained for a deceit practiced in an exchange of horses on the Lord's day, because the plaintiff cannot prove the deceit without showing the terms of the illegal contract in which he participated.

The law of this State is much weakened by some of the exceptions in Section 197. It is highly gratifying, however, to find the Supreme Court upholding the law on the ground that Christianity is part of the common law.

VERMONT. (1894.)

The following Sections of Chapter 225, are entitled "Sabbath-Breaking:"

"5140. Any person who between twelve o'clock Saturday night and twelve o'clock the following Sunday night, exercises any business or employment, except such only as works of necessity and charity, or holds, or resorts to any ball or dance, or uses or exercises any game, sport or play, or resorts to any house of entertainment for amusement or recreation, shall be fined not more than two dollars.

"5141. The railroad commissioners may authorize the running upon any railroad of such through trains on Sunday as, in the opinion of the board, the public necessity and convenience may require, having regard to the due observance of the day.

"5142. A person who hunts, shoots or pursues, takes or kills wild game or other birds or animals, or discharges fire arms, except in the just defense of person or property or in the performance of military or police duty, on Sunday, shall be fined ten dollars, one-half to go to the person who makes the complaint and one-half to the State.

Serving a process on Sabbath is illegal except in case of necessity. The following acts were passed by the General Assembly of the State of Vermont, 1904:

"The open season for hunting deer in this State shall be the last week in October of each year containing six working days, Sundays excepted. This act shall apply to both resident and non-resident deer hunters.

"A person who hunts, shoots or pursues, takes or kills wild game or other birds or animals, or discharges firearms, except in the just defense of person or property, or in performance of military or police duty, on Sunday, shall be fined not less than ten or more than one hundred dollars, or be imprisoned not more than two months."

In the case of *Lyon v. Strong*, the Supreme Court of Vermont in 1834, gave a deliverance as to the ground of the Sabbath law from which we quote as follows:

"Aware of the benefits to be derived from stated periods of rest from manual labor, of the importance of having the same day observed by all, recognizing that every denomination of Christians among them regarded the Sabbath as a day set apart for moral and religious duties, they (the legislature) determined that every one should be protected in the enjoyment of his religious privileges and in the performance of his religious duties, and have made provisions that those who are thus disposed may on that day perform those great and necessary duties which they believe are required of them, without disturbance from the secular labor of others; and further, that all, whether high or low, prisoner or free, master or servant, shall be permitted to rest, and that none shall compel them to labor on that day; and lest through avarice or cupidity, any one should be disposed so to do, they have enacted that the day shall be observed as a day of rest from secular labor and employment, except such as necessity and acts of charity shall require." (6 Vt. 219.)

The constitutionality of the law seems never to have been questioned before the Courts, but in a number of cases involving the construction of the law the ground of such legislation has been pretty thoroughly canvassed. In 1847, in the case of *Adams v. Gray* this was done by Judge Redfield in an elaborate, but not altogether satisfactory opinion. In this case a horse-trade had been made by the litigants on Sabbath in the State of New Hampshire. The Sabbath laws of the two States were very similar. Two very important questions were considered. First, whether the new Hampshire law should be regarded in deciding the case, and second if it is not to be regarded, should the contract be declared illegal on general principles of public policy. Both questions were answered in the negative. The Court said:

"In this State, full immunity for all religions, and no religion, is equally given by the fundamental law of the State. No man can be abridged of his perfect liberty in that respect. And while this does not forbid the legislature from passing general laws against blasphemy, the desecration of the Lord's day, and the disturbance of public worship, it does, impliedly at least, forbid the adoption of any law, which is not necessary for the quiet enjoyment of religious feeling and religious worship. So that all laws which it is competent for the legislature to adopt, must have reference solely to preventing the disturbance of our citizens in their religious feelings and devotions. Beyond this, the constitution of the State absolutely prohibits any law. How, then, can it be said, that a contract made out of the State, upon Sunday, is any violation of the religious feelings or any infringement of the religious devotions of our citizens, any more than if made upon any other day?

"There is only one other ground, upon which, it seems to me, it could be seriously contended, that such a contract is immoral; that is, that its enforcement here tends to shock the moral sense of the community. I have no doubt such is the fact in regard to a portion of the most serious minded, earnest, and strenuously religious of our citizens. And no one can doubt, that the feeling of so considerable and influential a portion of the citizens of the State is entitled to the highest consideration. But in making inquiry into the state of the moral feeling of the whole community, we must not forget that, upon religious matters, it is almost infinitesimally divided. And before we could determine that any given cause shocked the moral feeling of the community, we must be able to find but one pervading feeling upon that subject,—so much so that a contrary feeling in an individual would denominate him either insane, or diseased in his moral perceptions. Now nothing is more absurd, to my mind, than to argue the existence of any

such universal moral sentiment, in regard to the observance of Sunday. It is in no just sense a moral sentiment to all, which impels us to the observance of Sunday, for religious purposes, more than any other day. It is but education and habit in the main, certainly. Moral feeling might dictate the devotion of a portion of our time to religious rites and solemnities, but could never indicate any particular time above all others.

"But this will be best determined by the actual state of opinions among us, upon this subject. Some of our citizens are atheists, perhaps; a considerable number deists, or rationalists; and among Christians there is an almost infinite diversity of opinion in regard to this subject. The Irish Catholic, who may have become a denizen of the Republic, regards St. Patrick's day, perhaps, as the most sacred in the calendar. The French Catholic is willing to labor every day in the year, almost, except on St. Peter's day. If he is well informed, and conscientious, he will hardly forget Good Friday, or Christmas, or Ash-Wednesday. The same is true, in regard to these latter days, with the consistent members of the Church of England, or of the Lutheran Church, or of the Greek Church, if any such there be among us. Now all these regard Sunday; but not as more sacred than some other days. It is but in commemoration of the weekly recurrence of the Lord's day, the Resurrection. But Easter-day, which is the annual festival of the Lord's day, is truly the great day of the feast,—the Sunday of Sundays, the crowning festival of the year! And this, with Good-Friday, Ash-Wednesday, Christmas, and some few other prominent fasts and festivals, is most religiously observed in all the ancient Churches; and in all the Lutheran Churches,—which embrace Holland, Sweden and Denmark, Prussia and Germany, so far as they are Protestant;—and in the English Church and all its branches. And so are all the Sundays in the year, but with far less solemnity than the greater fasts and festivals above named. In addition to this, it must be remembered that we have among us some Jews, perhaps, and some Seventh-day Baptists, who do not regard Sunday at all; and many of the Friends, who regard all days alike. This may all be very unwise or very unreasonable, in the estimation of some; but it is none the less true; and we must take things as they are. How then, can it be said, that to enforce a contract made upon Sunday, out of the State is shocking to the moral sense of the community?"

As to the illegality of contracts made on Sabbath the Court said: "There is a most urgent necessity so to administer this rule in regard to them, that it shall not be in the power of the reckless and irreligious to circumvent and defraud the unwary, under the guise of the sacredness of the time when their own injustice was perpetrated. We have little doubt such practices have already been attempted in some cases, and that it might become a not unfrequent resort of those who desired to effectually cut off all remedy for their own fraud and dishonesty. If the general rule of holding contracts, made upon Sunday, void, is,

also, to shield the contracting parties from the consequences of their frauds, and to allow the dishonest and abandoned to retain whatever they may be able to get possession of under such contracts, and the same time release them from all liability upon their own contracts, then the rule itself will be productive of infinite mischief and should be discarded at once." (19 Vt. 358).

"It is well settled in this State," says the Supreme Court of Vermont," whatever may be the decisions in other States—that the illegality which attacks to a contract executed on Sunday is not an illegality which enters into the subject matter or essence, of the contract, and for that reason renders it void: that such contracts only being illegal on account of the day on which they are made, are capable of ratification by any act which fairly recognizes them as existing contracts, on a subsequent week day, like a promise to perform, or pay the amount stipulated therein, or a part payment of the same." (51 Vt. 334).

The right to recovery for injuries received while traveling on the Sabbath has been denied in the following cases:

"It has been repeatedly held in this State that if a person sustain an injury by reason of an insufficiency in the highway while such party is travelling in violation of the statute, he cannot recover of the town or such injury." (53 Vt. 435.)

In *Duran v. Insurance Company* the Court held that when an accident policy which provides that the insurance money will not be paid if the accident occur wholly or partly from violations of the law, the insured cannot recover if he was injured while violating the Sabbath law. (63 Vt. 437.)

It is not illegal since 1894 to travel on Sabbath.

The exception in favor of railroads made by the Statute of Vermont is its weak point. The argument of the Supreme Court in *Adams v. Gray* is vicious. The Lord's day holds a place in the hearts of the people and in the customs of society that no other day holds. The opinion, however, that people who defraud and take shelter under the Sabbath law should not be allowed to escape, should receive general approval.

VIRGINIA. (1904.)

Chapter 185 of the Statutes of Virginia is entitled, "Of Offenses against Morality and Decency." The sections relating to the Lord's day are entitled, "Violations of the Sabbath, How punished," and are as follows:

"3799. If a person on a Sabbath day be found laboring at any trade or calling, or employ his apprentices or servants in labor or other busi-

ness except in household or other work of necessity or charity, he shall forfeit two dollars for each offense. Every day any servant or apprentice is so employed, shall constitute a distinct offense.

"From any judgment heretofore or hereafter rendered under this section, the right of appeal shall lie to the defendant within ten days, to the corporation or hustings court of the city, or to the circuit court of the county wherein said judgment appealed from and when taken shall be proceeded in as appeals in misdemeanor cases.

"3800. Exceptions as to the Jews.—The forfeiture, declared by the preceding section, shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant, not of his belief, to do secular work or business on a Sunday, and does not on that day disturb any other person.

"3801. What transportation, etc., by railroads on Sunday prohibited.—No railroad company, receiver, or trustee controlling or operating a railroad, shall, by any agent or employee, load, unload, run, or transport upon such road on a Sunday, any car, train of cars, or locomotive, nor permit the same to be done by such agent or employee, except where such cars, trains, or locomotives are used exclusively for the relief of wrecked trains, or trains so disabled as to obstruct the main track of the railroad; or for the transportation of the United States mail; or for the transportation of passengers and their baggage; or for the transportation of live stock; or for the transportation of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; Provided however, that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train-load, such train-load may be made up with cars loaded with ordinary freight.

"3802. What time the word 'Sunday' in the preceding Section embraces.—The word "Sunday" in the preceding Section shall be construed to embrace only that portion of the day between sunrise and sunset; and trains in transitu having started prior to twelve o'clock on Saturday night, may, in order to reach their terminus or shops of the railroad, run until nine o'clock the following Sunday morning, but not later."

The penalty for violating section 3801 is not less than a hundred dollars for each offense, and it is a separate offense in each county or corporation through which the train passes.

"3803a. No steamboat company shall by any agent or employee load or unload on a Sunday any steamship or steamboat arriving at any port or landing on the bays, rivers, or other waters of this State or permit the same to be done by any such agent or employee except where such steamship or steamboat is for the transportation of the United States mail, or for the transportation of passengers and their baggage, or for the transportation of through freight in transitu, or of

live stock, or of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; provided, that nothing in this act shall be construed as preventing any steamship or steamboat arriving at any port or landing on the bays, rivers, and on other waters of this State not its final point of destination from unloading any and all freight intended for delivery at such intermediate port or landing or from loading and taking on any and all freight intended for shipment from such intermediate port or landing to the final destination of said steamship or steamboat."

The penalty is the same as in the case of railroads.

"3804. No bar-room, saloon, or other place for the sale of intoxicating liquors shall be opened, and no spirituous, malt, or intoxicating liquors shall be sold in any bar-room, restaurant, saloon, store, or other place between twelve o'clock on any Saturday night and sunrise of the succeeding Monday morning.

"Any person violating the provisions of this section shall upon conviction, be fined not less than one hundred, nor more than five hundred dollars, and the license of the place where the sale was so made shall be revoked." (Vol. 2, p. 2033).

"To shoot or hunt any game in this State on Sunday" is unlawful. (Vol. 1, p. 1042, Sec. 2070a).

In *Norfolk & Western R. R. Co. v. Commonwealth* the Supreme Court of Appeals handed down an opinion which but for an adverse opinion by the Supreme Court of the United States in *Hennington v. Georgia* would have greatly weakened the railroad law which is already greatly impaired by its numerous provisions. The following extracts will give a sufficiently clear view of its character:

"A statute which forbids the running of interstate freight trains between sunrise and sunset on a Sunday, is, by its necessary operation, no matter what its professed object may be, a regulation of commerce. At all events, it is an obstruction to interstate commerce which for the purpose of the present case, amounts to the same thing; for, in any view, it is an invasion of the exclusive domain of Congress, and, therefore, void. To say that the State may, in the exercise of her police powers, enforce by statute observance of the Sabbath, not as a religious duty, but as a day of rest, is no answer to the constitutional objection here raised. The validity of such legislation, when not in conflict with a higher law, is acknowledged by all, and its wisdom and propriety denied by none—certainly not by this court. But when, in a case like the present it contravenes the constitution of the United States, the latter must prevail, because it is the 'supreme law' in all matters relating to the regulation of interstate commerce." (88 Va. 95, 1892).

A similar case was before the same court in 1896 involving the question of hauling empty cars through the State to the coal mines on the Sabbath. In this case it was held that hauling such cars is not commerce and is therefore a violation of a constitutional law. In the opinion prepared by Judge Buchanan the court said:

"The experience of mankind has shown the wisdom and necessity of having at stated intervals a day of rest for man and beast from their customary labors. It is necessary both for the physical and moral nature of man. The government of the United States, as well as the governments of the States of the Union, recognizes this requirement for rest in man's nature, and provides for it in their respective jurisdictions." (93 Va. 749).

By making the penalty for violations of the law relating to labor only two dollars the efficiency of the law is somewhat impaired. The railroad law makes a gap wide enough for almost any train the companies might wish to run. The steamboat law is equally faulty.

WEST VIRGINIA. (1899.)

Sections 16 and 17 of Chapter 149 of the West Virginia Statutes treat of Sabbath-breaking. They are as follows:

"16. If a person on a Sabbath day, be found laboring at any trade or calling, or employing his minor children, apprentices, or servants in labor or other business, except in household or other work of necessity or charity, he shall be fined not less than five dollars for each offense. And every day any such minor child, or servant or apprentice is so employed, shall constitute a distinct offense. And any person found hunting, shooting, or carrying fire-arms on the Sabbath day, shall be guilty of a misdemeanor and fined not less than five dollars.

"17. No forfeiture shall be incurred under the preceding section for the transportation on Sunday of the mail, or of passengers and their baggage, or for running any railroad train or steamboat on the Sabbath day, or for carrying fire-arms or shooting on that day, by any person having the right to do so under the laws of the United States or of this State; and no forfeiture for laboring on the Sabbath day shall be incurred under the said section, by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief to do secular work or business on Sunday, and does not on that day disturb any other person in his observance of the same. And no contract shall be deemed void because it is made on the Sabbath day." (p. 974).

The following also treat of certain features of the question.

"No civil process or order shall be executed on Sunday, except in cases of persons escaping from custody, or where it may be especially provided by law." (Ch 41, Sec. 15).

An attachment may be issued or executed on Sunday if oath be made that the defendant is actually removing his effects on that day. (Ch. 106, Sec. 8).

Inquests on dead bodies may be held on the Sabbath. (Ch. 155, Sec. 11).

In the case of the State v. B. & O. R. R. Company, the basis on which the Sabbath law rests was first of all set forth. The railroad company had been indicted for hauling coal on Sabbath, and judgment was rendered against it by the Circuit Court of Mineral County. The case came before the Supreme Court of Appeals on a writ of error. This court said:

"In construing our statute it would be our duty to give to it a meaning consistent with our constitution, if its meaning was doubtful, and such meaning could reasonably be attached to its language. Its meaning is not however doubtful. It was obviously not intended by our statute to enforce the observance of the Sabbath as a religious duty. The Legislature obviously regarded it as promotive of the mental, moral, and physical well-being of men, that they should rest from their labors at stated intervals; and in this all experience shows they were right. If then rest is to be enjoined as a matter of public policy at stated intervals, it is obvious that public convenience would be much promoted by the community generally resting on the same day; for otherwise each individual would be much annoyed and hindered in finding that those, with whom he had business to transact, were resting on the day on which he was working. The Legislature holding these views in selecting the particular day of rest doubtless selected Sunday because it was deemed a proper day of rest by a majority of our people who thought it a religious duty to rest on that day; and in selecting this day for these reasons the Legislature acted wisely. The law requires that the day be observed as a day of rest, not because it is a religious duty, but because such observance promotes the physical, mental and moral well-being of the community; and Sunday is selected as this day of rest, because if any other day had been named, it would have imposed unnecessarily onerous obligations on the community, inasmuch as many of them would have rested on Sunday as a religious duty; and the requirement of another to be observed as a day of rest would have resulted in two days being observed instead of one, and thus time would have been unnecessarily wasted. This I conceive is the main object of our law; but it is not its only object. While I am thus resting on the Sabbath in obedience to law, it is right and reasonable that my rest should not be disturbed by others. Such a disturbance by others of my rest is in its nature a nuisance, which the law ought to punish, and Sabbath breaking has been frequently classed with nuisances and punished as such." "If any portion of the community should regard it as their religious duty to rest on some other day than Sunday, and do so rest, they are not required to rest on Sunday, as one-seventh of time is all that the public good requires to be devoted to rest. But if you do not rest on

Sunday, you must take care not to disturb those who do, and not to compel others to work who should rest on that day.

"The obvious purpose of the law was not to enforce the performance of a religious or moral duty; for it expressly provides that this supposed religious duty may be neglected by any one, who will rest the required seventh part of his time."

"If these be correct views of the true meaning and purpose of the act, it is obvious that there is no reason why its observance should not be enforced against corporations, and why they should not be fined according to the provisions of this act for employing their servants in labor. The punishment inflicted is not because they in employing their servants in labor on Sunday are violating the fourth commandment or committing any immoral act, but because they are requiring their servants to labor more than six-sevenths of their time; and this is regarded by the State as prejudicial to their well-being. The corporation is therefore punished not for the violation of any social or moral obligation, but simply because it is violating a positive law forbidding it to employ its servants in labor on Sunday; or because it is annoying others who are thus resting in obedience to law."

It should be stated in explanation of the last paragraph that it was argued by Counsel for the Railroad Company, that the statute requires the observance of the Sabbath day as a religious duty imposed upon us by God, and that as corporations can owe no religious duty the statute cannot be construed to extend to them. (15 W. Va. 362, 1879.)

In 1887 the clause was added to the law excepting all railroad trains and steamboats.

As to the proper construction of the statute, it has been held that it is the province of the jury to determine under all the facts and circumstances of the case, whether the work charged to have been done on Sabbath was or was not a work of necessity. Butchering an animal, that had broken off one of its horns, on Sabbath for fear of fever is not a work of necessity. (State v. Knight, 29 W. Va. 340).

The railroad law is the weak part of this legislation. The judicial opinions are not above criticism.

WISCONSIN. (1898.)

Chapter 186 is entitled, "Offenses against Chastity, Morality, etc.," "Violation of Sunday" is the sub-title of Section 4595, relating to Sabbath-breaking. It is as follows:

"4595. Any person who shall keep open his shop, warehouse or workhouse, or shall do any manner of labor, business or work, except only works of necessity or charity, or be present at any dancing or public diversion, show or entertainment, or take part in any sport, game or play, on the first day of the week, shall be punished by fine not exceeding ten dollars; and such day shall be understood to include

the time between the midnight preceding and the midnight following the said day and no civil process shall be served or executed on said day." (Vol. 2, p. 2780.)

"Any person who conscientiously believes that the seventh or any other day of the week, ought to be observed as the Sabbath, and who actually refrains from secular business and labor on that day, may perform secular labor and business on the first day of the week, unless he shall wilfully disturb thereby some other person, or some religious assembly on said day." (Vol. 2, p. 2782).

In 1879, Section 4276 which relates to legal notices was amended as follows: "Any notice, advertisement, statement or publication, required by law or the order of any court, to be printed or published in any newspaper, may be printed and published in a newspaper printed on Sunday, and such printing and publishing shall be a lawful publication, and a full compliance with the order of the court or office ordering such publication, the same to all intents and purposes, as though the same had been printed and published in a newspaper printed on a secular day, etc." (p. 2640).

"No courts shall be open or transact any business on the first day of the week."

No civil process can be served or executed on the first day of the week.

"In case of exigency, an injunction may be granted, and by direction of the court or judge, may be served on Sunday."

Magistrates are to preserve peace and order, and if necessary arrest offenders on the Sabbath.

The opinions handed down by the Supreme Court of Wisconsin are not numerous and do not consider the constitutional principles involved. They relate chiefly to contracts made on the Lord's day and to liability for damages for injuries received on that day.

A contract or agreement made on the first day of the week is void and will not be enforced in a court of law, but, "Where a contract, otherwise valid, is void by reason of having been made on Sunday, . . . a subsequent promise to pay for the goods, made on any day other than Sunday, is valid." (31 Wis. 252, 1872).

A town is not obliged to repair, on Sabbath day, a hole in the highway caused by a rain on Saturday night. (33 Wis., 277, 1873).

A man who hired a wrecking machine for seven days was required to pay for its use on Sabbath although he did not use it on that day. If the contract had included its use on that day it would have been void and could not have been enforced. But the court declared that "the mere stipulation, that in computing the amount of the hire, Sunday should be reckoned as one day, does not necessarily contemplate its use on that day and does not render the contract illegal." (37 Wis. 41, 1875).

If injuries are received while travelling on Sabbath the right to recover is not affected by the fact that the injured party is travelling for pleasure. "He does not thereby become an outlaw, but is as much within the protection of the law, and is entitled to the same degree of care, as though he had postponed his ride till the next day." (*Knoulton v. Milwaukee City Ry. Co.*)

While a cattle drover was driving cattle across a bridge in the town of Wauwatosa on Sabbath the bridge broke down and some of the cattle were killed. In the damage suit which followed the Supreme Court held that while the drover was violating the law and was liable to a fine the accident happened because of the unsafe condition of the bridge, and would have occurred had he been crossing on any other day, and that he was entitled to recover. (29 Wis. 21, 1871).

In *Knox v. Clifford* it was shown that "a note was actually made and delivered on Sunday, but was dated on Saturday." It was claimed that this rendered it void. The Supreme Court held that "Where a party makes and puts in circulation a negotiable note purporting to be made and bearing date on some secular day, he is estopped, as against an innocent holder, from showing that it was actually executed and delivered on Sunday." (38 Wis. 651, 1875.)

Loaning money on the Sabbath is business and is unlawful, and the law will not lend its support to a claim founded on its own violation. (51 Wis. 46.)

Securing signatures to a petition relating to secular business on the Lord's day is unlawful. (52 Wis. 320.)

A claim for damages in case of eviction cannot be based on profits made in violation of the Sabbath law. (100 Wis. 414.)

A subscription for the building of a church made on the Sabbath is valid. (113 Wis. 567.)

The statute making it lawful to publish legal notices in Sunday newspapers is a great injustice to those who do not read such papers. With this exception the law of Wisconsin is good. With very few exceptions the opinions of the courts are judicious and give the law strong support.

WYOMING. (1899.)

Chapter 10, Division 1, Title 20, of the Wyoming Statutes is entitled "Sunday." It is as follows:

"2642. For the purposes of this chapter the first day of the week, commonly called Sunday, shall begin with midnight Saturday and terminate the following midnight.

"2643. Every person or persons, company or corporation, having license to sell liquors under the laws of Wyoming, who shall keep open, or suffer his or their agent or employee to keep open, his or their

place of business, or who shall sell, give away or dispose of, or permit another to sell, give away or dispose of, on his or their premises, any spirituous, malt, vinous or fermented liquors, or any mixtures of any such liquors, on the first day of the week, commonly called Sunday, or upon any day upon which any general or special election is being held, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five dollars, or more than one hundred dollars, or imprisoned in the county jail not to exceed three months.

"2644. It shall be unlawful for any person or persons, company or corporation, to keep open any barber shop, store, shop or other place of business for the transaction of business therein, upon the first day of the week commonly called Sunday; provided, this section shall not apply to newspaper printing offices, railroads, telegraph companies, hotels, restaurants, drug stores, livery stables, news depots, farmers, cattlemen and ranchmen, mechanics, furnaces or smelters, glass works, electric light plants and gas works, the vendors of ice, milk, fresh meat and bread, except as to the sale of liquors and cigars. Any person, company or corporation who shall violate the provisions of this section, shall, on conviction thereof, be fined in a sum of money not less than twenty-five dollars, nor more than one hundred dollars, for each offense." (p. 717.)

This law permits far more than it prohibits, and no cases seem to have reached the Supreme Court.

PORTO RICO. (1902.)

The Sabbath law of Porto Rico is contained in Title XIX of the Penal Code and is entitled "Sunday Closing." It is as follows:

"553. That every Sunday commercial and industrial establishments, excepting public markets, pharmacies, bakeries, hotels, restaurants, cafes, and places where refreshments only are served, excepting also public and quasi-public utilities and works of emergency, necessary to prevent unusual and serious financial loss, shall remain closed and do no business whatever after twelve o'clock noon. This prohibition shall not, however, extend to theaters and other places devoted exclusively to amusements or to charitable purposes; at all such places it shall be lawful to work at any hour on Sunday, but only in aid of such charitable purposes or amusements.

"554. The municipal council of any municipality may, by ordinance, require commercial and industrial establishments, including those excepted in Section 553, or any of them, to remain closed at all hours on Sunday, excepting the works of emergency therein mentioned.

"555. In case of disorder on Sunday in any establishment herein

excepted from the provisions hereof, or excepted in any municipal ordinance enacted under the authority hereof, the alcalde may order said establishment to be closed forthwith during the remainder of the day on which the disorder occurs; and in case of a repetition in the same establishment of disorder on any other Sunday, the alcalde may direct such establishment to be closed on Sunday for a period not exceeding three months; and in case of each subsequent offense in the same establishment, the alcalde may order it to be closed on Sunday for a period not exceeding one year."

* Section 556 fixes the penalty at five to ten dollars for the first offense, and from ten to twenty-five dollars for the second offense. (pp. 612-614.)

CHAPTER V.

STATES WHOSE SABBATH LAWS ARE INHERENTLY WEAK.

In the fourth list of States are to be placed those whose laws are inherently weak because the prohibitions are limited to a few of the common violations of the sanctity of the Sabbath. In some of the States of this class labor is not prohibited, in some no mention is made of business, while in some nothing is prohibited except such things as disturb congregations and families in the religious observance of the day. In some of them there is no prohibition of hunting and fishing.

COLORADO. (1891.)

"Sunday worship" is the title of the sections of the Colorado Code on the Sabbath question. They are as follows:

"1370. Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement, on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, on conviction thereof, in any sum not exceeding fifty dollars. (Vol. 1, p. 947.)

"1371. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, or who shall, by a disorderly or immoral conduct, interrupt or disturb the meeting, processions or ceremonies of any religious denomination, on either a Sunday or weekday, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars. (Vol. 1, p. 947.)

"1323. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tipling or gaming house on the Sabbath day or night, or shall keep a lewd house, etc.; every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisonment in the county jail not exceeding six months. (Vol. 1, p. 932.)

1445 provides that prisoners sentenced to hard labor are not to work on Sabbath.

"2597. That any person who conscientiously observes the seventh day of the week, commonly called Saturday, as the Sabbath day, and refrains from doing secular labor upon that day, shall not be required to serve as a juror, or as a witness, on such day, if he or they shall ask to be excused from such service." (Vol. 3, p. 726, L. '91.)

2718 provides that attachments to secure property may be issued on Sabbath. Bills and notes due on Sabbath are payable on Saturday. Sec. 265. County offices are not open on Sabbath. Sec. 930.

2840, after providing for licenses for theaters, circuses, and shows, declares: "No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theater, circus or show, on the Sabbath or Lord's day; but any person who shall so offend on such day shall be fined in a sum not less than fifty nor more than one hundred dollars, for every such offense."

A recent statute requires every saloon, bar or other place where spirituous, vinous, malt or other liquors are kept, sold, bartered, exchanged or given away, to be closed from twelve o'clock on Saturday night until six o'clock on Monday morning, and declares that no person shall be permitted to be or remain in or around the same, except those connected therewith. The penalty for violating this law is not less than \$100 nor more than \$500.

The public courts hold no session on that day. Sec. 3511. When Sabbath is the meeting day of the State Board of Canvassers, they are to meet the next day. Sec. 1633. The State Library is not open on the Sabbath. Sec. 2802. Nor the Supreme Court Library. Sec. 987. Inmates of the State Reformatory are not to labor on Sabbath. Sec. 4174. Tax sales are not to be held on Sabbath. Sec. 3888.

In 1893 it was enacted "That it shall be a misdemeanor for any person to carry on the business of barbering on Sunday in any city of the first or second class, whether incorporated by general law or special charter, in the State of Colorado. The penalty is from \$25 to \$50 or imprisonment from fifteen to thirty days, or both. (Vol. 3, p. 360.)

Contracts made on Sabbath are valid.

The charter of the city of Denver previous to 1889 gave to that city entire jurisdiction over the liquor traffic within its limits. A city ordinance was passed requiring saloons to be closed only

part of the Sabbath. In *Huffsmith v. The People*, it was held that the charter takes away all jurisdiction from the State, and that there can be no prosecution for keeping open a saloon at the hours permitted by the city ordinance. (8 Col. 175, 1884.)

This charter was amended in 1889, and under the new charter it was held, in *Heinssen v. The State*, that this exclusive jurisdiction is withdrawn and that the saloons must obey the State law. Justice Elliott in rendering the opinion of the court said concerning the Colorado Statute:

"Our laws do not recognize Sunday as having any particular sanctity or sacredness above other days; but the law does recognize the fact that large numbers of our people abstain from their usual employments on Sunday, and that many of them devote the day more or less to religious worship and works of charity, while others enjoy it as a day of rest, recreation or pleasure, according to their several inclinations.... Provision is also made to promote peace and quiet, and to prevent dissipation and disturbance, to the end that citizens of all classes may enjoy the privileges of the day as they severally please, in an orderly manner, without trespassing upon the privileges of others.The observance of one day in seven as a day of rest is conducive to the sanitary, moral and physical well-being of the race." (14 Col. 228, 1890).

In *Muller v. The People*, this opinion was reaffirmed, the court declaring that, "We are satisfied that it was the intention of the general assembly to subject municipal corporations organized under the general laws of the State to the general statutory provisions relative to the keeping open of saloons on Sunday." (24 Col. 251, 1897.)

With respect to the use of the Sunday newspaper to give public notices required by law it is held that "The publication of notice of the sale of real estate for taxes in a Sunday newspaper does not constitute legal notice, and a sale based on such publication is void." (*Schwed v. Hartwitz et al.* 23 Col. 187, 1896).

The validity of the law against keeping saloons open on the Sabbath and the fact that the fine is not excessive were maintained in the case of *Cardillo v. The People*, 26 Col. 355. (1899.)

While the law of Colorado fails in its prohibitory clause by not forbidding business, and by forbidding only such labor and amusements as disturb others, it still possesses some merit. The judicial opinions, especially those against legal notices in Sunday papers and the Sunday saloon are praiseworthy.

ILLINOIS. (1903.)

"Sunday" is the title of the Sections of the Criminal Code of Illinois relating to the Sabbath; they are as follows:

"259. Whoever keeps open any tippling house, or place where liquor is sold or given away, upon the first day of the week, commonly called Sunday, shall be fined not exceeding \$200." This penalty has been changed to fine not exceeding \$100, or imprisonment not exceeding six months.

"260. Sunday shall include the time from midnight to midnight.

"261. Whoever disturbs the peace and good order of society by labor (works of necessity and charity excepted), or by any amusement or diversion on Sunday, shall be fined not exceeding \$25. This section shall not be construed to prevent watermen and railroad companies from landing their passengers, or watermen from loading and unloading their cargoes, or ferrymen from carrying over the water travelers and persons moving their families, on the first day of the week, nor to prevent the due exercise of the rights of conscience by whoever thinks proper to keep any other day as a Sabbath.

"262. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, shall be fined not exceeding \$25." (p. 665.)

In *McPherson v. Village of Chebanse*, involving the right of an incorporated village to pass an ordinance prohibiting persons from keeping open their places of business for the purpose of vending goods, wares and merchandise, on the first day of the week, it was argued that such an ordinance is inconsistent with and repugnant to the policy of the State. But the Court said:

"There is no repugnancy between them. We do not admit that the keeping open of the stores in a village on Sunday is allowable under the statute—that it would not disturb the peace and good order of society. Sunday, as it is observed by common usage, is not only set apart as a day of rest from labor, but it is devoted to religious worship. The consecration of the day to its wonted manner of observance, is a blessing to mankind. Besides the recuperative effect referred to, it has its other beneficial uses. It affords opportunity for moral, intellectual and social culture. It is promotive of good habits, and tends to improve the manners of men. It is civilizing and refining in all its influences. Whatever detracts from the observance of the day, as it is customarily observed, is not to be countenanced. The keeping open by persons of their places of business in a community, on Sunday, for the exercise of the business of their ordinary callings, is a public and serious interference with the observance of the day in its accustomed mode of observance. It is obstructive of the purposes for which the day is set apart. It is offensive to the moral sense of the community. It disturbs the peace of society, in its open interference with the peace and quiet of a day devoted as a day of rest and for religious worship. It disturbs the

good order of society in publicly and flauntingly, and in defiance of public sentiment, desecrating a day, and inviting others to its desecration, set apart for purposes of the highest well being of human society." (114 Ill. 46, 1886.)

In 1895 the legislature of Illinois passed an act making it "unlawful for any person or persons to keep open any barber shop, or carry on the business of shaving, hair-cutting or tonsorial work, on Sunday, within this State." To test the constitutionality of the act the case of *Eden v. The People* was brought before a justice of the peace who sustained the law. Appeal was taken to the Criminal Court of Cook County by which the law was again sustained. The case was then appealed to the Supreme Court by which the law was declared to be unconstitutional. A brief examination of the case will be instructive.

It should be remembered that Illinois belongs to a class of States whose Sabbath laws are weak in their prohibitory clauses. In this case the court pointed to the fact that the Illinois statute "merely prohibits labor and amusement which disturb the peace and good order of society." Under this law it was held as follows:

"Each and every citizen is left perfectly free to labor and transact business on Sunday or refrain from labor and business, as he might choose, so long as he does not disturb the peace and good order of society. By the act in question an attempt has been made by the legislature to inaugurate a radical change in the law as to a class of the laboring element of the State—the barbers. . . . The income derived from his place, and his own labor and the labor of his employees, are his property, but the legislature has by the act taken that property from him. . . . The barber is thus deprived of property without due process of law, in direct violation of the Constitution of the United States and of this State."

It was held that this statute cannot be sustained as an exercise of the police power of the State which involves the right to protect the public interest, the public welfare, or, as stated in this opinion, "the health, comfort, safety or welfare of society." How, it may be asked, is the health, comfort, safety or welfare of society to be injuriously affected by keeping open a barber shop on Sunday? It is a matter of common observation that the barber business, as carried on in this State, is both quiet and orderly. . . . In view of the nature of the business and the manner in which it is carried on it is difficult to perceive how the rights of any person can be affected or how the comfort or welfare of society can be disturbed." "If the public welfare of the State demands that all business and all labor of every description, except works of necessity and charity, shall cease on Sunday, the first day of the week, and that day shall be kept as a day of rest, the legislature has the power to enact a law requiring all persons to refrain from their ordinary callings on that day. All will then be placed on a perfect equality, and none can complain of an un-

just discrimination. But when the legislature undertakes to single out one class of labor harmless in itself, and condemn that and that alone, it transcends its legitimate powers, and its action cannot be sustained." (161 Ill. 296, 1896.)

In defining the word necessity it is held that by this term 'the law does not mean a physical or absolute necessity, but a moral fitness or propriety of the work done under the circumstances of each particular case. Any work necessary to be done to secure the public safety, by the safe keeping of a felon or delivering him to bail must come within the true meaning of the exception.' Generally speaking, however, judicial acts cannot be done on the Lord's day. (*Johnston v. The People*, 31 Ill. 469.)

In the case of *Scammon v. The City of Chicago*, the Supreme Court held that a notice appearing in a Sunday newspaper is not valid. 40 Ill. 146. The Court said, "Although we have departed from the austere observances of the New England colonists, we have not drifted so far in the opposite direction as to recognize no distinction between Sundays and the other days of the week. The experience of the world has taught the necessity of setting apart one-seventh of our time for religious worship and meditation, and for complete repose from the harassing and absorbing pursuit of gain, ambition and pleasure. Even those who are not guided by the teachings of Christianity, acknowledge the necessity of a rational observance of the Sabbath as conducive in the highest degree to the temporal interests of society. While legislation prescribing the precise mode of its observance would be justly regarded as an unwarrantable interference with individual liberty, on the other hand, all agree that no person should be permitted to follow his ordinary secular occupations, if, by so doing he disturbs that portion of the community which desires to devote the day to religious worship and meditation."

Keeping open tippling houses on the Sabbath is a violation of the statute, and it is not necessary to prove that it is done to the encouragement of idleness, gaming, drinking and other misbehaviour, but it must be shown that liquor was sold or drank. *Fant. v. The People*, 45 Ill. 259. The law is violated if only beer is sold, or if the bar tender keeps the saloon open and shows his willingness to sell, though he sell but a single glass or none at all. The law is violated, although the person charged keeps a boarding house, and the saloon is used as a sitting room for the boarders, provided it is also accessible to the public for purposes prohibited by the statute. *Koop v. The People*, 47 Ill. 327. See also, 15 Ill. 441. *Maine v. McCartney*: 78 Ill. 294, *Kroer v. People*, 294; 86 Ill. 33, *Siebold v. People*.

On a certain Sabbath a bill in chancery was brought "in the Livingston Circuit Court, praying for a writ of injunction to restrain the Fairbury, Pontiac and Northwestern Railway Com-

pany from taking possession of one of the principal streets in the incorporated town of Fairbury, for the purpose of grading, tying and ironing the same for the track of their railroad." The bill was filed by a large property owner on the street to be taken by the railway, and it alleges that the company, immediately after twelve o'clock of the night of Saturday, with a large force of men, had taken violent possession of the street for the express and avowed purpose of finishing their track through its entire length before the next Monday morning; and that they had selected Sunday for the work, for the express purpose of evading an injunction, and avoiding the process of court, and for the purpose of obtaining and holding the street without paying for it or the damages thereby occasioned to the property owners upon it. The record in the case says:

"This bill was presented to the master in chancery, in the absence of the circuit judge, on Sunday. The writ of injunction was ordered by the master on that day, and issued by the clerk and served by the sheriff on the same day."

At the next term of court the writ was quashed and the bill dismissed. The case went to the Supreme Court on a writ of error.

The ground taken by the railroad company was that since Sabbath is dies non juridicus a writ cannot be issued on that day. The Court said:

"Here this dies non juridicus was selected by the railway company as the proper day to commit a great outrage upon private and public rights, believing the arm of the law could not be extended on that day to arrest them in their high handed and unlawful design. To the complainant the acts they were organized to perpetrate on that day were fraught with irreparable injury. Feeble indeed would be the judicial arm if it could not reach such miscreants." (*Langabier v. P. F. & N. W. R. R. Co.* 64 Ill. 243, 1872)

The case of *Richmond v. Moore* involved the validity of contracts made on the Lord's day. The case came first before the Superior Court of Cook County, next before the Appellate Court of the First District, and finally before the Supreme Court of the State. The validity of such contracts was sustained. Among other things the Supreme Court said:

"Our statute, by its very terms, is for the preservation of the peace and good order of society from disturbance. It is not, nor can it be, he'd to have been the purpose of the statute to compel the performance of a religious duty, however necessary to the future welfare of the individual failing to perform it.

"But the statute does protect the religious community from being disturbed in their devotions and worship by the indecent disregard of their right to be undisturbed on that day. But it permits others, that do not recognize the Christian Sabbath, to keep another day of rest. This exception embraces Jews, Seventh Day Baptists, and it may be, some other religious denominations. The object of the statute is to protect persons keeping the Christian Sabbath as a day of holiness, from disturbance in its observance, and not to compel the performance of religious duties as such. That is no part of governmental duty under our institutions. Our government is unlike the British Government, as that government combines the ecclesiastical and secular powers. Its constitution is based upon the union of church and State, and it claims and exercises the power to enforce the faith and doctrines of the established church, by statutes imposing penalties for failing to perform religious duties and requirements, and compelling all to contribute support to the State church; on the contrary, however, a total severance of church and State is one of the great controlling foundation principles of our system of government. The spiritual welfare of our people is left entirely to the hierarchy of the various churches. The government protects all alike in their religious beliefs and unbeliefs. It is no part of the function of our government to prescribe and enforce religious tenets. The great purpose of the formation of our system of government is to protect the people in the enjoyment of their temporal and spiritual rights and to prohibit crime, vice and wrong to any portion of the community and to pass and enforce laws for the promotion of the temporal interests of the people, and, as far as possible, secure their temporal welfare and happiness. Although it is no part of the functions of our system of government to propagate religion, and to enforce its tenets, when the great body of the people are Christians, in fact or sentiment, our laws and institutions must necessarily be based upon and embody the teachings of the Redeemer of mankind. It is impossible that it should be otherwise. And in this sense, and to this extent, our civilization and institutions are emphatically Christian, but not for the purpose of compelling men to embrace particular doctrines or creeds of any church, or to support one or another denomination by public burthens, but simply to afford protection to all in the enjoyment of their belief or unbelief. But the State has the unquestioned power to suppress crime, vice and immorality, even if such acts are claimed to be the exercise of religious belief.

"The legislature is absolutely powerless to enforce religious doctrines or beliefs, merely as such. It may be that in suppressing crime, vice, or immorality, it may incidentally enforce religious doctrines. The Christian religion forbids all crime, vice and immorality, and good government equally requires their suppression. They are suppressed by the government because required for the general welfare, and not

because they are religious doctrines. . . . In all countries and ages among civilized or partially civilized peoples, governments have set apart days of rest, recurring at short periods. This has been, and still is, regarded as necessary to the temporal welfare of the people, as a certain amount of rest is regarded as absolutely necessary to man and animals subjected to labor. Considerations of public policy demanding such periods of rest, and the great body of Christians holding the observance of Sunday to be a religious duty, it is natural that the law-making power, as a matter of public policy, should specify Sunday as the day of rest, thereby conforming public policy to religious sentiment. But that Sunday is kept as a holy day by most Christian denominations neither adds to nor detracts from the validity of the enactment. Had any other day of the week been selected, the enactment would have had the same binding force." (107 Ill. 429, 1883.)

In the case of the *Collins' Ice Cream Company v. Richard H. Stephens*, the latitudinarian character of the law was set forth in the following words:

"By the contract plaintiff agreed to devote his entire time and attention to the business of the defendant, and the contract is presumed to have been made with reference to the usual custom of that kind of business. Whether he would be bound to work on Sunday would depend upon the manner of conducting the business and the established custom. A contract which contemplates labor on Sunday not tending to disturb the peace and good order of society nor constituting a violation of the criminal code is valid and enforceable." (189 Ill. 200, 1901.)

The difficulties in the way of a uniform enforcement of a statute which prohibits only what disturbs other people are clearly presented in the opinions above quoted. What disturbs some will not be regarded as a disturbance by others.

Some of the opinions here given render a weak law still weaker while others have features that are highly commendable.

MONTANA. (1895.)

Chapter VI., Title IX., of the Statutes of Montana treats of "Offenses against Good Morals." The following sections relate to the first day of the week:

"530. Every person who on Sunday or the first day of the week keeps open or maintains or aids in opening or maintaining any theatre, play-house, dance-house, concert saloon or variety hall is guilty of a misdemeanor.

"531. It is unlawful to conduct the business of hair-cutting, shaving or shampooing, or to open barber shops for the doing of such business, on Sunday.

"532. Any person violating the provisions of this Act is guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense, not less than fifteen dollars and not to exceed fifty dollars and for any subsequent violation, a fine not less than twenty-five dollars and not exceeding one hundred dollars shall be imposed.

"533. Every person who wilfully disturbs or disquiets any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behaviour, or by any unnecessary noise, either within the place where such meeting is held or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor." (Vol. 4, pp. 843, 844.)

NEBRASKA. (1903.)

Chapter XXIII. of the Criminal Code of Nebraska is entitled "Miscellaneous Offenses." Section 241 is on "Sabbath Breaking." It is as follows:

"If any person of the age of fourteen years or upward shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, or shooting, he or she shall be fined in a sum not exceeding twenty dollars, or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. And if any person of the age of fourteen years or upward shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted), he or she shall be fined in a sum not exceeding five dollars; Provided, nothing herein contained in relation to common labor on said first day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent families emigrating from travelling, watermen from landing their passengers, superintendents or keepers of toll bridges or toll gates from attending or superintending the same, or ferrymen from conveying travelers over the water, or persons moving their families on such days, or to prevent railroad companies from running necessary trains." (P. 1974.)

Section 14 of chapter 50 relates to liquor selling on Sabbath. It declares that "Every person who shall sell or give away any malt, spirituous and vinous liquors on the day of any general or special election, or at any time during the first day of the week, commonly called Sunday, shall forfeit and pay for every such offense, the sum of one hundred dollars." (p. 1045.)

No court can be opened, nor any judicial business transacted on the Sabbath, except to instruct a jury then deliberating, receive a verdict or discharge a jury, to exercise the powers of a single magistrate or to grant or refuse a temporary injunction. (p. 831.)

No direct assault seems to have been made on the constitutionality of this law, but its constitutional grounds were presented in some measure by the Supreme Court in 1892 in the case of the State v. O'Rourk. The defendants were arrested for playing base ball on the Sabbath. Both the county judge and the District Court held that playing base ball on the Sabbath is not a violation of the law. The case was then taken to the Supreme Court and this opinion was reversed. Chief Justice Maxwell in delivering the opinion with which all the judges concurred, said:

"All free government is based on the divine law. God gave the ten commandments to Moses, which contain the rules designed to apply to the whole race. Although given to the Israelites, they were designed for all humanity." "Christianity is woven into the web and woof of free government and but for it free government would not have existed, because no other system has been able to check the selfishness, arrogance, cruelty and covetousness of the race." "As a Christian people, therefore, jealous of their liberty and desiring to preserve the same, the State has enacted certain statutes, which, among other things, in effect, recognize the fourth commandment, and the Christian religion and the binding force of the teachings of the Saviour. Among these is the statute which prohibits sporting, hunting, etc., on Sunday." "The law, both human and divine, being thus in favor of abstaining from sporting, etc., on Sunday, is a reasonable requirement and should be enforced. The deliberate violation of such a law, there is reason to believe in many cases, is but the commencement of a series of offenses that lead to infamy and ruin; and in any event the influence upon the participants themselves has a tendency to break down the moral sense and make them less worthy citizens."

After mentioning the immoral acts which the State punishes, the court proceeds: "These cases show the importance felt by the legislature, of evils of the kind named, and others, by means of which, in addition to wrongs inflicted on the persons injured, a spirit of insubordination is created and fostered which incites to evil and tends to subvert the just and equal rights of some or all. In addition to this, every person has a right to the quiet and peace of a rest day. He has also a right to the enforcement of the law, so that the evil example of the defiance of the law shall not be set before his children. The State has an interest in their welfare also, in order that they may become useful citizens and worthy and honorable members of society." (35 Neb. 614.)

The Supreme Court of Nebraska holds that "Neither at common law nor under our statute is a contract entered into on Sunday void for that reason." (*Horacek v. Keebler*, 5 Neb. 355, (1877.)

When the day for performing a contract falls on Sabbath, that

day is not counted, and compliance with the terms of the contract on the next day is deemed in law a performance, but when a contract is to be fulfilled within a given number of days intervening Sabbaths are counted. *Post v. Garrow*, 18 Neb. 682, (1886). 33 Neb. 649, (1891.)

Where a railroad company runs trains on Sabbath and employees are injured through negligence of the company, the company is not exonerated because the accident occurred on Sabbath. *Johnson v. M. P. R. R. Co.* 18 Neb. 691 (1886).

While a drug store may be kept open for necessary purposes, the proprietor may not engage in indiscriminate trade on Sunday. Persons who believe the seventh day of the week is the Sabbath, but do not so observe it, are not exempt from the prohibitions of the law. (*Liberman v. State*, 26 Neb. 465, (1889).)

Where intoxicating liquors are sold or given away on Sabbath, the principal is liable though not personally present. *Martin v. State*, 30 Neb. 507, (1890.)

An order made by a judge on Sabbath is void. (*Merchants Nat'l Bank of Omaha v. Jaffray*, 36 Neb. 218, (1893).)

When grace on a note or bill expires on Sabbath, it is due on Saturday, and if Saturday is a legal holiday it is due on Friday. (51 Neb. 707-715, (1897.)) Judicial business cannot be transacted on Sabbath. (*Deere v. Hodges*, 59 Neb. 288, (1899).)

In 1902 the Supreme Court rendered a decision which construes very loosely the Nebraska law as it applies to sports. That decision declares that a contract to furnish one performance, consisting of music, dancing, and feats of contortion, each day of the week, including Sunday, is not a violation of the law, and the legislature having expressed the policy of the State in regard to the observance of the Sabbath, the court will not add to the restrictions by declaring such contract contrary to public policy. (*Wirth v. Calhoun*, 64 Neb. 316.)

In *State v. King* the Supreme Court of Nebraska noted the distinction between Sabbath and mere holidays, declaring as follows:

"The Creator instituted the Sabbath as a day of rest, and experience has shown the necessity of its observance by mankind generally, as a means of preserving full mental and physical vigor. Hence at common law, courts are prohibited from transacting business on Sunday. . . . No such reasons exist, however, in favor of holidays." The court held that when a legal holiday falls on the first day of the week, Monday is not a legal holiday as to the holding of courts, etc., but only as to the presentation and demand of commercial paper. (Neb. 23, 540, 1888.)

The Nebraska statute is weak because it prohibits neither business nor amusements on the Lord's day. There are some excellent things in some of the opinions.

NEVADA. (1885.)

"An Act for the better observance of the Lord's day," is the title of the Sabbath law of Nevada. It is as follows:

"1. No person shall keep open any play-house or theater, race-ground, cock-pit or play at any game of chance for gain, or engage in any noisy amusement, on the first day of the week, commonly called Lord's day.

"2. No judicial business shall be transacted by any court, except deliberations of a jury who have received a case on a week day, so called, and who may receive further instructions from the court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, nor any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's day; provided, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination to be proceeded with.

"3. Any person or persons violating the provisions of the two preceding sections of this Act shall be punished, on conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars for each offense."

Few cases under this law have reached the Supreme Court. In 1880 it was decided that "An attachment suit can be commenced and the writ served on Sunday whenever the plaintiff, or some person in his behalf makes the affidavit that it will be too late to wait till a subsequent day." Most States allow the issuing and serving of the writ, but not the commencement of the suit.

This law prohibits neither labor nor business, and only noisy amusements. There is not much occasion for cases for the courts to arise.

NEW HAMPSHIRE. (1891.)

Chapter 271 of the New Hampshire Code is entitled, "Offenses against morality and Religion." The sections relating to the Sabbath have the sub-title, "Disturbances of the Lord's day." They are as follows:

"3. No person shall do any work, business, or labor of his secular calling, to the disturbance of others, on the first day of the week, commonly called the Lord's day, except works of necessity and mercy, and the making of necessary repairs upon mills and factories which

could not be made otherwise without loss to operatives; and no person shall engage in any play, game or sport on that day.

"4. No person shall, on the Lord's day, discharge any firearms for sport, or in the pursuit of game, nor carry a firearm in a field, highway or private way, while in the pursuit of game or with intent to discharge the same in sport.

"5. No person shall keep his shop, warehouse, cellar, restaurant or workshop open for the reception of company, or shall sell or expose for sale any merchandise whatsoever on the Lord's day; but this section shall not be construed to prevent the entertainment of boarders, nor the sale of milk, bread and the necessaries of life, nor drugs and medicines." (p. 726.)

Bills, etc., falling due on Sabbath are payable on the preceding day.

It should be observed that the New Hampshire Statute uses the term, "secular," instead of "ordinary," which word was employed in the Statute of Charles II. and interpreted to allow a person to perform worldly labor provided it was not in the line of his ordinary calling.

In 1827, the Superior Court of New Hampshire, said that this substitution of "secular" for "ordinary" means that "any work, labor or business relating to secular concerns, works of necessity and mercy excepted," is prohibited."

It should be noted also that the phrase, "to the disturbance of other," was not a part of the old law in New Hampshire, but was added in the early part of the last century. In 1848 the Superior Court gave an opinion as to the modifications of the law made by this addition. The Court said:

"The old law not only protected the solemnities of religion from interruption, and secured the public in their peaceful performance, but also reminded the individual that he has religious duties to fulfill. It tended to secure to him time and opportunity for their fulfillment by prohibiting him from performing other things, and induced him to turn his attention, for one day in the week, to religious reflection, by refusing him permission to distract his mind by occupying himself with his worldly affairs.

"This latter object the Revised Statute does not attempt to attain, that is, it does not have in view the good effect upon the individual, by prohibiting him from exercising his worldly calling. By the act of 1799 he could not do this under any circumstances. By the Revised Statute he may do it, with qualification, a condition, and that is, that it be not to the disturbance of others. This provision aims only at protecting the public in their devotions and religious reflections; others, the law says, shall not be disturbed. It leaves each individual

to employ himself as he may chose, subject only to this limitation. It does not aim at guarding him from himself. . . . It leaves him to his own conscience."

In this same opinion the court spoke as follows on the meaning of the phrase, "to the disturbance of others." "If nothing can be considered a disturbance which people willingly submit to and take part in, then the legislature did not intend to prohibit any assembly of persons, for whatever purpose, provided the people present are willing to give up their religious duties and take part in whatever is done." "Upon this principle a horse-race in a public street would be no disturbance if the people chose to desert the churches and assemble on the race-ground. A military parade on the Sabbath would not be prohibited if the bystanders, or those who heard it, preferred military to sacred music. A theater or a circus, a menagerie or a political caucus, would no more be disturbances than would the services in the church. But we do not think that such would be the true construction of the act." The court declared further that contracts relating to secular matters cannot be legally made on the Sabbath because two or more persons are thereby disturbed. (19 N. H. 233.)

The party who would prosecute one who violates the Sabbath law "must not only allege the act to have been done on the Lord's day, but he must allege it to be work, labor, or business of the secular calling of the person doing it; that it was done to the disturbance of others, and that it was not a work of necessity or mercy." (*Clough v. Shepard*, 31 N. H. 490.)

In the case of *Allen v. Deming* the Supreme Court said:

"In the judgment of many persons, such a law is impolitic, and ought never to have been enacted, and they easily reach the illogical result, that therefore it should be disregarded by those whose duty it would otherwise be to enforce it, or at least great astuteness may be properly exercised to defeat its operation. The law is alleged to be difficult in its application and unjust in its effects; to interpose an inequitable defense to an honest demand; to interfere unnecessarily with freedom of opinion and of action; and to give to merely formal observances the high sanction of the law. Some tribunals even have seemed to consider it as a law which had better be suffered to pass in silence, upon the ground substantially that it had been repealed by public opinion."

"The toleration of amusements and the existence of fairs in England to a greater or less degree upon the Sabbath, are readily accounted for by their known accordance with the practice of Roman Catholic countries, among which was England until the Reformation in the reign of Henry the Eighth. With the spread of the reformed religion, and the consequent improvement in civilization, the views and manners of the people changed on the subject of the national observance of the Sabbath, and in all Protestant communities laws were

enacted to secure it, varying in their provisions with the peculiarities of the people."

The court held that a note given on Sabbath is void. "A party should not be heard before a tribunal whose duty it is to declare the law when his cause of action arises from a transgression of the law." (14 N. H. 133, 1843.)

The sale of a note on Saturday but perfected on Sabbath is illegal. (Smith v. Foster, 41 N. H. 215, 1860.)

In the case of Woodman v. Hubbard, in 1852, the Superior Court gave an opinion as to contracts made on Sabbath that deserves notice. In this case the defendant hired a horse from the plaintiff to drive to a specified place and return. He drove several miles further and returned the same day and as a result the horse died. The plaintiff sought to recover damages for the value of the horse. The defendant made the plea that the whole transaction took place on the Sabbath, that the contract was void and could not be enforced. The Court said:

"It necessarily follows from this view of the case, that a man is wholly without remedy for any injury that may be done to the horse he lets on Sunday, in violation of law, if the necessity of showing his illegal contract will preclude his recovery. Though the property is conceded to remain in the plaintiff, he has no remedy to enforce his right, because he cannot show it without showing the illegal contract of letting. And in all the numerous cases where horses were illegally let on Sunday, the hirer might with perfect impunity retain and sell them. This appears to us to be pushing the application of a well settled principle to an unnecessary and extravagant length, not required nor warranted by the general current of authorities. (5 Foster. 67.)

Previous to 1799 the law of New Hampshire prohibited travelling "on the Lord's day, between sun rising and sun setting, unless from necessity, or to attend public worship, visit the sick or do some office of charity."

In an opinion rendered in 1857 in the case of Corey v. Bath, the Supreme Court said:

"Travelling on Sunday, in an orderly and decent manner, to visit a parent, is not to be regarded as a criminal recreation, within the meaning of the statute. Travelling on Sunday, in the prosecution of secular business, to the disturbance of others, would be within the other branch of the statute." (35 N. H. 530.)

In 1866 in deciding that the execution of a will on the Sabbath is not illegal, the Supreme Court spoke as follows on the same matter:

"The changes introduced by the Revised Statutes were designed to withdraw all legislative control over the acts and conduct of the individual citizen, so far as they did not interfere with the public observance of the Lord's day—wisely holding that in respect to acts of a private nature not calculated to disturb others in the exercise of the appropriate duties of the day, the individual conscience alone should decide. At the same time we perceive no intention to diminish the restraints upon those unnecessary worldly acts which interfere with the public observance of the Lord's day; and therefore such acts when done openly or publicly in the presence of others are prohibited, because they are calculated to turn the attention of those who are present from their appropriate religious duties to matters of mere worldly concern, and thus to disturb them in the sense in which the term is used in the statute. The policy of the act is still to encourage the due observance of the Sabbath, as a day of rest from worldly labors and traffic, and of devotion to religious duties; and although it is left to the conscience of each citizen to decide whether he shall himself in private perform any secular labor, he must take care to do no such labor in a manner to turn the attention of others from their appropriate duties and fix it upon worldly business or traffic. The purpose is to give every citizen an opportunity to discharge the religious duties incumbent upon him on that day, without being disturbed, or having his attention withdrawn, by the career of worldly traffic or labor; and it is wholly immaterial whether it be so withdrawn with his own consent or not, inasmuch as such acts are equally subversive of that public order and decency which the law designed to promote, whether assented to or not by the persons present." (George v. George, 47 N. H. 27.)

The case of *Chenette v. Techan* shows that there are serious complications growing out of these inconsistent opinions. In this case the defendant hired a horse and buggy of the plaintiff for a pleasure drive on the Lord's day. Through carelessness of the driver the buggy was damaged. The owner could not recover because the contract was made on the Lord's day. Taking the drive it seems was no violation of the law, but making the contract was. (63 N. H. 149, 1884.)

An illustration of the methods followed to defraud by taking advantage of the Sabbath law is found in *Jameson v. Carpenter*. The plaintiff labored for the defendant at a fixed price. One Sabbath shortly after he began work, the defendant paid him \$20.50, when only \$7.25 was due. Plaintiff tried to collect wages a second time on the plea that the payment on Sabbath was illegal. The plea was not sustained. (68 N. H. 62.)

While the law of this State prohibits only work, labor or business that disturbs others, an opinion by the Supreme Court greatly strengthens this clause, and deprives it of most of its harmful effects.

NEW MEXICO. (1897.)

The Sabbath law of New Mexico is found in Chapter V., Title IX., relating to "Crimes and Offenses." It is entitled "Sabbath Observance." The law follows:

"1368. Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse racing, cock fighting, or in any other manner disturbing any worshipping assembly, or private family, or attending any public meeting, or public exhibition, or engaged in any labor, except works of necessity, charity or mercy, shall be punished by a fine not exceeding fifteen dollars, nor less than five dollars, or imprisonment in the county jail of not more than fifteen days, nor less than five days, in the discretion of the court, upon conviction before any district court.

"1370. It shall be lawful in cases of necessity for farmers and gardeners to irrigate their lands, and when necessary to preserve the same, to remove grain and other products from the fields on said day; and nothing in this act shall be construed to prevent cooks, waiters and other employes of hotels and restaurants, and of butchers and bakers, from performing their duties on said day.

1371 declares that no civil process shall be issued or served on Sabbath, except when there is danger of loss or serious inconvenience.

1369 declares that fines collected under this act shall be applied to the school fund. Sunday for the purpose of this act is the time between sunrise and midnight. (p. 396.)

The Supreme Court of New Mexico has decided that "There is no law in this territory invalidating a contract of enlistment by a soldier entered into on Sunday." (1 N. M. 172.)

In 1884 the Supreme Court gave its opinion that a verdict rendered on Sabbath is valid. The Court said: "Is it to be said that the sanctity of the day is violated by discharging from unnecessary confinement twelve citizens who have completed important and honorable service for the State? Is it desecration to permit the return to their homes and join with their families in such observation of the day as may seem good to their consciences? We think not; and are therefore clearly of the opinion that the return of the verdict in this case on Sunday was proper." (3 N. M. 76.)

The law of this territory does not prohibit the transaction of business. The judicial opinions are few and add little to the argument for Sabbath laws.

OREGON. (1887.)

The title of Chapter VIII., of the Oregon Code, in which the

sections relating to the Sabbath are found is, "Crimes against public policy." These sections are the following:

"1890. If any person shall keep open any store, shop, grocery, ball-alley, billiard-room, or tippling-house, for the purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or Lord's day, such person, upon conviction thereof, shall be punished by fine not less than five nor more than fifty dollars; provided, that the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery stable keepers, barbers, butchers and bakers; and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of the fact for the jury to determine, when the offense is tried by jury." (Vol. 1, pp. 957, 958.)

"1896. If any person shall serve or execute any civil process on a Sunday or the Lord's day, such service shall be void, and such person, upon conviction thereof, shall be punished by fine not less than five nor more than fifty dollars." (Vol. 1, p. 959.)

"1909. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday, or give, or sell, or otherwise dispose of intoxicating liquors on that day; any person violating this section shall be fined in any sum not exceeding twenty-five nor less than ten dollars for each offense; and such fine to be for the use of common schools in the county in which the offense was committed; provided, that this section, so far as it prohibits keeping open a house or room, shall not apply to tavern-keepers." (Vol. 1, pp. 962, 963.)

Arrests cannot be made on Sabbath unless the crime charged be a felony, or a case of a misdemeanor unless upon the direction of the magistrate, indorsed upon the warrant.

Until 1901 barbering on Sabbath was permitted, but the following act was passed February 11, of that year.

"Be it enacted by the Legislature Assembly of the State of Oregon.

"1. That it shall be a misdemeanor for any person or persons to carry on the business of barbering on Sunday in Oregon."

Section 2 fixes the penalty for the first offense at ten dollars fine or imprisonment in the county jail for five days, and for the second offense a fine of not less than twenty-five nor more than fifty dollars may be imposed, or imprisonment for not less than ten nor more than twenty-five days.

It is lawful to give instruction to a jury, deliberating on a verdict, on Sabbath; to receive a verdict or discharge a jury; to exercise the power of a magistrate in a criminal action or in a proceeding of a criminal nature.

The Supreme Court of Oregon has decided that an indictment dated on Sabbath is not void. In the case in which this opinion was given,

a man had been indicted, tried and condemned for the crime of burglarly. The indictment was dated on Sabbath. (16 Ore. 105.)

A notice given on Sabbath to produce papers at a trial is good. (28 Ore. 168.)

In 1897 the Supreme Court gave an opinion of considerable value in *Ex parte Tice*. In this case in the lower Court, the jury failing to agree was discharged on Sabbath, the plaintiff having given his consent. A number of cases are cited to confirm the position "that Sunday at common law was dies non juridicus..". The Court then says: "Such being the rule at common law the right to perform any judicial act on Sunday must be sought for in the act conferring it." The consent of the plaintiff to the discharge of the jury is declared to be without merit. As "the public has an interest in the observance of Sunday as a day of rest, and a right to see that it shall not be desecrated except in cases of urgent need, plaintiff could not waive the public right." (32 Or. 179.)

In the case of *Wachsmuth v. Routledge* the court held that where a record was ordered to be filed on November 14, which was Sabbath, and it was filed on the 15, the filing was in time.

The weakness of this law lies in its failure to prohibit labor and in making needless exceptions.

WASHINGTON. (1891.)

The Sabbath law of Washington is found in the Criminal Code, Chapter III., entitled "Of Crimes Against the Public Peace." The sections relating to the Sabbath are the following:

"98. If any person be found on the first day of the week, commonly called Sunday, engaged in any riot, or offering to fight, horse-racing, or dancing, whereby any worshipping assembly or private family are disturbed, every person so offending shall on conviction be fined in a sum not to exceed one hundred dollars, to be recovered before any justice of the peace in the county where such offense is committed, and shall be committed to the jail of such county until the said fine, together with the costs of prosecution, shall be paid." (p. 680.)

"210. Any person who shall keep open any play-house or theater, race-ground, cock-pit, or play at any game of chance for gain, or engage in any noisy amusements, or keep open any drinking or billiard saloon, or sell or dispose of any intoxicating liquors as a beverage, on the first day of the week, commonly called Sunday, shall, upon conviction thereof, be punished by a fine not less than thirty dollars nor more than two hundred and fifty dollars. All fines collected for violation of this section shall be paid into the common school fund." (p. 711.)

"211. It shall be unlawful for any person or persons of this State to open on Sunday for the purpose of trade or sale of goods, wares

and merchandise, any shop, store, or building or place of business whatever; provided, that this section shall apply to hotels only in so far as the sale of intoxicating liquors is concerned, and shall not apply to drug-stores, livery-stables, or undertakers. Any person or persons violating this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars." (p. 711.)

It has been held by the Supreme Court of Washington that under the provisions of the act of Congress relating to the protection of salmon in the waters of Alaska, fishing in those waters on Sabbath is not illegal. A person making a contract with a company as a fisherman in which the Sabbath is not excepted is bound to fish on Sabbath. (4 Wash. 689.)

It has been held that the Washington laws relating to the observance of the Sabbath "do not purport to prohibit the transaction of business or to render ordinary business transactions void. (Main v. Johnston, 7 W. 321.) In the case of State v. Binnard it was held to be unlawful to keep a saloon open on the Sabbath. (21 W. 349.)

The law against opening shops for trade, etc., does not apply to barber shops. (10 W. 166.)

Rent falling due on Sabbath cannot be collected till the following day. (11 W. 296.)

An ordinance of a city prohibiting barbers from pursuing their calling on Sabbath for compensation, is void as an act of special legislation. (15 W. 296.)

If this statute included labor under its prohibitory clause it would be an admirable law.

CHAPTER VI.

NO SABBATH LAWS IN TWO STATES AND ONE TERRITORY.

Neither Arizona, California nor Idaho has a Sabbath law. The statutes must be examined, however, to learn the legal status of the first day of the week.

ARIZONA. (1901.)

The statutes of Arizona contain the following:

"Sec. 2709. Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, the day on which a general election is held, Thanksgiving day, and Arbor day, shall each and all be holidays.

"2710. Public offices shall not be open on holidays.

"2711. No court of justice shall be open, nor shall any judicial business be transacted on any legal holiday, except for the following purposes:

1. To give, upon their request, instructions to a jury, when deliberating on their verdict.

2. To receive a verdict or discharge a jury.

3. For the exercise of the powers of a magistrate in a criminal action; Provided, that injunctions, attachments, claim and delivery and writs of prohibition may be issued and served on any day." (pp. 721, 722.)

CALIFORNIA. (1905.)

California contributes an exceedingly interesting and instructive chapter to the history of the struggle on the Sabbath question. In April, 1858, the legislature of this State passed an act entitled "An Act for the better observance of the Sabbath." In the same month the Supreme Court in *Ex parte Newman* declared the act unconstitutional. Chief Justice Terry announced the opinion of the Court. Mr. Justice Burnette gave a supplementary opinion in which he expressed his agreement with Judge Terry's opinion, but not with his argument. The court held that the law was in conflict with the first and fourth sections of Article first of the Constitution, which forbid discrimination or preference in religion, and that the enforced observance of a day held sacred by any sect is a discrimination in favor of that sect, and a violation of the religious freedom of others. It was declared that when the citizen is compelled by the legislature to do any affirmative religious act, or to refrain from doing anything because it violates simply a religious principle or observance, the act is unconstitutional. It was asserted that if the legislature can prescribe the days of rest, it would seem that the same power can prescribe the hours to work, rest and eat.

Judge Terry, in his opinion, called attention to the title of the act and declared that there is no expression in the act under consideration which can lead to the conclusion that it was intended as a civil rule, as contradistinguished from a law for the benefit of religion. It is called "An act for the better observance of the Sabbath," and the prohibitions in the body of the act are confined to the 'Christian Sabbath.'"

He denied the necessity for laws protecting men in the enjoyment of periods of rest. He said:

"When we come to inquire what reason can be given for the claim of power to enact a Sunday law, we are told, looking at it in its purely civil aspect, that it is absolutely necessary for the benefit of his health and the restoration of his powers, and in aid of this great social necessity, the legislature may, for the general convenience, set apart a particular day of rest, and require its observance by all.

"This argument is founded on the assumption that mankind are in the habit of working too much, and thereby entailing evil upon society, and that without compulsion they will not seek the necessary repose which their exhausted natures demand. This to us is a new theory,

and is contradicted by the history of the past and the observations of the present. We have heard, in all ages, of declamations and reproaches against the vice of indolence, but we have yet to learn that there has ever been any general complaint of an intemperate, vicious, unhealthy or morbid industry. On the contrary, we know that mankind seek cessation from toil from the natural influences of self-preservation, in the same manner and as certainly as they seek slumber, relief from pain, or food to appease their hunger."

He announced as a basis on which to rest his argument, the social compact theory of government. On this point he said, "When societies are formed each individual surrenders certain rights, and as an equivalent for that surrender has secured to him the enjoyment of certain others appertaining to his person and property, without the protection of which society cannot exist." He contended that the enactment of a Sabbath law is an unwarranted limitation placed upon the rights which the government is bound to protect. He declared that whenever the legislature attempts to fix hours for rest and labor, "it leaves its legitimate sphere, and makes an incursion into the realms of physiology; and its enactments, like the sumptuary laws of the ancients, which prescribe the mode and texture of people's clothing, or similar laws which might prescribe and limit our food and drink, must be regarded as an invasion, without reason and necessity, of the natural rights of the citizen, which are guaranteed by the fundamental law. The truth is, however much it may be disguised, that this one day of rest is a purely religious idea. Derived from the Sabbath institutions of the ancient Hebrew it has been adopted into all the creeds of succeeding religious sects throughout the civilized world. . . . If the legislature have the authority to appoint a time of compulsory rest, we should have no right to interfere with it, even if they required a cessation from toil for six days in the week instead of one. If they possess this power it is without limit, and may extend to the prohibition of all occupations at all times."

If the Judge had grasped and heeded the principle, so frequently announced by other judges, that the Sabbath is a civil institution, he would have been restrained from such folly. When a statute law grows out of a custom it recognizes that custom as it exists. If it were the custom of the people to rest six days of the week and to labor only one, the law would take note of the custom and embody it in its mandates. The power of the legislature is not an arbitrary power to be wielded in a whimsical manner, but a power limited and controlled both by the written constitution and the common law.

Had the judge held right views on the theory of government he would not have soiled his ermine with the mire of the social compact philosophy.

A few sentences from the dissenting opinion of Judge Field should here be given both because of their intrinsic merit and because this opinion was adopted a few years later as the opinion of the court. Judge Field said:

"The petitioner is an Israelite, engaged in the sale of clothing, and his complaint is, not that his religious profession or worship is interfered with, but that he is not permitted to dispose of his goods on Sunday; not that any religious observance is imposed upon him, but that his secular business is closed on a day on which he does not think proper to rest. In other words, the law, as a civil regulation, by the generality of its provisions, interrupts his acquisitions on a day which does not suit him. The law treats of business matters, not religious duties. In fixing a day of rest, it establishes only a rule of civil conduct. In limiting its command to secular pursuits it necessarily leaves religious profession and worship free. It is absurd to say that the sale of clothing, or other goods, on Sunday, is an act of religious worship; it follows that the inhibition of such sales does not interfere with either.

..... The legislature possesses the undoubted right to pass laws for the preservation of health and the promotion of good morals, and if it is of opinion that periodical cessation from labor will tend to both, and thinks proper to carry its opinion into a statutory enactment on the subject, there is no power, outside of its constituents, which can sit in judgment on its action. It is not for the judiciary to assume a wisdom which it denies to the legislature, and exercise a supervision over the discretion of the latter. It is not the province of the judiciary to pass upon the wisdom and policy of legislation; and when it does so, it usurps a power never conferred by the Constitution.

"It is no answer to the requirements of the statute to say that mankind will seek cessation from labor by the natural influences of self-preservation. The position assumes that all men are independent, and at liberty to work whenever they choose. Whether this be true or not in theory, it is false in fact; it is contradicted by every day's experience. The relations of superior and subordinate, master and servant, principal and clerk, always have and always will exist. Labor is in a degree dependent upon capital, and unless the exercise of the power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise. The necessities for food and raiment are imperious; and the exactions of avarice are not easily satisfied. It is idle to talk of a man's freedom to rest when his wife and children are looking to his daily labor for their daily support. The law steps in to restrain the power of capital. Its object is not to protect those who can rest at

their pleasure, but to afford rest to those who need it, and who, from the conditions of society, could not otherwise obtain it. Its aim is to prevent the physical and moral debility which spring from uninterrupted labor; and in this respect it is a beneficent and merciful law. It gives one day to the poor and dependent, from the enjoyment of which no capital or power is permitted to deprive them. It is theirs for repose, for social intercourse, for moral culture, and, if they choose, for divine worship. Authority for the enactment I find in the great object of all government, which is protection.

"The fact that the civil institution finds support in the religious opinions of the vast majority of the people of California is no argument against its establishment.

"It would be fortunate for society if all wise rules obtained a ready obedience from the citizens, not merely from the requirements of the law, but from conscientious or religious convictions of their obligation. The law against homicide is not less wise and necessary because the divine command is, 'Thou shalt do no murder.' The legislation against perjury is not the less useful and essential for the due administration of justice because the injunction comes from the Most High, 'Thou shalt not bear false witness against thy neighbor.' The establishment by law of Sunday as a day of rest from labor is none the less a beneficent and humane regulation, because it accords with the divine precept that upon that day 'thou shalt do no manner of work; thou, and thy son, and thy daughter, thy man-servant and thy maid-servant, thy cattle, and thy stranger that is within thy gates.' "

In reply to the argument of Mr. Justice Terry based upon the use of the terms, "Sabbath" and "Christian Sabbath," employed in the title and in the body of the statute, Mr. Justice Field said that the terms are used simply to designate the day selected by the legislature. The same construction would obtain and the same result follow if any other terms were employed, as 'the Lord's day, commonly called Sunday,' contained in the statute of Pennsylvania, or simply the 'Sabbath day,' or 'the first day of the week,' as in several States." (9 Cal. 502, 1858.)

The law was reenacted in substantially the same form in 1861, under the title "For the observance of the Sabbath." In July of that year, in the case of *Ex Parte Andrews* (18 Cal. 679) the Supreme Court held the law to be constitutional. Judge Baldwin in delivering the opinion of the court said:

"Unquestionably, under our system, the legislature has power to repress whatever is hurtful to the general good. This is a great purpose and end of all government. It is just as true that under our theory the legislature must generally be the exclusive judge of what is or is not hurtful . . . If from physical causes the carrying on of particular pursuits—as in certain mines or some mechanical branches which

generate disease—is hurtful to health, it is within the power of government to regulate the business so as to obviate or mitigate such results. And of both the evil and the remedy the legislature is the judge, and why should the power be less or different when the evil is moral instead of physical? The legislature has not only the power to regulate, but the power to suppress particular branches of business which it considers immoral and prejudicial to the general good, as gambling, lotteries, etc. The duty of government comprehends the moral as well as the physical welfare of the State; and in this instance, it is asserted on behalf of this law, that the passage of it is to the welfare of the people, both moral and physical.”

Referring to the fourth section of the first article of the constitution, which guarantees the free exercise and enjoyment of religious profession and worship, and upon which the argument for the unconstitutionality of the law was chiefly based, Judge Baldwin said: “We understand this to be an interdict against all legislation which invidiously discriminates in favor of or against any religious system. It does not interdict all legislation upon subjects connected with religion; much less does it make void legislation, the effect of which is to promote religion, or even advance the interests of a sect or class of religionists. On the contrary, the interests and even the rites of sects have been oftentimes protected by law, as by acts of incorporation of churches, exemption from taxation in some States, protection of meetings from interruption, and the like acts. While the primary object of legislation, which respects secular affairs, is not the promotion of religion, yet it can be no objection to laws, that while they are immediately aimed at secular interests, they also promote piety.” He declared that the fact that the day protected was the day observed by Christians for worship, was no reason for holding the law to be unconstitutional, that the act requires no one either to support any religious sect or to have a religion, that it enjoins nothing that is not secular, and commands nothing that is religious, that it is purely a civil regulation, and spends its whole force upon matters of civil economy. In replying to the argument based upon the use of the terms, “Sabbath” and Christian Sabbath, it was declared that even if one of the motives of the framers of the act was, to enforce a religious respect for the Sabbath, it would be difficult to maintain that this invalidates it on the ground of its unconstitutionality.

Without entering into a full discussion of the matters involved the court adopted as its own the opinion of Mr. Justice Field in *Ex parte Newman*, 9 Cal. 518.

In *Ex Parte Bird* the law was again declared constitutional. (19 Cal. 130, 1861.)

In 1872 a new law was enacted and all former laws repealed. It is contained in Chapter VII. of the Penal Code, and is en-

titled, "Of Crimes against religion and Conscience, and other offenses against good morals." It is as follows:

"299. Every person who, on the Christian Sabbath, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening or maintaining, any bull, bear, cock, or prize fight, horse-race, circus, gambling-house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance-cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance or representation, is guilty of a misdemeanor."

"300. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking-house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than four nor more than fifty dollars."

This was amended in 1880 to read as follows: "The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation; provided, that the provisions of the preceding section shall not apply to persons keeping open barber-shops, bath-houses, and hair-dressing saloons after 12 o'clock M. on Sunday."

In 1880 an act to provide for a bakers' day of rest was passed. It is as follows: "1. It shall be unlawful for any person engaged in the business of baking to engage or permit others in his employ to engage in the labor of baking, for the purpose of sale, between the hours of six o'clock P. M. on Saturday, and six o'clock on Sunday, except in the setting of sponge preparatory to the night's work; provided, however, that restaurants, hotels, and boarding-houses may do such baking as is necessary for their own consumption."

"2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not less than one month nor more than six months, or by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by both fine and imprisonment." (pp. 128, 129.)

In July, 1880, the act providing for a bakers' day of rest was declared unconstitutional, because it was special legislation and in conflict with section 25, Article IV., of the Constitution. (55 Cal. 550), *Ex parte Westfield*.)

In July, 1881 the constitutionality of the Sabbath law was again passed upon by the Supreme Court. Chief Justice Morrison in ren-

dering the decision of the court considered at some length the constitutional grounds of such legislation. It had been argued that Article 1, Section 4 of the Constitution, which declares that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State," forbids the enactment of a Sabbath law. Judge Morrison shows conclusively that this is not correct. But he denies that it is "a religious regulation." He declares that "it is purely a secular, sanitary, or police regulation." He states that such legislation is uniformly upheld as constitutional by the courts of the different States, but he adds, "It is true, that they are not uniform in the view that the acts can be sustained from a religious standpoint and upon religious grounds, but they are uniform in holding that such a law does not violate any constitutional provision. By some of the authorities it is held that Christianity is a part of the common law of this country, and by others that it is not; while another view is, that Christianity is a part of our common law in only a qualified sense..

He quotes from Sedgwick's Constitutional and Statute Law as follows:

"Still, though Christianity is not the religion of the State, considered as a political corporation, it is nevertheless interwoven into the texture of our society, and is intimately connected with all our social habits, and customs and modes of life." After reciting the history of the law and the decisions of Courts pro and con, he declares "It will thus be seen that the departure from the line of authority was of short duration, and that the highest court of this State, at an early day in our history, returned to the well-beaten track of judicial authority on this interesting and frequently discussed question. It is too late now to indulge in another departure, even if I were inclined to set aside the great weight of judicial opinions by which Sunday laws have been sustained and enforced. . . . Regarding the law from a purely secular standpoint, the law is a proper and salutary one. It imposes no restraint upon the conscience of any member of the community; it exacts from no person the performance of any religious rites or ceremonies; it prescribes no religious faith or belief; a man may be an Episcopalian, a Methodist, a Catholic, a Hebrew, or, if he sees fit, even an Infidel. He may worship one God or a plurality of gods. He may be a Trinitarian or a Unitarian, or he may reject all belief in the superintending care of a Divine Providence. Sunday laws leave his religious belief and practices as free as the air he breathes." (Ex Parte Burke, 59 Cal. 6.)

In March, 1882, the law was declared constitutional, Justices McKinstry, Ross and Sharpstein dissenting. (60 Cal. 177.) Judge Thornton said: "Declaring the provisions of the sections referred to invalid as violative of the constitution, would be to strike at the foundation

of the legislative power to determine what acts of those not mala in se, shall be punished criminally, and what shall not be punished."

In concurring in this opinion Judge McKee took occasion to say that "the State has not set apart Sunday for a day of rest as a religious institution; nor does she impose observance of the day upon churches or on church members, nor are religious commemorations or ceremonies prescribed or enforced. . . . As a day of rest, Sunday is not set apart as a holy day, but it is set apart as a legal holiday."

In this decision four judges favored the upholding of the law as constitutional while three dissented.

In 1883, the legislature repealed the law, leaving the State without a rest day law for ten years.

In 1893 a new law was enacted "to provide for a day of rest from labor." It is as follows:

"1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven; and it shall be unlawful for any employer of labor to cause his employees, or any of them to work more than six days in seven; provided, however, that the provisions of this section shall not apply to case of emergency.

"2. For the purposes of this act, the term day's rest shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

"3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor. (Penal Code, 722.)

IDAHO. (1901.)

"Sundays and holidays" is the title of that division of the Statutes of Idaho which contains the only provisions relating to the first day of the week. They are found in Chapter CXXI., and are as follows:

"3017. No court can be opened nor can any judicial business be transacted on Sunday, on the first day of January, on the fourth day of July, on Christmas, or Thanksgiving day, or on any day on which the general election is held, except for the following purposes.

1. To give upon their request, instructions to a jury when deliberating on their verdict;

2. To receive a verdict or discharge a jury;

3. For the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature."

In civil causes orders of arrest may be made and executed, writs of attachment and executions served, and proceedings to recover personal property may be had. (p. 13.)

CHAPTER VII.

THE GENERAL GOVERNMENT AND THE SABBATH.

The authority to enact a general Sabbath law for the entire country does not belong to the government of the United States. If such were the case the laws in the different States already considered would not exist. This is one of the powers not delegated to the United States by the Constitution, but reserved to the States respectively. But there is a sphere in which the National Government has the exclusive right to enact such laws. The District of Columbia, all possessions in which territorial government has not been established, the Panama Canal zone, all government buildings, all departments of the government wherever operated, are subject exclusively to such regulations as may be made by the general government.

As to the District of Columbia, Congress has hitherto neglected to perform its duty to enact a law pertaining to Sabbath observance except to close saloons on that day.

ALASKA. (1900.)

The act of Congress with reference to the Sabbath in Alaska is entitled "Profanation of Sunday." It is found in Chapter 8 and is as follows:

"141. If any person shall keep open any store, shop, grocery, ball alley, billiard room, or tippling house, for purposes of labor or traffic,

or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person, upon conviction thereof, shall be punished by a fine not less than five nor more than fifty dollars: provided, that the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery-stables keepers, barbers, butchers and bakers, and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of fact for the jury to determine, when the offense is tried by jury." (p. 30.)

INDIAN TERRITORY.

"Sabbath Breaking" is the title of the law of the Indian Territory relating to the first day of the week, found in Chapter 19. It is the same as the law of Arkansas.

A GENERAL LAW FOR ALL DEPARTMENTS OF THE GOVERNMENT.

From time to time Congress has adopted acts for the regulating of all departments of the government, in which there is a clause with reference to the first day of the week. This clause is as old at least as an act of 1836, and was embodied in an act of 1898 and is as follows:

"It shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees of whatever grade or class, in their respective departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or executive order."

The exclusion of the Lord's day from the days of required official duty has been the custom of the Government Departments always.

THE DEPARTMENT OF STATE.

This Department has no special regulations relating to this matter, the Act of Congress quoted above being sufficient for all purposes.

TREASURY DEPARTMENT.

In addition to the general law regulating all Executive Departments there are other acts applying to the Treasury Department, providing for leave of absence for thirty days and declaring

that these thirty days shall be exclusive of "Sundays" and holidays. There are also a number of regulations covering the same ground and providing for leave of absence in case of sickness, and declaring that "Sundays" occurring within such a period will be charged. The acting secretary writes that "from the organization of the Government the practice of the Treasury Department has been to recognize the first day of the week, the Christian Sabbath, as a day of rest and cessation from labor, and all public buildings occupied by that department and its dependencies have been closed on that day."

WAR DEPARTMENT.

Title XIV. of the Revised Statutes of the United States relates to the Army. Chapter 4 under this title relates to the Military Academy. Section 1324 is as follows:

"The Secretary of War shall so arrange the course of studies at the academy that the cadets shall not be required to pursue their studies on Sunday." (Vol. 1, page 933.)

General Order No. 50, dated June 12, 1899, is as follows: "In November, 1862, President Lincoln quoted the words of Washington to sustain his own views, and announced in a general order that—"The President, Commander-in-Chief of the Army and Navy, desires and enjoins the orderly observance of the Sabbath by the officers and men in the military and naval service. The importance for man and beast of the prescribed weekly rest, the sacred rights of Christian soldiers and sailors, a becoming deference to the best sentiment of a Christian people, and a due regard for the Divine will demand that Sunday labor in the Army and Navy be reduced to the measure of strict necessity."

"The truth so concisely stated cannot be too faithfully regarded, and the pressure to ignore it is far less now than in the midst of war. To recall the kindly and considerate spirit of the orders issued by these great men in the most trying times of our history, and to promote contentment and efficiency, the President directs that Sunday morning inspection will be merely of the dress and general appearance, without arms; and the more complete inspection under arms, with all men present, as required in par. 950, A. R., 1889, will take place on Saturday."

This order issued by President McKinley, is regarded as still in force.

Paragraph 202, Army Regulations, 1904, is as follows: "An orderly observance of the Sabbath by the officers and men in the military service is enjoined. Military duty and labor on Sunday will be reduced to the measure of strict necessity."

The Chief of Engineers says that in accordance with the spirit of the foregoing regulations enjoining the proper observance of the Sabbath, "It has been and still is the policy of the Engineer Department to prohibit, wherever possible, Sunday labor on works under its charge. Such labor is permitted only in cases of exigency or extraordinary emergency, where it is actually necessary for the public interests. The procedure usually followed in enforcing Sabbath observance on Government work in the Engineer Department is to require, where applicable, the insertion in the specifications for each work a provision forbidding work to be done by the contractor on Sunday, except upon the written consent of the engineer officer in charge, and then only in cases of extraordinary emergency."

DEPARTMENT OF JUSTICE.

This Department has no regulations concerning the first day of the week as a day of rest.

POST OFFICE DEPARTMENT.

Chapter 3 of Postal Laws and Regulations, (1903), is entitled "General Provisions relating to Postoffices." Section 264 is as follows:

"Where mail arrives on Sundays, postoffices must be kept open for an hour or more for the delivery thereof, if the public convenience requires it. If the mail is received during the time of public worship the office need not be opened till after the close of services. Offices need not be opened on Sundays if no mails are received between the hour of closing on Saturday and 6 p. m. Sunday.

"2. While post-offices are open on Sundays delivery of mail must be made to all who apply, as well as to box holders. Postage stamps may be sold; but money orders need not be issued or paid. The registration of mail matter and the delivery of registered matter on Sundays is left to the option of each postmaster. Special delivery mail must be delivered on Sundays as well as on other days, if post-office is open on Sundays.

"3. The carriers' windows at free delivery offices must be opened on Sundays and holidays during the regular office hours for the delivery of mail matter." (page 117.)

Provisions for carrying the mail declare that "The Postmaster-General shall provide for carrying the mail on all post roads established by law, as often as he, having due regard to productiveness and other circumstances, may think proper." (U. S. Compiled Statutes, Vol. 2, p. 2708, 1901.)

It is held by the Supreme Court of the United States that "In the case of mail transportation contracts, congress must be deemed the principal, the Postmaster-General its agent. (American Digest, Vol. 40, p. 283.)

CONGRESS AND THE MAILS.

The Postmaster-General in 1815 declared that the transportation of the United States mails on the first day of the week was coeval with the Constitution, and it is probable that this was true with respect to some of the most important routes. The first authorization by Congress of the delivery of mails on the Lord's day was on April 30, 1810. General opposition to this action was manifested in all parts of the country, and it is thought that it might have been rescinded but for the breaking out of the war of 1812, "which made an excuse for its continuance as a war measure."

Numerous petitions were sent to Congress in 1828-9, urging that Sunday mails be discontinued. The tone of the petitions can be discerned from the following extracts: "Your Memorialists protest against the States supporting, aiding or being united to the Church; and they also protest against the civil power being used to trample down or persecute the Church, or to weaken and destroy one Church duty." "When the Constitution provided that Congress should pass no law establishing religion, it surely was not intended to vest that body with the right to pass a canon desecrating one of the most sacred institutions of the religion of the nation. This law is against religion." It was urged that Congress received from the States no power to authorize such work on the Sabbath as had always been illegal in all of them, and that the law was therefore unconstitutional. It was urged still further that to require any class of government officers to work on the Sabbath was an infringement on their rights of conscience. The Memorialists declared that the measure was not only needless but also harmful, both physically, mentally and morally, both to the postmasters and to the people,

and that while discarding the union of Church and State, the nation cannot ignore the connection of morality and the State.*

These petitions were referred to a committee of the Senate of which Richard M. Johnson was the Chairman.† The report of this committee is found in Senate Documents, 2d Session, Twentieth Congress, Jan. 19, 1829, and is as follows:

"The Committee to whom was referred the several petitions on the subject of mails on the Sabbath or first day of the week, report:

"That some respite is required from the ordinary vocations of life is an established principle sanctioned by the usages of all nations whether Christian or pagan. One day in seven has also been determined upon as the proportion; and, in conformity with the wishes of the great majority of citizens of this country, the first day of the week, commonly called Sunday, has been set apart to that object. The principle has received the sanction of the National Legislature so far as to admit of a suspension of all public business on that day, except in cases of absolute necessity or great public utility. This principle the Committee would not wish to disturb. If kept within its legitimate sphere of action no injury can result from its observance. It should, however, be kept in mind that the proper object of government is to protect all persons in the enjoyment of their religious as well as civil rights; and not to determine for any whether they shall esteem one day above another or esteem all days alike holy. We are aware that a variety of sentiments exist among good citizens of this nation on the subject of the Sabbath day; and our government is designed for the protection of one as much as for another. The Jews, who in this country are as free as Christians and entitled to the same protection from the laws, derive their obligation to keep the Sabbath day from the fourth commandment of the Decalogue, and in conformity with that injunction pay religious homage to the seventh day of the week, which we call Saturday. One denomination of Christians among us, justly celebrated for their piety and certainly as good citizens as any other class, agree with the Jews in the moral obligation of the Sabbath and observe the same day. There are also many Christians among us who derive not their obligation to observe the Sabbath from the Decalogue, but regard the Jewish Sabbath as abrogated. From the example of Christ they have chosen the first day of the week, instead of that day set apart in the Decalogue

*See, "The Sabbath for Man" by Dr. W. F. Crafts; pp. 271, 274.

†Alexander Campbell, it is claimed by his biographer, was the real author of this report. He declares that Mr. Johnson had neither the education nor ability to write such a report, that Mr. Campbell and Mr. Johnson were warm friends, that Mr. Campbell had taken a leading part in opposition to the enforcement of laws against blasphemy and Sabbath breaking in Washington county, Pa., and that when charged with being the author of the report he gave an evasive answer. *Memoirs of Alexander Campbell* by Robert Richardson; two volumes, vol. 1, pp. 536, 537.

for their religious devotions. These have generally regarded the observance of the day as a devotional exercise, and would not more readily enforce it upon others than they would secret prayer or devout meditations. Urging the fact that neither their Lord nor His disciples, though often censured by their accusers for a violation of the Sabbath, ever enjoined its observance, they regard it as a subject on which every person should be fully persuaded in his own mind and not coerce others to act upon his persuasion. Many Christians again differ from these, professing to derive their obligation to observe the Sabbath from the fourth commandment of the Jewish Decalogue, and bring the example of the Apostles, who appear to have held their public meetings for worship on the first day of the week, as authority for so far changing the Decalogue as to substitute that day for the seventh.* The Jewish Government was a Theocracy with enforced religious observances; and though the Committee would hope that no portion of the citizens of our country would willingly introduce a system of coercion in our civil institutions, the example of other nations should admonish us to watch carefully against its earliest indications. With these different religious views the Committee is of the opinion that Congress cannot interfere. It is not the legitimate province of the Legislature to determine what religion is true or what false. Our Government is a civil not a religious institution. Our Constitution recognizes in every person the right to choose his own religion and to enjoy it freely without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from Government so long as they do not invade the rights of others.†

The transportation of the mails on the first day of the week, it is believed, does not interfere with rights of conscience. The petitioners for its discontinuance appear to be actuated from a religious zeal which may be commendable if confined to its proper sphere; but they assume a position better suited to an ecclesiastical than a civil institution. They appear in many instances to lay it down as an axiom that the

* This may be the view of some, but the true view is that the Fourth Commandment does not specify the day of the week to be observed, but only the proportion of time, the seventh after six of labor.

† Even from this inadequate statement it is clear that the Sabbath laws of our country should be enforced because individual rights are invaded by Sunday mails and similar infractions of the law. The Supreme Court of the United States has declared that "With man's relation to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always that the laws of society designed to secure its peace and prosperity, and the morals of its people are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation." (David v. Beason, 134 U. S., p. 333, 1890.) Sabbath Laws are usually found in the Penal Code and by general consent Sabbath desecration is regarded as properly the subject of punitive legislation.

practice is a violation of the law of God. Should Congress in their legislative capacity adopt the sentiment, it would establish the principle that the Legislature is a proper tribunal to determine what are the laws of God. It would involve a legislative decision in a religious controversy; and on a point on which good citizens may honestly differ without disturbing the peace of society or endangering its liberties. If this principle is once introduced it will be impossible to define its bounds. Among all the religious persecutions with which almost every page of modern history is stained, no victim suffered but for what government denominated the law of God. To prevent a similar train of evils in this country, the Constitution has wisely withheld from our government the power of defining the Divine law. It is a right reserved to each citizen; and, while he respects the equal rights of others, he cannot be held amenable to any human tribunal for his conclusions.

Extensive religious combinations for a political object are, in the opinion of the committee, always dangerous. This first effort of the kind calls for the establishment of a principle which, in the opinion of the committee, would lay the foundation of dangerous innovations upon the spirit of the Constitution, and upon the religious rights of the citizens. If admitted, it may be justly apprehended that the future measures of the government will be strongly marked, if not eventually controlled by the same influence. All religious depotism commences by combination and influence; and when that influence begins to operate upon the political institutions of a country, the civil power soon bends under it; and the catastrophes of other nations furnish an awful warning of the consequence. Under the present regulations of the Post Office Department the rights of conscience are not invaded. Every agent enters voluntarily, and it is presumed conscientiously, into the discharge of his duties, without intermeddling with the conscience of another. Post Offices are so regulated as that but a small proportion of the First Day of the week is required to be occupied in official business. In the transportation of the mails on that day no one agent is employed many hours. Religious persons enter into the business without violating their consciences, or imposing any restraints on others. Passengers in mail stages are free to rest during the first day of the week, or to pursue their journeys at pleasure. While the mail is transported on Saturday, the Jew and Sabbatarian may abstain from any agency in carrying it, from conscientious scruples. While it is transported on the first day of the week, another class may abstain from the same religious scruples. The obligation of Government is the same to both these classes; and the committee can discover no principle on which the claims of the one should be more respected than those of the other, unless it should be admitted that the consciences of the minority are less sacred than those of the majority. It is the opinion of the committee that the subject should be regarded simply as a question of expediency, irrespective of its religious bearings. In this light it has hitherto been considered; Congress has never legislated on the subject.

It rests as it ever has done, in the legal discretion of the Postmaster General, under the repeated refusals of congress to discontinue the Sabbath mails. His knowledge and judgment in all concerns of that department will not be questioned. His intense labors and assiduity have resulted in the highest improvement of every branch of his department. It is practiced only on the great leading routes, and such others as are necessary to maintain their connections. To prevent this would, in the opinion of the committee, be productive of immense injury, both in its commercial, political, and in its moral bearings. The various departments of government require frequently in peace, and always in war, the speediest intercourse with the remotest parts of the country; and one important object of the mail establishment is to furnish the greatest and most economical facilities for that intercourse. The delay of the mails one whole day in seven, would require the employment of special expresses at great expense, and sometimes with great uncertainty. The commercial, manufacturing and agricultural interests of our country, are so intimately connected as to require a constant and most expeditious correspondence betwixt all our seaports, and betwixt them and the most interior settlements. The delay of the mails during the Sunday would give occasion to employment of private expresses, to such an amount that probably ten riders would be employed where one mail stage is now running on that day; thus diverting the means of that Department into another channel, and sinking that establishment into a state of pusillanimity incompatible with the dignity of the Government of which it is a department. Passengers in the mail stages, if the mails are not permitted to proceed on Sunday, will be expected to spend that day at a tavern upon the road, generally under circumstances not friendly to devotion, at an expense which many are but poorly able to encounter. To obviate these difficulties many will employ extra carriages for their conveyance, and become the bearers of correspondence as more expeditious than the mails. The stage proprietors will themselves often furnish the travelers with those means of conveyance; so that the effect will be ultimately only to stop the mail, while the vehicle which conveys it will continue, and its passengers become the special messengers for conveying considerable proportion of what would otherwise constitute the contents of the mail. Nor can the committee discover where the system could consistently end. If the observance of a holy day becomes incorporated in our institutions, shall we not forbid the movement of an army; prohibit an assault in time of war; and lay our injunction upon our naval officers to lie in the wind while upon the ocean on that day? Consistency would seem to require it. If the principle is once established that religion or religious observances shall be interwoven with our legislative acts, we must pursue it to its ultimate end. We shall, if consistent, provide for the erection of edifices for the worship of the Creator, and for the support of Christian ministers, if we believe such measures will promote the interests of Christianity. It is the settled conviction of the committee, that the only method of

avoiding these consequences with their attendant train of evils, is to adhere strictly to the spirit of the Constitution, which regards the general Government in no other light than that of a civil institution, wholly destitute of religious authority. What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights, of which government cannot deprive any portion of its citizens however small. Despotic power may invade these rights, but justice still confirms them. Let the national legislation once perform an act which involves the decision of a religious controversy, and it will have passed its legislative bounds. The precedent will be established, and the foundation laid for that assumption of the Divine prerogative in this country, which has been the desolating scourge, to the fairest portions of the old world. Our Constitution recognizes no other power than that of persuasion for enforcing religious observances. Let the professors of Christianity recommend their religion by deeds of benevolence, by Christian meekness, by lives of temperance and holiness. Let them combine their efforts to instruct the ignorant, to relieve the widow and the orphan, to promulgate to the world the Gospel of the Saviour, recommending its precepts by their habitual example; Government will find its legitimate object in protecting them. It can not oppose them and they will not need its aid. Their moral influence will then do infinitely more to advance the true interests of religion than any measures which they may call on Congress to enact. The Petitioners do not complain of any infringements of their rights. They enjoy all that Christians ought to ask at the hands of any government—protection from all molestation in the exercise of their religious sentiments.*

Resolved, that the Committee be discharged from the further consideration of the subject."

NAVY DEPARTMENT.

Chapter 5, under Title XIV. of the Revised Statutes of the United States, relates to the Naval Academy. Section 1526 is as follows:

"The Secretary of the Navy shall arrange the course of studies and the order of recitations at the Naval Academy so that the students in said institution shall not be required to pursue their studies on Sunday." (Vol. 1, p. 1049.)

*A more subtle and misleading document than this could scarcely be framed. It abounds in evasions and misstatements. The Sunday mail service inevitably either corrupts the conscience or shuts out those who refuse to be corrupted. In addition to more than a hundred thousand employees, it requires the running of numerous mail trains with their crews. It places the government in the attitude of disobedience to God. How can Christians teach the principles of the Gospel to people who have no Sabbath? What excuse ever existed for Sunday mails is taken away by the telegraph.

The General Order No. 50, given above when considering the regulations relating to the Army also applies to the Navy. Among the Navy Regulations the following are in point:

"Article 2. The Commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God."

Article 259, paragraph 2. "Sunday shall be observed on board of all ships and at naval stations in an orderly manner. All labor shall be reduced to the requirements of necessary duty. The religious tendencies of officers and men shall be recognized and encouraged."

The Department furnishes the following additional facts: "It is the practice and custom of the service to dispense with all unnecessary work on board ships on Sunday and to give the men every opportunity for the use of the day for religious and such other duties as their conscience may dictate. No drills or exercises of any kind except those required by law, of general muster or reading the Articles of War, are carried out on board ship on Sunday.

"It may be further stated that it is contrary to the general policy of the Navy Department to permit work on Sunday by civilian employes at the various navy yards, except in an emergency, or where the exigency of the service may require the same."

DEPARTMENT OF THE INTERIOR.

In addition to the Act of Congress relating to all Executive Departments of the Government, there are regulations adopted by the Department for the Indian School Service, in which religious instruction is provided for. Under "Religious Instruction in Indian Schools" Rule 9 declares that "Church and mass attendance on Sundays, at hours agreed upon by the respective pastors, will be strictly insisted upon by the school superintendent."

Under "Duties of Field Matrons" operating in connection with missions among the Indians, the 10th rule requires them to teach "the proper observance of the Sabbath etc."

DEPARTMENT OF AGRICULTURE.

This Department has certain Rules and Regulations among which there is one relating to the Sabbath. It is found in B. A. I. Order No. 125, subdivision b of Rule 4 and is as follows:

"The slaughtering of animals shall be conducted on week days between the hours of 6 a. m. and 7 p. m., except in certain cases of emergency, when permission to slaughter at other hours may be granted by the inspector in charge. No slaughtering shall be conducted on Sundays after 12 o'clock noon. Permission to make any permanent departure from the above-designated hours shall be obtained from the Chief of the Bureau of Animal Industry."

The Department furnishes the following additional information: "Formerly no slaughtering was permitted on Sundays, but it was found that the Hebrews in the large cities were inconvenienced by this ruling and the order was modified accordingly."

COMMERCE AND LABOR.

The Department of Commerce and Labor has issued no orders relating to the matter of Sabbath observance.

LAWS RELATING TO INTERNAL REVENUE, ETC.

Title XXXV. of the Revised Statutes of the United States treats of "Internal Revenue." Chapter 4 is entitled "Distilled Spirits." Section 3238 forbids distilling and brewing on the Sabbath in these words: "No malt, corn, grain, or other material shall be mashed, nor any mash wort or beer brewed or made, nor any still used by a distiller, at any time between the hour of eleven in the afternoon of any Saturday and the hour of one in the forenoon of the next succeeding Monday; and every person who violates the provisions of this section shall be liable to a penalty of one thousand dollars." (Vol. 2, p. 2129).

In computing time in bankruptcy proceedings, the first day of the week is not to be included. (Vol. 22, p. 926).

OPINIONS OF THE UNITED STATES COURTS.

Opinions of the Courts of the United States are not to be looked for in cases arising under any of the above laws and regulations. Such cases do not exist. In many instances, however, cases arising under State laws or municipal regulations have been carried to these courts and opinions of considerable value rendered. These will now be considered.

The case of *Soon Hing v. Crowley* arose under an ordinance of the Board of Supervisors of the City and County of San Francisco, California, which prohibits washing and ironing in public laundries and washhouses within defined territorial limits, from ten o'clock at night till six in the morning, and at any hour on

the Lord's day. Soon Hing was arrested by Crowley, Chief of Police of San Francisco, for violating this ordinance. While in the custody of the officer Soon Hing applied to the Circuit Court of the United States for a writ of habeas corpus. The writ was refused, the judges being divided in opinion and the opinion of the presiding judge controlling. The case went to the Supreme Court of the United States for review. One of the points on which the Circuit Court was divided was, whether the section forbidding work in laundries on the Sabbath is void on the ground that "it deprives a man of the right to labor at all times." Justice Field wrote the opinion of the Supreme Court and on this point spoke as follows:

"Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities; and their validity has been sustained by the highest courts of the States." (113 U. S. 703, 1884).

The case of *Hennington v. The State* (90 Ga. 396), mentioned above on page 89 was carried to the Supreme Court of the United States on the plea that the law is such a regulation of interstate commerce as is forbidden to the States by the Constitution of the United States. The opinion of the Supreme Court of Georgia was upheld by the Supreme Court of the United States. The following sentences are valuable:

"In our opinion there is nothing in the legislation in question which suggests that it was enacted with the purpose to regulate interstate commerce, or with any other purpose than to prescribe a rule of civil duty for all who, on the Sabbath day, are within the territorial jurisdiction of the State. It is none the less a civil regulation because the day on which the running of freight trains is prohibited is kept by many under a sense of religious duty. The Legislature having, as will not be disputed, power to enact laws to promote the order and to secure the comfort, happiness and health of the people, it was within its discretion to fix the day when all labor, within the limits of the State, works of necessity and charity excepted, should cease. It is not for the judiciary to say that the wrong day was fixed, much less that the Legislature erred when it assumed that the best interests of all required that one day in seven should be kept for the purposes of rest from ordinary labor. . . .

"The defendant contends that the running on the Sabbath day of railroad cars, laden with interstate freight, is committed exclusively to the control and supervision of the National Government; and that, although Congress has not taken any affirmative action upon the subject, State legislation interrupting, even for a limited time only, interstate commerce, whatever may be its object, and however essential such legislation may be for the comfort, peace and safety of the people of the State, is a regulation of interstate commerce forbidden by the Constitution of the United States. Is this view of the Constitution and of the relation between the States and the General Government sustained by the former decisions of this court? Is the admitted general power of a State to provide by legislation for the health, the morals, and the general welfare of its people, so fettered that it may not enact any law whatever that relates to or affects in any degree the conduct of commerce among the States? If the people of a State deem it necessary to their peace, comfort and happiness, to say nothing of the public health and the public morals, that one day in each week be set apart by law as a day when business of all kinds carried on within the limits of that State shall cease, whereby all persons of every race and condition in life may have an opportunity to enjoy absolute rest and quiet, is that result, so far as interstate freight traffic is concerned, attainable only through an affirmative act of Congress giving its assent to such legislation?" A number of cases are here quoted to show that this is not true. The court then said: "Local laws of the character mentioned have their source in the powers which the States reserved and never surrendered to Congress, of providing for the public health, the public morals and the public safety, and are not, within the meaning of the Constitution, and considered in their own nature, regulations of interstate commerce simply because, for a limited time or to a limited extent, they cover the field occupied by those engaged in such commerce." (*Hennington v. Georgia*, 163 U. S. Reports, 299, 1895).

Liability for damages in certain cases involving acts claimed to be violations of the Sabbath was decided by the Supreme Court of the United States in the case of *P. W. & B. R. Co. v. Phil. & Havre de Grace Steam Towboat Co.* The following is a statement of the case:

The latter company had been authorized by a statute of Maryland to construct a railway bridge over the mouth of the Susquehanna River at Havre de Grace. After beginning the work they abandoned it, a number of piles which had been driven being cut off a few feet below the surface of the water. The Towboat Superior came into collision with one or more of these piles and suffered great damage. The case came first before the District Court of Maryland, then before the Circuit Court of the United States and finally before the Supreme Court. The decision each time favored the Towboat Company. The contention of the Railroad Company was that the vessel began its voyage on the

Lord's day, thus violating the law of Maryland, and that the company was not entitled to recover. The Court said:

"The law relating to the observance of Sunday defines a duty of a citizen to the State, and to the State only. For a breach of this duty he is liable to the fine or penalty imposed by the statute and nothing more. Courts of justice have no power to add to this penalty the loss of a ship, by the tortious conduct of another, against whom the owner has committed no offence." (23 How. 219, 1859).

A railroad company receiving on Sabbath goods for shipment is bound to keep them in safe custody and is liable for their destruction by fire. (24 How. 247, 1860).

The case of *State v. Petit*, (74 Minn. 376), involving the constitutionality of the Minnesota statute, (see above page 108), was carried to the Supreme Court of the United States. The opinion of the Supreme Court of the State sustaining the constitutionality of the law was upheld. The indictment against Mr. Petit was keeping open a barber shop on the Sabbath. The Supreme Court of the United States declared that "Keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards, shall not be deemed a work of necessity or charity." (177 U. S. 164, 1899).

A case came before the United States Circuit Court, Eastern District, Arkansas, in 1884, founded on a promissory note issued on the Lord's day in Tennessee, in which the validity of contracts made on the Sabbath was considered. The Court held that contracts valid where made are valued everywhere, and that this note was valid in Tennessee. The following sentences are of interest:

"In this country legislative authority is limited strictly to temporal affairs by written constitutions. Under these constitutions there can be no mingling of the affairs of Church and State by legislative authority. All religions are tolerated and none is established. Each has an equal right to the protection of the law, whether Christians, Jews or infidels. No citizen can be required by law to do, or refrain from doing, any act upon the sole ground that it is a religious duty. . . . The State protects all religions, but espouses none. . . . The statute then, is not a religious regulation, but is the result of a legitimate exercise of the police power, and is itself a police regulation.

"Experience has shown the wisdom and necessity of having, at stated intervals, a day of rest from customary toil and labor for man and beast. It renews flagging energies, prevents premature decay, promotes the social virtues, tends to repress vice, aids and encourages religious teachings and practice, and affords an opportunity for innocent and healthful amusement and recreation. Neither man nor beast can stand the strain of constant and unremitting toil. Such a day, when

designated by the State, is a civil and not a religious institution.” (Swan v. Swan, 21 Fed. Rep. 299, 1884).

The Supreme Court of the United States decided a case in 1883 involving the validity of contracts made on the first day of the week, in which there were various complications. Certain agents for the Gibbs & Sterrett Manufacturing Company had sold mowing and reaping machines for the company in the State of Wisconsin. The agents had not the right to close the contract, but it had to be ratified by the principal. The party to whom the machines were sold did not know this. The agreement was signed on the Sabbath but not delivered till another day. The legality of the contract was decided negatively by the Circuit Court before which the case first came in the State of Wisconsin. It was carried to the Supreme Court of the United States and the opinion of the Circuit Court was reversed. The following position was first affirmed:

“The ground upon which courts have refused to maintain actions on contracts made in contravention of statutes, for the observance of the Lord’s day is the elementary principle that one who has himself participated in a violation of law cannot be permitted to assert in a court of justice any right founded upon or growing out of the illegal transaction.”

But it was held that:

“An agreement signed by the maker on Sunday, but not delivered to the other party on that day, is no violation of a statute making it a penal offence to do business on the first day of the week.

“A contract made on Sunday with an agent of the other party without his knowledge, the agent having no authority to bind his principal, and ratified by the principal on another day of the week and then exchanged, is not void as a violation of a statute making it penal to do business of Sunday.” (111 U. S. 597).

In the Circuit Court, W. D. Tennessee, the constitutionality of Sabbath laws was sustained in 1891. In this case R. M. King was indicted in the Circuit Court of Obion County, for plowing on the first day of the week. Mr. King was a Seventh Day Adventist, and as he kept the seventh day of the week as the Sabbath, claimed exemption from the operation of the Sabbath law. He was repeatedly fined for his persistent disregard of the law. His neighbors had him indicted as a common nuisance, for a crime at common law, to secure severer punishment for the misdemeanor than the penalty under the statute. He was tried by a jury and his fine fixed at \$75, and was committed to jail till the fine and costs should be paid. He appealed to the Supreme Court which affirmed the conviction without giving a written opinion. He then filed a petition for a habeas corpus, alleging

that he had been deprived of liberty without due process of law, that he had been denied the equal protection of the law guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that he had been denied the religious freedom guaranteed by the Constitution. The Sheriff of the county denied the illegality of the imprisonment, and the proof was taken before the Circuit Court of the United States. Judge Hammond in delivering the opinion of the court said:

"It is a common nuisance in Tennessee, according to its common law to work on Sunday. . . We do not say that Sunday observance may be compelled upon this principle, as a religious act. . . Nor do we believe King was wrongfully convicted, because Christianity is not a part of the law of the land. . . for it surely is; but not in the dangerous sense pointed out by Mr. Jefferson and other writers following him in the controversy over it. The fourth commandment is neither a part of the common law or the statute, and disobedience to it is not punishable by law; and certainly the substitution of the first day of the week for the seventh as a part of the commandment has not been accomplished by municipal process, and the substitution is not binding as such. The danger that lurks in this application of the aphorism has been noted by every intelligent writer under my observation, and all agree that this commandment, either in its original form, as practiced by petitioner, or in its substituted application to the first day of the week, is not more a part of the common law than the doctrine of the Trinity or the Apostles' Creed. Nevertheless, by a sort of factitious advantage, the observers of Sunday have secured the aid of the civil law, and adhere to that advantage with great tenacity, in spite of the clamor for religious freedom and the progress that has been made in the absolute separation of Church and State, and in spite of the strong and merciless attack that has always been ready, in the field of controversial theology, to be made, as it has been made here, upon the claim for divine authority for the change from the seventh to the first day of the week. Volumes have been written upon that subject, and it is not useful to attempt to add anything to it here. We have no tribunals for its decision, and the efforts to extirpate the advantage above mentioned by judicial process in favor of a civil right to disregard the change, seem to me quite useless. The proper appeal is to the legislature. For the courts cannot change that which has been done, however done, by the civil law in favor of the Sunday observers. The religion of Jesus Christ is so interwoven with the texture of our civilization, and every one of its institutions, that it is impossible for any man, or set of men, to live among us, and find exemption from its influences and restraints. Sunday observance is so essentially a part of that religion that it is impossible to rid our laws of it, quite as impossible as to abolish the custom we have of using the English language, or clothing ourselves

with the garments appropriate to our sex. . . . We cannot have in individual cases a perfect observance of Sunday, according to the rules of religion; and, indeed, the sects are at war with each other as to the mode of observance. And yet no wise man will say that there shall therefore be no observance at all. Government leaves the warring sects to observe as they will, so they do not disturb each other; and as to the non-observer, he cannot be allowed his fullest personal freedom in all respects. . . . One may, and many thousands do, work on that day, without complaint from any source; but if one ostentatiously labors for the purpose of emphasizing his distaste for or his disbelief in the custom, he may be made to suffer for his defiance by persecutions, if you call them so, on the part of the great majority, who will compel him to rest when they rest, as it does in many other instances compel men to yield individual tastes to the public taste, sometimes by a positive law, and sometimes by a universal public opinion and practice far more potential than a formal statute. There is scarcely any man who has not had to yield something to this law of the majority which is itself a universal law, from which we cannot escape in the name of equal rights or civil liberty. . . . The fact that religious belief is one of the foundations of the custom is no objection to it, as long as the individual is not compelled to observe the religious ceremonies others choose to observe in connection with their rest days. As we said in the outset, not one of our laws or institutions or customs is free from the influence of our religion, and that religion has put our race and people in the very front of all nations in everything that makes the human race comfortable and useful in the world. This very principle of religious freedom is the product of our religion, as all our good customs are, and if it be desirable to extend that principle, to the ultimate condition that no man shall be in the least restrained, by law or public opinion, in hostility to religion itself, or in the exhibition of individual eccentricities or practices of sectarian peculiarities of religious observances of any kind, or be fretted with laws colored by any religion that is distasteful to anybody, those who desire that condition must, necessarily, await its growth into that enlarged application. But the courts cannot, in cases like this, ignore the existing customs and laws of the masses." (In re King, 46 Federal Reports, 905, 1891).

On the 5th of August, 1892 (Stat. 1st Sess., 52d Cong., p. 389), Congress passed an act "to aid in carrying out the act of April 25, 1890, with reference to the World's Columbian Exposition. Section 4 of this act is as follows:

"That it is hereby declared that all appropriations herein made for, or pertaining to, the World's Columbian Exposition are made upon the condition that the said exposition shall not be opened to the public on the first day of the week, commonly called Sunday; and if the said appropriations be accepted by the corporation of the State of Illinois, known as the World's Columbian Commission, created by the act of

congress of April twenty-fifth, eighteen hundred and ninety, to make such rules or modification of the rules of said corporation as shall require the closing of the exposition on the first day of the week commonly called Sunday."

"October 25, 1892, rules were adopted by the corporation and the commission, and among them one providing that the gates should be open from May 1st to October 30th, every day of the week except Sunday."

"Among the appropriations made on August 5th, 1892 was one of five million pieces of silver half dollars. The whole amount appropriated on that day amounted to two million, five hundred thousand dollars. Of these souvenir half dollars there were transmitted to the World's Columbian Commission 3,858,240, the remainder being retained, for expenses of judges etc., of the Exposition," "until said World's Columbian Exposition shall have furnished to the satisfaction of the Secretary of the Treasury, full and adequate security for the return and payment, by said World's Columbian Exposition to the treasury, of the sum of five hundred and seventy thousand, eight hundred and eighty dollars, on or before October first, eighteen hundred and ninety-three; and until such security shall have been furnished by said World's Columbian Exposition, this appropriation or any portion thereof, shall not be available."

The Board of Directors of the World's Columbian Exposition chose to view this as a breach of faith on the part of the United States Government, and "on the 12 of May 1893 the Board of Directors resolved to open the grounds but not the buildings, on Sunday." On May 16th it was resolved to open both the buildings "during the Sundays of the exposition period," and to amend the rules accordingly. At a meeting of the World's Columbian Commission held on May 22d, 1893 majority and minority reports were presented on the amended rule. By a vote of 29 to 28 the Commission refused to modify the rule as amended.

To avoid confusion it should be stated that the Commission was a national body, and the directors were a local board accountable to the Commission. The first case before the courts was brought by Clingman, a stockholder, who filed a bill in the Superior Court of Cook County, to restrain the authorities from closing the Exposition on the Sabbath. The order was issued, but was afterwards reversed.

Next the Attorney General of the United States authorized the United States Attorney for the Northern District of Illinois to file a bill in the Federal Court in the name of the United States to restrain the officers of the exposition from throwing open the gates of the exposition on the Lord's day. The case was heard by Circuit Judges Woods and Jenkins, and District Judge Grosscup. The Circuit Judges granted the temporary order, District Judge Grosscup dissenting. Judge Woods declared that "the government has possession of the grounds, has property there and has pecuniary interests in imported goods subject to duty," and therefore has the right "to seek relief in a court of equity.

Judge Jenkins held that the gift of \$2,500,000 "upon condition that if the gift were accepted the exposition should be closed on Sunday," constituted a charitable gift upon condition, which condition is enforceable in equity. Judge Jenkins in upholding the constitutionality of the act of congress, said: "It is said that this legislation by congress is without the power of congress; that it is unconstitutional; that it seeks to establish religious tests. I cannot concur in the objection. Legislation with respect to the first day of the week has nothing to do with the matter of religious tests or the compulsion of a particular religious belief or service. It is founded upon the necessities of the human race, as taught by experience, the needed rest which human beings require from the avocations of six days, labor; and it is justified by that experience, outside of and irrespective of any question of creed or any question of religion; and all that the laws seek to do—the laws of the several states which have existed almost from the existence of the States—is to provide for that needed rest, and to provide for non-interruption in that rest and in such religious services in which any citizen may choose to indulge. It is not an imposition upon any one of compulsion in respect to religious belief, or in respect to attendance at church. It provides simply for the protection and for the peace of those who may choose to attend church, that they shall not be interrupted by labor on that day." (*United States v. World's Columbian Exposition*, 56 Feb. 630, 1893).

This case was appealed and came before the Circuit Court of Appeals, Seventh Circuit, which rendered an opinion, dissolving the injunction, July 26, 1893. This means, not that the gates may not be closed, but that the proper course was by action at law, not by injunction proceeding in a court of equity.

The position of Judge Jenkins as to the jurisdiction of the United States was denied. It was declared that "congress had the right to direct the gates to be closed on any day of the week, and has given such direction in the appropriation acts of 1892. But in that legislation congress did not affect to be acting in the exercise of the police power, or as a matter of administrative detail upon the theory of absolute control." In reversing the decision of the lower court it was said, "we can discover no tenable ground excepting the case from the ordinary rule which requires, in order to the exercise of jurisdiction in chancery, some injury to property, whether actual or prospective, some invasion of property or civil rights; some injury, irreparable in its nature, and which cannot be redressed at law. The application of that rule is fatal to the maintenance of the order under review." (*World's Columbian Exposition v. United States*, 56 Fed. 654, 1893).

While there is much that is satisfactory in the attitude of the Government of the United States on the Sabbath question, there

is also much that is open to criticism. The truth is that we have in this investigation overwhelming evidence that within the civil and political sphere there must be radical reform to save the Sabbath as a civil institution.

CHAPTER VIII.

THE FIVE-FOLD BASIS FOR SABBATH LAWS.

No institution among civilized men is the subject of more frequent, more zealous and more protracted controversy than the Sabbath. There is no aspect of it that is not made a matter of dispute. Its origin, its perpetuity, the day of the week on which it occurs, the manner of its observance, its place in civil life, together with the right of the States to enact laws for its protection, are all questions over which there have been sharp debates.

Our special theme is the place of the Sabbath in civil life. In the discussion of it all other aspects of the general question can receive only incidental consideration.

In the present stage of the controversy about the Sabbath, no other division of the general question stands so much in need of calm and thorough investigation. No investigation relating to the whole question will be more helpful to the right understanding of the principles involved, or lead more surely to the proper solution of the problem as to Sabbath laws than an investigation of these laws themselves and of the judicial opinions rendered under them. There is a general misapprehension of the nature of these laws and of the constitutional grounds on which they rest. Their best vindication is a full and accurate presentation of their character and of the grounds on which the courts sustain their constitutionality.

To assist in obtaining at one glance a comprehensive view of

our Sabbath laws and the grounds on which their constitutionality is sustained, this chapter will present a summary of the preceeding investigations.

In the study of other aspects of the question, such as the divine appointment of the Sabbath and the perpetuity of the Fourth Commandment, the day to be observed and the manner of observing it, the Scriptures constitute the principal authority to which appeal is to be made. But after these questions are settled, even if the settlement should receive unanimous approval (which unhappily is not the case), there still remain for settlement such questions as the right and duty of the State to enact rest-day laws, and the proper boundaries of the prohibitions and requirements of such laws. It is true that the Scriptures clearly teach that the State is under obligation to keep the Sabbath by resting its machinery on that day, and that it should safeguard the peace and quiet of the day by compelling the cessation of worldly employments and recreations. But in this country with its heterogeneous population this view of the authoritative teaching of Scripture does not receive universal assent. Some deny the perpetual obligation of the law of the Sabbath, and with this denial they would demolish all authority for civil Sabbath laws. Others admit the perpetuity of the Sabbath, but deny that it has any claim upon the State for protection. Others hold that the Sabbath law has been repealed and the Sabbath as an institution abolished, but that the first day of the week is to be celebrated in honor of Christ's resurrection, not as a Sabbath appointed by God, but as a semi-holiday appointed by men. While this class do not oppose all "Sunday" legislation they believe such legislation should be exceedingly lenient. Others would attach no sanctity whatever to the day and would have it set apart by law merely as a holiday, no legal compulsion, however, to be employed to enforce its observance any more than in the case of other holidays, but every one being allowed to seek his own pleasure and do his own works, regardless of the annoyance he may occasion to others.

These conflicting views concerning the Sabbath and Sabbath laws have been productive of untold harm. The Supreme Court of New Hampshire, in *Allen v. Deming*, spoke as follows with reference to this variety of opinion:

"In the judgment of many persons, such a law is impolitic, and ought never to have been enacted, and they easily reach the illogical result, that therefore it should be disregarded by those whose duty it would otherwise be to enforce it, or at least great astuteness may be properly exercised to defeat its operation. The law is alleged to be difficult in its application and unjust in its effects." "Some tribunals even have seemed to consider it as a law which had better be suffered to pass in silence, upon the ground substantially that it had been repealed by public opinion." (14 N. H. 133, 1843.)

In the midst of this confusion and conflict about Sabbath laws where shall we look for light? To what umpire shall we appeal for the settlement of the points in dispute? No one class of citizens considered as a fragment of our population and authorized to speak for none but themselves, has the right to give the final authoritative answer. Why not go to the State itself for the answer? Why not examine the laws themselves and the opinions of the courts handed down in cases arising under these laws? If these voices are listened to, misapprehensions will be removed, prejudice will vanish, and opposition will be seen to be groundless.

We cannot avoid this legal investigation even if we would. Opponents of the law have chosen the field on which they propose to wage the warfare, they have thrown down the gage of battle, and there is no alternative but to yield our Sabbath laws or meet and defeat the antagonists on their chosen ground.

CLASSIFICATION OF STATES.

With respect to the character of their Sabbath laws or the non-existence of such laws the States and Territories may be divided into five classes as is shown in preceeding chapters.

The first class is composed of those whose laws are framed according to the British model and prohibit on the Lord's day labor, business or work of one's ordinary calling only. This class includes Georgia, Indiana, North Carolina, Rhode Island and South Carolina.

In the second class are to be placed all those whose Sabbath laws contain strong and comprehensive prohibitory clauses

forbidding labor, business, amusements, fishing, hunting, etc., and make few exceptions to the operation of the law besides works of necessity and charity. This class includes Arkansas, Connecticut, Delaware, Florida, Indian Territory, Iowa, Kansas, Maine, Maryland, Michigan, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee and Utah.

The third class embraces those whose prohibitory clauses are materially weakened by making many exceptions besides works of necessity and charity. Some of these exceptions are here noted. Alabama, Kentucky, Mississippi, Texas, Vermont, Virginia and West Virginia make an exception of railroads. New Jersey, excepts Sunday trains and legal notices in Sunday newspapers. Massachussets and New York permit the sale of tobacco, the printing and sale of newspapers, and the latter State permits also the sale of fruit and confectionery. Minnesota to allows the printing and sale of newspapers. The Wyoming law makes exceptions of newspapers, railroads, telegraph companies, news depots, farmers, mechanics, furnaces, smelters, glass works, venders of ice cream, milk, fresh meat and bread. The law of Louisiana excepts newspapers and printing offices, book stores, public and private markets, bakeries, dairies, railroads, theaters and other places of amusement.

The fourth class includes those States the prohibitory clauses of whose Sabbath laws are inherently weak. The laws of Colorado, Illinois and New Mexico prohibit on the Lord's day only such labor and amusements as disturb congregations and families. Business is not mentioned. New Hampshire forbids such secular business or labor as disturbs others. Montana prohibits neither labor nor trade. Nebraska does not prohibit trade. Oregon does not prohibit labor. Washington does not prohibit labor and weakens the clause prohibiting crimes against the public peace by adding after the enumeration of "riot, fighting or offering to fight, horse-racing, or dancing," the clause, "whereby any worshipping assembly or private family is disturbed."

The fifth class embraces those that have no Sabbath laws. This class includes Arizona, California and Idaho.

THEIR CONSTITUTIONALITY IN DISPUTE.

The question of the constitutionality of our Sabbath laws has often been in dispute before our courts, both State and Federal. In these disputes opponents appeal to both the State and the National Constitution. The clauses upon which reliance is placed are those that guarantee religious liberty. The purport of these clauses as found in all our State Constitutions is the same. A few extracts will show their character. The Declaration of Rights in the Constitution of Maryland says "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion, or profession, or for his religious practice, unless under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or ministry."

The Constitution of the State of New York declares that "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; . . . but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State."

The Constitution of Pennsylvania declares that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship."

Similar provisions are found in the constitutions of all the States. In many a conflict they have been appealed to before

courts of law to establish the unconstitutionality of Sabbath laws. A sentence in the Fourteenth Amendment of the Constitution of the United States is also sometimes appealed to for the same purpose. It is as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

In some cases, Section 10, Article 1, of the Constitution of the United States, which prohibits the States from passing any law impairing the obligation of contracts, is used as the basis of an argument against the constitutionality of the Sabbath law.

It has been contended, on the strength of these provisions that all laws are unconstitutional which prohibit on the Sabbath ordinary labor and business, the keeping open of saloons, the operating of theaters, fishing, hunting, playing base ball, etc.

SABBATH LAWS CONSTITUTIONAL.

If it could be successfully maintained that Sabbath laws violate constitutional provisions safeguarding property, contracts and liberty, they would of necessity disappear from our statute books. But with singular unanimity the constitutionality of these laws has been sustained by our courts. The grounds on which these opinions rest are not always the same. Neither do our judges always make the best use of the strongest grounds on which the constitutionality of these laws can be maintained. But it is a fact that should command general attention, and lead to serious thought even those who would sacrilegiously break down all Sabbath legislation, that with scarcely an exception the constitutionality of our Sabbath laws has been upheld by the Courts. The grounds on which these opinions of the courts rest are worthy of most careful study.

FIRST GROUND—THEY INVADE NO CONSTITUTIONAL RIGHT.

In a preceding paragraph constitutional provisions were quoted upon which reliance has been placed in efforts to secure

opinions of courts against the constitutionality of Sabbath laws. The argument used is that when the law stops ordinary worldly labor, closes a store or a saloon, shuts the doors of a theater, prevents a horse race or a game of base ball, on the first day of the week, it is interfering with that liberty which is guaranteed by the Constitution.*

For the purpose of the present discussion, human actions may be divided into three classes: (1) those which conscience approves and requires; (2) those which conscience condemns and forbids; (3) those about which conscience gives no authoritative decision either way, and whether done or not done no regrets are experienced. To one or another of these classes all acts dealt with by Sabbath laws belong. It is quite clear that if these laws prohibit men from doing what conscience requires or seek to constrain them to do what conscience forbids, rights are invaded and the constitution violated. Let us inquire whether Sabbath laws do either of these things. The answer is given in the opinions of our courts. "The Sunday law was not intended to compel people to go to church, or to perform any religious act, as an expression of preference for any particular creed or sect." (*State v. Ambs*, 20 Mo. 214.) "These laws do not prohibit or interfere with the worship of God on any other day than Sunday, nor do they compel any one to worship on Sunday." (*Judefind v. State*, 78 Md. 510.)

Sometimes the plea is advanced that legislators are prompted by religious motives in the enactment of these laws and that this is an unwarranted mingling of things civil and religious, and that on account of these motives such laws invade

* Among the opinions of Courts declaring that there is no invasion of rights and consequently no infraction of the Constitution by our Sabbath laws, the following are of more than ordinary merit: *Shover v. State*, 10 Ark., 259, 1850; *Scales v. The State*, 47 Ark., 476, 1836; *Gunn v. The State*, 89 Ga., 341, 1892; *Johns v. The State*, 78 Ind., 332, 1870; *Kilgour v. Miles and Goldsmith*, 6 G. & J. (Md.), 268, 1834; *Judefind v. State*, 78 Md., 510, 1894; *Allen v. Deming*, 14 N. H., 133, 1843; *Specht v. Commonwealth*, 8 Pa., 312, 1848; *Commonwealth v. Nesbit*, 34 Pa., 398, 1859; *Frolickstein v. Mayor of Mobile*, 40 Ala., 725, 1867; *Commonwealth v. Has*, 122 Mass., 40, 1877; *Lindenmuller v. The People*, 33 Barb., 584, (N. Y.), 1861; *City Council of Charleston v. Benjamin*, 2 Strobbart, 508 (S. C.), 1846; *Gabel v. Houston*, 29 Texas, 335, 1867; *Albrecht v. The State*, 8 Texas, 313, 1880; *Adams v. Gray*, 19 Vt., 358, 1847; *The State v. B. & O. R. R. Co.*, 15 W. Va., 362, 1879; *State v. Ambs*, 20 Mo., 214, 1854; *State v. Powell*, 53 O. R. 324, 1898; *Richmond v. Moore*, 167 Ill., 429, 1883; *State ex rel. Walker & Mertz v. Judge*, 39 La., 132, 1887; *Ex parte Burke*, 59 Cal., 6, 1881.

the freedom of those who do not believe in them. It may be readily conceded that such motives exist. No such institution as the Sabbath could exist apart from religion. Sabbath laws are scarcely conceivable apart from religious motives. But the motives of the lawmakers are not forced upon the consciences of those who are required to obey. Doubtless there are many laws against vice and immorality enacted from religious motives. But the subjects of these laws are still left free as to conscience. What the law demands is obedience. It does not aim to impose motives upon men's minds. It is a weak cause that pleads the religious liberty clauses of our constitutions as a defense of worldly labor, business and amusement on the Sabbath. The consciences of Sabbath breakers may not approve of Sabbath laws, but it is not conscience that urges men to engage in labor and trade, or to attend theaters, horse races and athletic sports on the Lord's day. Neither is any one harassed with compunctions of conscience or feelings of remorse if he fails through compulsion or otherwise to do these things. No one is compelled by the Sabbath law to do what he does not approve. He is only restrained from doing some things which he does approve and the State does not. There are still many other things in perfect accord with his secular views which the law does not forbid. He may spend the day in reading infidel works or works wholly lacking in the religious element; he may attend infidel lectures; he may do scores of things that are not religious, and the law is silent. All that it demands is a measure of outward respect for an institution that holds a prominent place in the minds of the great body of the people.

To regard such a law as an invasion of the religious rights and liberty of those who have little or no religion requires an unwarranted stretch of the meaning of terms.

SECOND GROUND—SABBATH LAWS PROTECT HUMAN RIGHTS.

Having shown that these laws are not in conflict with the constitutional provisions that safeguard religious liberty, it is

in order to show you that they are necessary for the preservation of certain rights.*

Civil government is the institution of rights. One chief object of its existence is to protect the rights of all classes.

It is generally conceded in Christian lands that all men have the right to rest one day in every week. Even in the State of California which has had no real Sabbath law since 1883, a rest day law has recently been enacted designed to guarantee to all one day's rest out of every seven without specifying any one day, but allowing this to be determined by circumstances. Cessation from labor one day in the week is a right to be protected by law. The plea has been made, however, that we do not need a law telling us when to rest or protecting us in the enjoyment of the right. It is said that those who feel the need of rest will take it without such a law. Whatever measure of truth there may be in this with respect to people who are able to control their own time, it is not true with respect to the vast army of employees who are dependent upon capitalists for employment. Multitudes of employees in mills and factories, on railroad trains and street cars, and also in the mail service of the United States, under existing laws, are deprived of their Sabbath rest, not because they prefer to labor seven days in the week, but because they must, or give up their positions. The Supreme Court of Minnesota stated the situation with precision when it declared that "labor is in a great degree dependent upon capital, and unless the exercise of power which capital affords is restrained, those who are obliged to labor will not possess the freedom for rest which they would otherwise exercise."

If the vast multitudes of our population popularly styled the laboring classes were fully aroused to their own interests they would prescribe as one of the conditions of their employment one day for rest in every seven, except in cases of necessity. This

* Among the opinions of Courts maintaining this position the following may be studied with profit: *State v. Miller*, 68 Conn., 373, 1896; *George v. George*, 47 N. H., 27, 1866; *Johnston v. Commonwealth*, 22 Pa., 102, 1853; *Sparhawk v. Union Passenger Railway Co.*, 54 Pa., 401, 1867; *State v. Pettit*, 74 Minn., 376, 1898; *Stae v. Williams*, 1 Vroom (N. J.), 1862; *Lindenmuller v. The People*, 33 Barb. 548, 1861; *The State v. B. & O. R. R. Co.*, 15 W. Va., 362, 1879; *Ray v. Callett and Buek*, 12 B. M., 582 (Ky.), 1851; *Stae v. Ambs*, 20 Mo., 214, 1854; *The State v. O'Rourke*, 35 Neb., 614, 1892.

should be one of the demands made by all labor organizations. They should appeal to the law to protect them in this right. But while these organizations make many demands, and while laborers have inaugurated strikes to enforce these demands, in all the annals of these proceedings as prepared by the Commissioner of Labor, there have been only two or three strikes because of Sunday labor.

But capitalists themselves are not always independent in this matter. The owners of mills and factories, the proprietors of barber shops as well as those engaged in certain mercantile pursuits, often feel compelled by circumstances to carry on their different enterprises on the Lord's day unless all who are engaged in the same calling are constrained by law to desist. In the Minnesota Supreme Court opinion just quoted there is a paragraph that covers such cases. The Court said, "If the law was not obligatory upon all, and those who desire to do so were permitted to engage in their usual vocations on Sunday, others engaged in the same kind of labor, might, against their wishes, be compelled by the laws of competition in business to do likewise."

But there are other rights than the mere right to rest from secular labor protected by Sabbath laws. There is the right to worship God without disturbance. Our rights of conscience are only partially secured by a law that protects us in the right to rest if the quietness of the day is not protected so as to make worship possible by laying the restraining hand of law upon all secular employments. On this point the Supreme Court of Pennsylvania, in *Johnston v. Commonwealth*, has said, "It would be a small boon to the people of Pennsylvania to declare their indefeasible right to worship God according to the dictates of their own consciences amid the din and confusion of secular employments, and with desecrations on every hand of what they conscientiously believe to be hallowed time." Of like import is the language of the Supreme Court of Missouri in *The State v. Ambs*, when in speaking of the motives of those who adopted the Sabbath law it was said, "They deemed a statute compelling the observance of Sunday necessary to secure a full enjoyment of the rights of conscience. How could those who conscientiously believed that Sunday is hallowed time, to be devoted to the wor-

ship of God, enjoy themselves in its observance amidst scenes by which the day was desecrated which they conscientiously believed to be holy?"

THIRD GROUND—AS POLICE REGULATIONS, SABBATH LAWS
PROTECT THE PUBLIC WELFARE.

The boundary line between the police power and some other powers of the State has never been definitely drawn. It has been drawn with sufficient precision, however, for our present purpose. It is conceded by all writers on the subject that the police power includes the power and the right to protect the public health, the public safety and order, and the public morals.

With few exceptions our State courts have been called upon to decide whether or not the Sabbath law is constitutional. With scarcely an exception the law has been sustained as a police regulation.*

But what is involved in these numerous opinions? Far more than appears from a mere casual perusal of them. Some of them betray a studied effort to conceal certain facts. For example, frequent use is made of the expression "mere police regulation," or other expressions of like import, as though such regulations do not possess the dignity and importance of laws relating to the tariff, the coinage of silver or the building of battleships. But police regulations are for the public welfare, and the first item is the public health. Frequently the courts tell us that mankind has learned by experience that cessation from la-

* The following list of cases is of value in the study of this ground:

State v. Miller, 68 Conn., 373, 1896; Hall v. The State, 4 Del., 132, 1844; Neal et al. v. Crew, 12 Ga., 93, 1852; Salter et al. v. Smith, 55 Ga., 244, 1875; Hennington v. The State, 90 Ga., 396, 1892; Specht v. Commonwealth, 8 Pa., 312, 1848; Colton v. Huey & Co., 4 Ala., 56, 1842; O'Donnell et als. v. Sweny, 5 Ala., 467, 1843; People v. Belet, 99 Mich., 151, 1893; Scougale v. Sweet, 124 Mich., 311, 1900; State v. Petlt, 74 Minn., 376, 1898; Lindenmuller v. The People, 33 Barb., 584, 1861; City Council of Charleston v. Benjamin, 2 Strobbart (S. C.), 508, 1846; Norfolk & Western R. R. Co. v. Commonwealth, 88 Va., 95, 1892; N. & W. R. R. Co. v. Commonwealth, 93 Va., 749, 1896; The State v. B. & O. R. R. Co., 15 W. Va., 362, 1879; Bloom v. Richards, 2 Ohio, 387, 1853; McGatrich v. Wason, 4 O. S., 566, 1855; Mayor of Nashville v. Lynch, 12 Lee (Tenn.), 499, 1883; Heinssen v. State, 4 Cal., 228, 1890; Scanlon v. The City of Chicago, 40 Ill., 146, ; State ex rel. Walker & Mertz v. Judge, 39 La., 132, 1887; Ex Parte Andrews, 18 Cal., 679, 1861; Soon Hing v. Crowley, 113 U. S., 703, 1884; Swan v. Swan, 21 Fed.-Rep., 299, 1884;

bor one day in seven is necessary for the preservation of health. But the truth is that civilized nations were resting one day in seven before they thought of inquiring into the effects of the custom on health. It is true, however, that scientific investigations in recent years prove that the custom is absolutely necessary to the public health, and thus science confirms divine wisdom from a sanitary point of view.

The public safety is the next thing involved in the police power. The opinions of Courts touching this matter plainly declare that the safety and order of the public are placed in jeopardy by allowing on the Sabbath some things that are legal on other days. By general consent things that are in themselves immoral, such as gambling, drunkenness, fighting, etc., are considered worse and more injurious to the public welfare if indulged in on Sabbath than on other days. Hence there are special laws in many States forbidding all such things on the Sabbath. But what makes the difference? It must be something about the day. The State recognizes its own need of morality and the utility of the Sabbath in cultivating it. While the police power of the State does not include the power to drive men to church, the State recognizes the fact that those who will not go and get the benefits there obtainable, shall do as little harm as possible by carrying on operations in conflict with, and rivals of, the religious services of the church.

This leads to the consideration of the public morals, which is the next thing involved in the police power. To get this matter clearly before the mind a few expressions from the opinions of courts will prove helpful. In his defense of the Sabbath law of New York Judge Allen, in delivering the opinion of the Supreme Court in the case of *Lindenmuller v. The People*, declared that Christianity, as the religion of the people of the State, and as furnishing the best sanctions of moral and social obligations, is entitled to protection. He declared further that the public peace and welfare are greatly dependent upon this protection, and that the Sabbath is one of the institutions to which it should be extended. The Supreme Court of Ohio in 1898, in the *State v. Powell*, in upholding the Sabbath law, declared that if there were no such regularly recurring periods of rest, there is

reason to believe that the masses would become morbid in mind, crime would multiply and degeneracy likely ensue.

FOURTH GROUND—THE SABBATH AS A CIVIL INSTITUTION IS
ENTITLED TO PROTECTION.

The significance of the proposition that the Sabbath is a civil institution should be definitely fixed. One of the principal objections to all Sabbath laws assumes that it is wholly an ecclesiastical institution, like baptism and the Lord's Supper, and that laws for its protection constitute a mingling of the affairs of Church and State. But Christians should be protected in their right to observe baptism and the Lord's Supper and other religious ordinances. In the very nature of the case, however, such ordinances can never become civil institutions where Church and State are not united. It is different in the case of the Sabbath. The term "Sabbath" denotes primarily not a day but an institution. It means "rest" or "cessation." The institution of the Sabbath is the institution of rest or cessation. To say that this is a civil and political institution means that the rest or cessation is to take place in the civil and political life. It is not in the ecclesiastical sphere that activity ceases on that day. Christians are not supposed to take a rest from religious activity one day in seven, and that on the Lord's day. It is on the Sabbath that we look for the greatest measure of activity in the church. It is especially in the civil and political spheres that the rest or cessation is to be looked for. We are to rest or cease from activity in the civil and political spheres so as to make activity possible in the ecclesiastical sphere. It is largely the same people who are found in both and cessation from activity in the one is essential to activity in the other.

It is of necessity that the Sabbath becomes a civil and political institution in all lands where Christianity becomes the prevalent religion. One of three supposable results will follow the Christianizing of a people. (1) They may wholly separate themselves from civil and political life so as to live in the consistent observance of Christian institutions. (2) They may continue in all civil and political relations, living in violation of Christian laws and usages where there is con-

flict. (3) They may conform the usages of civil and political life to the Christian standard. The first is possible only to a limited degree. Even if it were wholly possible it should be regarded as only a temporary expedient to maintain consistency and to secure reformation. The second is wholly inconsistent with Christianity and will be repudiated by all right-minded people, however common it may be in practical life. The third is the end to be aimed at, however necessary it may be at any time to adopt the first, and however popular it may be to practice the second.

The Sabbath is, therefore, a Christian institution which of necessity becomes a civil institution in so far as it requires cessation one day in seven from worldly employments and recreations.*

A few sentences from some of the opinions will add force to the argument. Judge Allen, in giving the opinion of the Supreme Court of New York in the *Lindenmuller* case, said, "The Christian Sabbath is one of the civil institutions of the State, and to which the business and duties of life are, by the common law, made to conform and adapt themselves. The same cannot be said of the Jewish Sabbath or the day observed by the followers of any other religion. . . . The existence of the Sabbath day as a civil institution being conceded, as it must be, the right of the legislature to control and regulate it and its observance is a necessary sequence."

The Supreme Court of Minnesota, in 1875, in *State v. Ludwig*, declares that "All the authorities concur that the legislature may by law establish, as a civil institution, the first day of the week as a day of rest, and may prohibit upon it, the performance

* The Courts are unanimous in this judgment as will appear from the following list of cases: *Shover v. State*, 10 Ark., 259, 1850; *Karvisch vs. The Mayor and Council of Atlanta*, 44 Ga., 205, 1871; *Hennington v. The State*, 90 Ga., 396, 1892; *Specht v. Commonwealth*, 8 Pa., 312, 1848; *Sparhawk v. Union Passenger Railway Co.*, 54 Pa., 401, 1867; *State v. Sopher*, 25 Utah, 318 1902; *Commonwealth v. Has*, 122 Mass., 40, 1877; *State v. Ludwig*, 21 Minn., 202, 1875; *The People v. Ruggles & Johnston*, 290 (N. Y.), 1811; *Lindenmuller v. The People*, 33 Barb., 584, 1861; *State v. Williams*, 4 Iredell (N. C.), 400, 1844; *City Council of Charleston v. Benjamin*, 2 Strobelhart, 508 (S. C.), 1846; *Gabel v. Houston*, 29 Texas, 335, 1867; *N. & W. R. R. Co. v. Commonwealth*, 93 Va., 749, 1896; *State v. Powell*, 58 O. R. (Ohio), 324, 1898; *Breyer v. The State*, 18 Plek, 103 (Tenn.), 1899; *Richmond v. Moore*, 107 Ill., 429, 1883; *The State v. O'Rourke*, 35 Neb., 614, 1892.

of any manner of labor, business or work, except only works of necessity and charity."

The facts here considered settle the question whether or not Christianity is part of the common law. While there have been a few negative opinions rendered by our courts on this question, nearly all the opinions are in the affirmative. As explanatory of this statement and of the kindred statement that the Sabbath is a civil institution the following from an opinion by the United States Circuit Court of the Western District of Tennessee is unexcelled.

"The religion of Jesus Christ is so interwoven with the texture of our civilization, and every one of its institutions, that it is impossible for any man, or set of men, to live among us and find exemption from its influences and restraints. Sunday observance is so essentially a part of that religion that it is impossible to rid our laws of it, quite as impossible as to abolish the custom we have of using the English language, or clothing ourselves with the garments appropriate to our sex. . . . There is scarcely any man who has not had to yield something to the law of the majority which is itself a universal law, from which we cannot escape in the name of equal rights or civil liberty. . . . The fact that religious belief is one of the foundations of the custom is no objection to it, as long as the individual is not compelled to observe the religious ceremonies others choose to observe in connection with their rest days. . . . Not one of our laws or institutions or customs is free from the influence of our religion, and that religion has put our race and people in the very front of all nations in everything that makes the human race comfortable and useful in the world. This very principle of religious freedom is the product of our religion, as all our good customs are." (In *Re King*, 46 Federal Reports, 905, 1891.)

This argument would not be complete without an extract from the opinion of the Supreme Court of the United States in the famous case of the *Church of the Holy Trinity v. United States*. This Court said:

"No purpose of action against religion can be imputed to any legislation, State or National, because this is a religious people. This is historically true. From the discovery of this con-

tinent to the present hour, there is a single voice making this affirmation."

Quotations are then given at length from the commission given to Christopher Columbus, from the Charters of the Colonies, from the Declaration of Independence and from other documents. These are followed by extracts from the opinions already given declaring that Christianity is part of the common law of the land. The Supreme Court of the United States lends its sanction to this proposition, and declares that "This is a Christian Nation."

The Sabbath occurring on the first day of the week is a part of that Christianity which is part of the Common law. This is not theory but fact. It is not made a fact by any process of legislation, but legislation favoring the Sabbath grows out of the fact. It has developed with the growth and development of the nation itself. It is an element in the vital constitution of the nation. Christianity without a Sabbath is not Christianity. A Christian nation without the civil institution of the Sabbath is not a Christian nation. The only way to remove the Sabbath from civil life and law is to to eliminate Christianity from the lives of the people.

FIFTH GROUND—LAWS FOR THE PROTECTION OF THE SABBATH AS A CIVIL INSTITUTION REST UPON DIVINE AUTHORITY.

As this feature of the question is too often ignored it is important that it be here presented with considerable fullness.

While there is no direct and explicit acknowledgment of divine authority in our Sabbath laws themselves, the fact that thirty-one of them use the terms Sabbath and Lord's day is to be regarded as containing an implied recognition of such authority, while the non-use of these terms is not a denial of it.

In the opinions of our courts, however, the divine authority on which the law rests is frequently recognized. Extracts from these opinions will be given in chronological order.

In 1811, in *The People against Ruggles*, the Supreme Court of New York declared that "Christianity, in its enlarged sense, as a religion revealed and taught in the Bible, is not unknown to our law. The statute for preventing immorality consecrates

the first day of the week, as holy time, and considers the violation of it immoral." (8 Johnston 290.)

Ringgold in his work on "Sunday Laws," flippantly speaks of the legislature of New York as claiming the power to make a day holy, and quotes this opinion in proof of his statement. But this is not a correct interpretation of the language used. If it were it would be no recognition of divine authority, but rather an assumption of a divine prerogative. A reference to the New York Statutes will show that the Legislature speaks of the Sabbath as holy time in the minds of Christians without any legislative act. (Section 264.) What the Legislature did was to recognize its holy character and to protect it as such, which involves a recognition of Him who alone can make a day holy.

In 1846, in *City Council of Charleston v. Benjamin*, the Supreme Court of South Carolina used the following words: "The Lord's day, the day of the Resurrection, is to us who are called Christians, the day of rest after finishing a new creation. It is the day of the first visible triumph over death, hell and the grave. It was the birthday of the believer in Christ, to whom and through whom it opened up the way which, by repentance and faith, leads unto everlasting life and eternal happiness. On that day we rest, and to us it is the Sabbath of the Lord—its decent observance in a Christian community is that which is to be expected." (2 Strobbart, 508.)

With wonderful lucidity and power the court proceeded to maintain the proposition that Christianity is part of the common law, that its moral principles permeate our social life and influence our legislation, and that its moral laws may be appealed to as authoritative in civil affairs.

The Supreme Court of North Carolina used the following language in 1844, in *The State v. Williams*. Work on the Sabbath "offends us not so much because it disturbs us in practicing for ourselves the religious duties, or enjoying the salutary repose, or recreation of the day, as that it is in itself, a breach of God's law and a violation of the party's own religious duty." (4 Iredell 400.)

The Supreme Court of Iowa, in 1848, in *Davis v. Fish*, said concerning the Sabbath that "It has been established by laws both human and divine, for public worship and private devotion

—a time-honored and heaven-appointed institution.” (1 Green 406.)

In *Neal and others v. Crew*, the Supreme Court of Georgia, in 1852, expressed disapprobation of municipal arrangements “which overlook and disregard the moral law of the Great Jehovah, who from the smoking top of Mount Sinai proclaimed to all the world, ‘Remember the Sabbath day to keep it holy; in it thou shalt not do any work.’” (12 Ga. 93.)

In his “Constitutional Limitations,” Judge Cooley says that “the Supreme Court of Pennsylvania have preferred to defend Sabbath laws” on the ground simply that they are “sanitary regulations, based upon the demonstration of experience that one day’s rest in seven is needful to recuperate the exhausted energies of body and mind.” (pp. 589, 590.) He seems to have overlooked the opinion in *Johnston v. Commonwealth*, in which the following occurs: “It may not be essential, but it is far from irrelevant, to the decision of the present case, to sustain the divine authority of its institution.” The court declares the day to be “set apart by divine command and human legislation as a day of rest. We have no right to give up this institution. It has come down to us with the most solemn sanctions, both of God and man.” (22 Pa. 192, 1853.)

In the same year, in *Omit v. Commonwealth*, the same Court said, “Rest one day in seven was enjoined by the precept and example of the Author of our existence, and government, founding itself on divine appointment, has made it a civil institution.” (21 Pa. 426.)

In *Stockton v. The State* the Supreme Court of Arkansas declared that the object of the Sabbath law is “to prohibit the desecration of the Sabbath, . . . which is set apart by divine appointment as well as by the law of the land.” (18 Ark. 186, 1856.)

In 1859, in *Campbell v. The International Life Assurance Society of London*, the Supreme Court of New York called attention to the fact that the statute “explicitly recognizes the first day of the week as holy time.” The court then gave an argument to prove that the Jewish Sabbath has been abolished and has been superseded by the Lord’s day. The essential points in the argument are these: The Scripture passages found in

Matthew 28:1; Mark 16:2; Luke 24:1; and John 21, together with the expression "the Lord's day," in Revelation 1:10; the practice of the Christians of assembling on the first day of the week, as mentioned in I Corinthians 16:2, and the usages of Christians traced back to remote antiquity "constitute an argument of irresistible force to prove that the Jewish Sabbath was superseded, that the day of the resurrection was substituted, and that the great injunction of the ancient law to keep it holy, was applicable to this new day of a greater deliverance." (4 Bosworth 998.)

In 1860 the New York Superior Court in a case already quoted said, "The learned counsel of the plaintiffs has entered largely into the question of the origin and sanction of the Christian Sabbath. It may not be essential but it is far from being irrelevant, to the decision of the present case, to sustain the divine authority of the institution." (20 Howard's Practice Reports, 76.)

In *Karwisch v. The Mayor and Council of Atlanta*, the Supreme Court of Georgia, in 1871, said, "The law fixes the day recognized as the Sabbath day all over Christendom, and that day, by divine injunction, is to be kept holy." (44 Ga. 204.)

In *Waldon et al v. Colquitt*, Governor, the same court, in 1879, called attention to the fact that the Code denominates the first day of the week "the Lord's day, and as the Lord's day all courts and magistrates are to consider it." (62 Ga. 449.)

The Missouri Court of Appeals in the case of the *City of St. Joseph v. Elliott*, declared that they would not decide whether the law is constitutional as prescribing a religious duty to God, a political duty to the State, or a social duty to our fellow-men, or all three combined. The Court declared that Sabbath laws have been upheld on each of these grounds, that the protection of the observance of religious duties was one part of their object, and that the moving cause of their enactment was obedience to a religious sentiment. It was maintained further by this Court that the defense of these laws for other reasons than those based on Christianity is an afterthought of the courts and were not the moving cause of their enactment. (47 A. 418, 1891.)

These citations may be brought to a close most fittingly by giving President Lincoln's General Order issued in November,

1862, for the better observance of the Sabbath in the Army and Navy. It is as follows: "The President, Commander-in-Chief of the Army and Navy, desires and enjoins the orderly observance of the Sabbath by the officers and men in the military and naval service. The importance for man and beast of the prescribed weekly rest, the sacred rights of Christian soldiers and sailors, a becoming deference to the best sentiment of a Christian people, and a due regard for the Divine will demand that Sunday labor in the Army and Navy be reduced to the measure of strict necessity."

In 1899, President McKinley, in General Order No. 50, incorporated this order of President Lincoln's. Its recognition of the Divine will in the matter of Sabbath observance is deserving of imitation by all who have to do with laws touching the matter in question.

THE CONSTITUTIONAL SABBATH.

Many of the opponents of the Sabbath seem to have abandoned at least temporarily the effort to secure opinions of Courts against the constitutionality of Sabbath laws. Some of them even declare their love for the Sabbath and their desire that it be perpetuated and protected. They are quite assiduous, however, in efforts to secure new legislation enlarging the list of exceptions to the application of the law. It becomes an important matter therefore to consider what kind of a Sabbath law is constitutional.

Evidently this question cannot be determined wholly by an examination of written constitutions, State and National. The provisions of these documents forbid the invasion of human rights, but they contain no positive injunctions as to the enactment of Sabbath laws. In the absence of such injunctions we must look elsewhere for the needed information. It is to be found by a careful study of the real character of the Sabbath as a civil institution. The Sabbath in the civil and political life of this country has a certain well defined character. A constitutional Sabbath law is one that adequately protects this institution.

Our Sabbath differs from the Sunday of Continental Eu-

rope, Mexico and the South American nations. Our Sabbath lasts twenty-four hours. To devote the afternoon and evening of the day to business, or pleasure, is in conflict with the spirit of the institution. The customs that have been growing up of late years in many of our cities and their suburbs, whereby the greater part of the day becomes a holiday are wholly un-American and are fraught with danger to our civilization and our country.

Some of the modifications introduced in some States in recent years whereby the selling of tobacco and various kinds of luxuries, the printing and selling of newspapers, and the doing of other things which come under the head neither of charity nor necessity, are violative of the institution as it exists among us, and ought to be considered unconstitutional. A constitutional Sabbath law in any of our States is one which, in general, protects all the people in their right to rest and to engage in public and private worship if they so desire.

It is a law which forbids, in general, all business and labor (works of necessity and charity alone excepted), all amusements and public sports, all hunting and fishing.

There is considerable diversity among our Sabbath laws as to the legality of contracts made on the Sabbath. In general, marriage contracts and contracts relating to the support of religion, are binding, though made on the Sabbath. In a few States a private business contract is binding. Generally such contracts are illegal and not enforceable.

A CONSTITUTIONAL DEFECT.

When our courts declare Sabbath laws to be constitutional it is not to be understood that there are positive constitutional provisions on which these laws rest and that the institution has adequate constitutional protection. All that is meant is that these laws violate no provisions of the written constitution and that they are in harmony with the unwritten constitution. The last Sabbath law enacted by California was declared by the Supreme Court of the State to be constitutional. When the legislature repealed the law no provision of the written constitution was violated.

Is there not a necessity therefore for positive provisions in written constitutions making it mandatory upon legislative bodies to enact Sabbath laws which shall afford adequate protection to the institution? Should not such constitutional provisions contain explicit recognition of the divine authority on which the Sabbath rests?.

CHAPTER IX.

THE ULTIMATE GROUND OF SABBATH LAWS.

With one exception the grounds on which Sabbath laws rest have been amply presented and sustained by the courts. That exception is the Divine authority for such laws.

With one exception all conceivable objections to these laws have been fully answered in the judicial opinions quoted. That exception is the objection which assumes that the separation of Church and State involves the separation of religion and the State, and the consequent banishment from the sphere of the State's action of all questions requiring settlement by an authoritative moral standard.

OPINIONS BASED ON SECULARISM.

In some instances the courts, not willing to maintain the Divine authority for Sabbath laws, and yet persuaded that these laws must be sustained as constitutional, have announced in unmistakable terms the secular theory of civil government, and have sought constitutional support for such laws in the mere will of the people.

The will of the people may be sufficient ground for a law establishing a holiday. It may suffice even for some of the laws regarding the first day of the week as found in some of our State Codes. But it is not sufficient ground for a law setting apart a day as a day of rest.

It can easily be shown that if there is no Divine authority for Sabbath laws each of the other grounds is worthless, as appears from the following considerations: The Declaration of Independence truthfully states that "all men are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men." The right to engage in labor, business and innocent amusement is bestowed by the Creator and is to be protected by the government. If government prohibits these pursuits one day in seven, unless it has a divine warrant so to do, it is guilty of an unjustifiable invasion of human rights. Thus the first ground on which Sabbath laws are sustained is shown to need the Divine will to sustain it.

Moreover, the right claimed by Christians to a Sabbath free from the turmoil incident to the activities of secular pursuits is no right at all unless given by the Creator. Any person or class of persons, it may be conceded, has the right to cease from such pursuits as often and as long as they desire. But where does any one get the right to demand that others shall be legally restrained from the usual activities of life on any day unless he can show a divine warrant? Thus the second ground on which the courts rest the argument for Sabbath laws must be given up unless God's will upholds it.

The third ground stands in similar need of Divine support. It upholds these laws as police regulations for the promotion of the public welfare. Public health, public peace and public morals are said to be promoted thereby. But why should it be more unhealthy to labor on the first day of the week than on any other? Why would not this interest be conserved just as well by decreasing the number of hours that should constitute a day's work? Why should people have the idea that the public peace is disturbed on the first day by the things that are done on all other days without thought of any such disturbance? Why is it, unless the day is recognized as holy? Why should it be regarded as immoral to do the very things on the first day of the week which all agree ought to be done on other days? No reason can be given except the sacredness that belongs to the day by Divine appointment.

By the terms of the fourth ground on which Sabbath laws

are sustained the Sabbath is declared to be a civil institution, and as such entitled to legal protection. The objector may admit that the Sabbath is a civil institution, as things now are, but he denies that it ought to be. It is asserted that it has no more right to be a civil institution than Ash Wednesday or Good Friday. It is maintained that the great body of Christians in this land have misunderstood their own religion, that they are perpetuating a Jewish custom which was abolished by Christ, and that when we accept and practice Christianity as Christ taught it, the Sabbath will cease to be a civil institution. Like all the rest, this fourth ground for Sabbath laws must be abandoned sooner or later unless the Sabbath is a divine institution sustained by a divine law which is of perpetual obligation. In contending against the vandal hosts that are seeking the destruction of the Sabbath, we will be driven back from one position to another and finally driven from the field and vanquished, unless we have the support of divine authority. Unless God is with us we might as well give up the fight at once. The real issue then is, have we divine authority for keeping the first day of the week as the Sabbath and for protecting its observance by law?

CONFLICTING OPINIONS.

This is the principal point on which judicial opinions relating to the Sabbath laws are at variance. In many cases the courts assume that the first day of the week is the Sabbath and that the Divine authority for a weekly rest day is expressed in the Fourth Commandment. In a few instances this position is boldly declared and sustained by proof. In some of the opinions just considered the question of Divine authority for the rest day is evaded, but the necessity of Divine authority for the rest day statute is denied.

In at least one instance, however, an elaborate argument is presented against the permanency of the Fourth Commandment and against any Divine warrant for a Sabbath law in this gospel dispensation. This was done by Mr. Justice Read in *Sparhawk v. Union Passenger Railway Company*. Mr. Read said:

"I am aware that some religious persons of some religious sects think the sanctity of Sunday, as a day of entire rest, is prescribed to all nations, and particularly to all Christians, by

the Fourth Commandment in the Decalogue, but an attentive perusal of the 20th, 31st and 35th chapters of Exodus, and of the 5th chapter of Deuteronomy, will show that this commandment was specially limited to the Jewish nation alone." "This recapitulation of Scripture makes it clear that the Fourth Commandment, which is a positive statute imposed upon the Israelites alone, as a people separated from all other nations by the Almighty for special and wise purposes, was not intended either for the Gentiles, or for those living under a later dispensation. Like circumcision, it was a sign between Him and them only. It was a part of the ceremonial law, like sacrifices, and not binding at any time on any nation except the Jews. . . .

"The Old Testament contains moral revealed law, ceremonial and judicial laws—the two last being either typical, or intended specially or only for the Jewish people, under the old dispensation, were terminated by fulfillment or abrogation on the coming of Christ, and the completion of the Christian dispensation. This was the view of the Apostle Paul, when he says in his epistle to the Collossians, 'Blotting out the handwriting of ordinances that was against us, which was contrary to us, and took it out of the way, nailing it to his cross; and having spoiled principalities and powers, he made a shew of them openly, triumphing over them in it. Let no man therefore judge you in meat, or in drink, or in respect of an holy day, or of the new moon, or of the Sabbath days.' So in his Epistle to the Gallatians, 4:9, 10 and 5:1: 'But now after that ye have known God, or rather are known of God, how turn ye again to the weak and beggarly elements, whereunto ye desire again to be in bondage? Ye observe days and months and times and years.' So in his epistle to the Romans 14:5; 'One man esteemeth one day above another; another esteemeth every day alike. Let every man be fully persuaded in his own mind. He that regardeth the day regardeth it unto the Lord; and he that regardeth not the day, to the Lord he doth not regard it.' And in the preceding chapter, 9th verse, the Apostle says, 'For this, thou shalt not commit adultery, Thou shalt not kill, thou shalt not steal, thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, Thou shalt love thy neighbor as thyself.'

"It is evident from these texts that the Apostle did not regard the Fourth Commandment as a part of the moral revealed law, but as a ceremonial or judicial law which was terminated by the coming of our Saviour and the completion of the Christian dispensation. . . . "I am deeply impressed with the necessity of a proper observance of Sunday as a day of worship and prayer, and of rest from labor; but living under the new dispensation,

and not under the old dispensation, I feel no inclination to turn the Lord's day into a Jewish Sabbath." (54 Pa. 401, 1867.)

It might be regarded as a sufficient reply to this argument to quote again the opinions of those courts which have maintained the divine authority for the Sabbath, especially that opinion of the Supreme Court of New York in which the Scriptural argument is given. But there is no case in which the ground canvassed by Judge Read is covered by a contrary opinion. His fallacious reasoning will have more weight with many people than all the contrary opinions of civil courts. Moreover, his opinion but rehearses the opinions of many who deny the perpetuity of the Sabbath, and who consequently oppose all Sabbath laws.

THE SABBATH BEFORE MOSES.

Mr. Justice Read assumes that the Sabbath was first instituted when the law was promulgated at Mt. Sinai. This is an erroneous assumption. It was instituted at the time of the creation. "God blessed the seventh day and hallowed it; because that in it he rested from all his work which God had created and made." (Gen. 2:3.)

The Israelites were reminded of the Sabbath and their duty to keep it before they reached Sinai. No manna was given on that day because it was to be a solemn rest unto Jehovah. (Ex. 16:23-30.)

The custom of dividing time into periods of seven days known to have existed in many nations cannot be explained satisfactorily if we close our eyes to the fact that this custom existed from the beginning by Divine appointment.

MOSES AND THE FOURTH COMMANDMENT.

The position of Mr. Justice Read is that the Fourth Commandment was given to the Jews alone, that it belonged to the Ceremonial or Judicial Code, and that it was not intended for any people except the Jews.

But this commandment was given precisely as those against murder, stealing, lying and other sins were given. Were these other commandments binding only on the Jews?

This commandment along with the other nine was an-

nounced with an audible voice by God from the smoking summit of Mt. Sinai. If it was only a ceremonial law belonging in the same class with the laws relating to sacrifices, purifications and other ceremonies, how comes it that God thus associated it with the moral code?

This commandment along with the other nine was written with God's own finger on a table of stone. No merely ceremonial law was so written. If Judge Read and others who agree with him are correct, they are wiser than God and can improve on His arrangement of His own law.

It is true that the Sabbath sustained relations to the ceremonial law. Twice as many sacrifices were to be offered on that day as on other days. It was the day on which the new supply of show-bread was placed upon the table in the Holy place. But the law itself was moral, not ceremonial.

It is true the Sabbath law was incorporated in the Hebrew judicial or civil code. But so were the laws against profanity, murder, stealing and other immoralities. Are they all therefore abrogated? Are we free from all the moral requirements of the Hebrew civil code because we are not Jews?

THE SABBATH A SIGN.

Reliance is placed on the Bible texts which declare the Sabbath to be a sign between God and Israel. It is inferred that no other people should have this sign; that its meaning as a sign is obscured if they do.

But did God choose and separate Israel and make them different from other nations on the principle that no others ought to be what He aimed to make them? Was it not the divine purpose to make them different from what others were, though they all should have been just what he aimed to make them? Was not, and is not, Sabbath keeping a sign whereby a people always indicate their attitude toward God and His law? Is there a high state of morals in any nation where the Sabbath is not kept?

PAUL AND THE SABBATH.

The texts quoted by Mr. Justice Read from the Epistles of Paul are often used for the same purpose by others. They cer-

tainly teach that a change has been introduced, that something has been abrogated. But is it the Fourth Commandment? This commandment is not mentioned nor referred to. Careful and discriminating Bible students will note this. It is well known that Paul had many a sharp controversy with Judaizers. They aimed to observe the entire ceremonial law, and taught its necessity in order to salvation. Paul denied their contention. He pronounced it unnecessary servitude. He issued a declaration of independence from such bondage. He declared it optional with Christians whether they observe Jewish customs. Among these customs were circumcision, the observance of the new moons, the keeping of the Jewish Sabbath. Already Christians were observing the first day of the week, not yet called the Sabbath but the Lord's day. To have called it the Sabbath then would have made confusion. Many Jewish converts kept both the first and the seventh days of the week, and taught the necessity of so doing. Paul declares in terms that no Jew could misunderstand that it was not necessary to keep the Jewish Sabbath. But this does not deny the authority of the Fourth Commandment. Christians were obeying it by observing the first day of the week.

THE FOURTH COMMANDMENT AND THE SABBATH.

The great mistake made by some people is in holding that the Fourth Commandment fixes the Sabbath unalterably upon the seventh day of the week. According to this theory the abolition of the seventh day Sabbath is the abolition of the Fourth Commandment. Those who hold this theory and believe the Fourth Commandment to be still binding have great difficulty with Paul's words, "Let no man therefore judge you in meat, or in drink, or in respect of a feast day or a new moon or a Sabbath day." (Col. 2:16.) Mr. Justice Read and some others take these words to mean a complete abolition of the Sabbath because they hold that no day of the week except the seventh can possibly be a Sabbath. The truth is, the Fourth Commandment does not fix the Sabbath upon any day. It only declares that one day in seven shall be kept holy. That day is to be the seventh after six of labor, which it will be, no matter on which day of the seven it may chance to occur. The particular day is determined else-

where. The principle is eternally established by the Fourth precept of the Decalogue. No change would be needed in the language of this precept whether the Sabbath should fall on the third, the fourth, or any other day of the week.

THE MORAL LAW NOT REPEALED.

The theory is held by many that the entire law has been repealed by the coming and work of Christ and that as a consequence the Fourth Commandment is no longer in force. On this theory it follows that nothing but human authority prescribes the keeping of the first day of the week. Certain statements by Paul are quoted to sustain the theory, such as these: "We are not under law but under grace;" Romans 6:14; "Christ is the end of the law for righteousness to every one that believeth," Romans 10:4. But it is sometimes forgotten that in answer to the question, "Do we make void the law through faith?" Paul said, "Nay, but we establish the law." Romans 3:21.

It should be remembered that Paul was antagonizing the theory of certain Jews "who being ignorant of God's righteousness, and seeking to establish their own," "did not subject themselves to the righteousness of God." Romans 10:3. Paul's object is to show that saving righteousness is obtained, not by the deeds of the law, but by faith in Christ. He seeks to put the law in its proper place and to point out its proper use so as to guard against its being put in the place of the free grace of God. Its use is to convict of sin, to be our schoolmaster to bring to Christ. The use of the plough is not abrogated by a declaration that it cannot take the place of a reaping or a threshing machine, but a step is taken in defining its proper use.

THE REPEAL AND REENACTMENT THEORY.

Passing now from the opinion of Mr. Justice Read it may be well to notice the dangerous theory held by some to the effect that the entire law was repealed by Christ and so much of it reenacted as is now necessary to guide the lives of Christians. Some who hold this view maintain that the Fourth Commandment has been reenacted by the institution of the Lord's day,

while others deny any such reenactment. On this matter the following quotation is pertinent:

"There has been a good deal of well meant but loosely expressed statement about reenactment of more or less of the Decalogue in the New Testament. For instance, a prominent pastor, studious and devout (Sunday School Times, of Philadelphia, January 14, 1882), says of the Fourth: 'It happens to be the only one of the ten which is not repeated nor reenacted in set terms in the new Testament.' Now repetition is one thing, reenactment is another. There are plain enough reasons why the Fourth was not repeated. But when were any of them reenacted? Reenactment means an explicit, formal restatement of the binding authority of the law as such. Our Lord never made such a statement. He and His hearers alike took it for granted that every one of the ten was a living law. He expounded and applied them. He never professed to add to their authority. He never rehearsed them as a whole. He never catalogued them. He never repeated nine, omitting one. There is not one line in the New Testament which implies that the Decalogue is not a unit, whole, inseparable." (Eight studies on the Lord's day. Note, pp. 260, 261.)

One form of this theory looks for proof to II. Cor. 3:7-11: "If the ministration of death, written and engraven in stones, was glorious: . . . how shall not the ministration of the Spirit be rather glorious? . . . for if that which is done away was glorious, much more that which remaineth is glorious."* It is assumed that it is the moral law that is done away. But how does this harmonize with the theory of reenactment? Paul is contrasting, not the Gospel with the law as such, but the new dispensation with the old. The old dispensation has passed away, but it had permanent elements which passed over into the new. The moral law is one of those permanent elements.

CHRIST AND THE SABBATH.

There may be different views as to the seeming silence of our Lord and the writers of the New Testament concerning the

* "Ought Christians to keep the Sabbath." By R. A. Torrey, p. 20.

permanency of the Fourth Commandment. It may be sufficient to call attention to certain well known facts. The Jews were very profane and our Lord repeats the command against profanity. They evaded the command that requires children to honor their parents, and He reproves them for their sin. They misinterpreted the Sixth Commandment so as to narrow its scope, and He shows them that even anger is a violation of this precept. They were given to violations of the Seventh Commandment, and He shows them the spiritual nature of it. They were guilty of robbery in various ways and He reproves them. They were great liars, and He denounces them for their sin. They were covetous, and He opens up their hearts to their sight that they may see how corrupt they are. But as to the Fourth Commandment they erred on the side of punctiliousness. In the case of the other precepts of the Decalogue they gave loose interpretations and sought devices for evading their requirements. But in the case of the Fourth they even added many requirements of their own and pronounced judgment on Christ for not complying with them. We protest against the custom of regarding Christ as an advocate of looseness in Sabbath keeping because He reproved the Jews for their strictness and found it unnecessary in specific terms to reiterate this precept.

But the supposed silence of the New Testament concerning this precept is more seeming than real. The continuance of a law may be recognized and enjoined by the enjoining of duties which cannot be performed otherwise. Does Christianity enjoin any duties which cannot be performed as intended by the Divine Head of the Church if the Sabbath is abolished? Something is implied in the very word, "Church." It involves the idea of a public congregation, an assembly for worship. Such an assembly can be held with regularity, and all its members can be free to attend, only by having a day set apart, free from worldly business and labor and pleasure seeking. That such assemblies will be held is supposed as a matter of course by every line of the New Testament. It is plainly taught by the example of the Apostles and their disciples in forming congregations and establishing ordinances of public worship. It is made mandatory by the authoritative word of an inspired writer, "Not forsaking the assembling of yourselves together as the manner of

some is, but exhorting one another; and so much the more as ye see the day approaching." (Heb. 10:25.)

It is pertinent to inquire in this connection whether it is wrong to neglect the supposed Christian obligations noted above. Where there is no law there is no transgression. If there is no law requiring the observance of the Sabbath there is no sin in not observing it. If there is no sin in not observing it there is no sin in neglecting public and private worship on that day. If there is no sin in neglecting these Christian ordinances there is no sin in neglecting a profession of religion. In truth, Sabbath keeping involves all Christian duty. The denial of its obligation is the denial of all Christian duty.

Sabbath observance is founded in the very nature of our relation to our Creator. Our relation is one of absolute dependence. The obligation growing out of that relation is service, including worship and good works. The abolition of the Sabbath is the denial of that relationship and the refusal to render the required service.

PERMANENCY OF THE SABBATH.

Our Lord said, "Think not that I came to destroy the law or the prophets: I came not to destroy, but to fulfill. For verily I say unto you, till heaven and earth pass away, one jot or one tittle shall in no wise pass away from the law, till all things be accomplished." (Matt. 5:17, 18.)

It is easily seen how the ceremonial laws relating to sacrifices and purifications have all been fulfilled in Christ. It is easily seen, too, how the civil statutes which were peculiar to Israel have served their purpose and were fulfilled when Israel had finished her mission in preparing the way for Christ. But no one has yet shown that there has been any fulfillment of the Sabbath law. It points backward to God's rest when He had finished the work of creation. It also points forward to the rest that remains for the people of God. It will not be fulfilled till we enter into that rest.

THE NAME AND THE DAY.

In law the terms "Sabbath," "Lord's day" and "Sunday" are

regarded as synonymous, being merely designations of the first day of the week. These terms are all freely employed in our statutes and judicial opinions. There are some people, however, who refuse to apply the term "Sabbath" to the first day of the week. It is easy to understand this refusal on the part of those who hold that the Seventh day of the week is the Sabbath and has not been and never can be changed. It is easy to understand it in the case of those who deny that we now have a Sabbath. It is impossible to understand it in the case of those who believe that the Fourth Commandment is still binding and that the first day of the week is now to be observed as a day of rest instead of the seventh. It is no part of the object of this discussion to present the evidence that the first day of the week is the New Testament Sabbath. But the following outline is here submitted.

(1) The example of our Lord in appearing to His disciples after His resurrection on the first day of the week. Luke 24:36; John 20:19-29.

(2) The gift of the Holy Spirit on the first day of the week. Acts 2:1-4.

(3) The Christian custom of meeting for worship on the first day of the week. Acts 20:7; 1 Cor. 15:2.

(4) The testimony of the Fathers that this was the custom. (Ignatius, A. D., 100; Barnabas, Justin Martyr, A. D., 138; Melito, A. D., 170; Irenaeus, A. D., 178; Clement of Alexandria, A. D., 194; Origen, A. D., 200.)

(5) The name "Sabbath" was transferred to the first day of the week. Eusebius declares that by keeping the Lord's day holy we keep the festival of the Sabbath.

Since the term "Sabbath" means "rest" or "cessation," and since there must be rest or cessation from secular pursuits to the end that men may meet for worship, it is a most suitable name for the rest day.

CONCLUSIONS.

1. The character of our Sabbath laws is better than many people have thought.

2. Modern tendencies are not all away from the Sabbath

of the Bible; some States have recently improved their laws, and some of the recent judicial opinions are among the best.

3. In more than half the States the laws need to be strengthened by extending the prohibitory clauses, reducing the number of exceptions or increasing the penalty; in some cases one, in others two, in others all three of these things should be done.

4. There is need of a campaign of education because of the prevalence of Sabbath desecration, not only by worldly people, but also by church members. The time has come for judgment to begin at the house of God.

5. Legislative bodies need constant watching lest they destroy existing legal safeguards of the Sabbath.

6. The civil courts can generally be relied upon to maintain the law; some of the best things said in defense of the Sabbath have been said by the courts. A certain class of attorneys who are reluctant to take cases involving the question of Sabbath breaking unless it be to defend the criminal, should study these great cases and learn what is the real basis of national greatness.

7. The principle that the Sabbath law is still binding involves the principle that it is binding upon nations and governments. Both State and national governments are under obligation to obey the law as well as to enact laws against the desecration of the Sabbath by the people.

8. By the making of contracts for the carrying of the mails on the Lord's day and the employment of thousands of men to handle the mails, the United States Government is the chief violator of the Sabbath law.

9. Both State and United States Courts have gone beyond the provisions of any written constitution in maintaining Sabbath laws; this is especially the case in opinions declaring that the law rests upon divine authority.

10. The Constitutions of the several states and the Constitution of the United States should be so amended as to set forth the fact of divine authority, and not leave it for the courts alone to proclaim it. The courts need a constitutional warrant for so doing.

11. The Sabbath question makes it clear that a separation

of Church and State does not mean a separation of religion and the State.

12. Sabbath breaking is not only an offense against religion, against the Church and against the Head of the Church, but it is also a crime against the Nation and the Nation's Divine Ruler, in that it is an assault upon an institution that has done more than any other to advance our civilization, is inwrought into the very fiber of the nation's being, is a necessary condition of our free institutions, and cannot be abolished without producing moral, religious and political chaos.

13. Our free government would be impossible without our Christian civilization; our civilization is produced and perpetuated by the Christian religion; the Christian religion cannot exist without the Christian church; the Christian church would languish and die without assemblies for public worship; assemblies for worship are impossible without a day of rest; a day of rest needs the protection of statute law; the statute law should rest upon a constitutional provision; the constitutional provision should rest upon and acknowledge the authority of God.

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