

UNITED STATES REPORTS.

QUARTER SESSIONS, PHILADELPHIA.

COMMONWEALTH EX REL. DENNIS SHEA ET AL. V.
WM. R. LEEDS, SHERIFF.

It is a conspiracy for two or more parties to act in concert in unlawful measures to enforce the Sunday Liquor Law. As by inducing a tavern-keeper to furnish beer on Sunday, by artifice or persuasion. The mere admission of visitors into a tavern on Sunday is not an infraction of the Sunday Law, unless liquor is actually sold.

[Opinion by PAXSON, J., May 4, 1872.]

This case was heard upon *habeas corpus*. The relators, Dennis Shea, Frank N. Tully and Charles Hooltka, were charged with conspiracy by one G. A. Barthoulott. The latter keeps a drinking saloon, and it is alleged that the relators were engaged with others in a series of prosecutions against liquor dealers for violation of what is known as the Sunday Liquor Law. The facts of this case, as they appeared at the hearing upon the writ of *habeas corpus*, were substantially as follows:

On Sunday, the 24th of March last, the relators, Shea and Tully, called at the house of the prosecutor. The front door, window, and back entry were closed, but they obtained admission through a private entrance. There was no one in the bar-room when they entered but the prosecutor and one of his boarders. They asked the prosecutor for beer. He refused them, saying, "I don't sell beer on Sunday." After some persuasion, and being told by Shea that a friend of his (the prosecutor) had told them if they would call there they could get some beer, the prosecutor gave Shea and Tully two glasses of beer, repeating, however, his former declaration that he could not sell beer on Sunday. They then each took a piece of bread and wanted to pay for that; but this, also, was declined, and the prosecutor finally ordered them out of his place. Up to this point he did not know the relators.

On the 13th of April suit was commenced against Barthoulott, before Alderman Jennings, upon complaint of one David Evans, who styles himself the "Treasurer of the Tax-payers' Union," to recover the penalty of \$50 imposed by section 2 of Act of February 26th, 1855, upon all persons who shall "sell, trade or barter any spirituous or malt liquors, wine or cider, on the first day of the week, commonly called Sunday." At the hearing Shea and Tully were examined as witnesses. The alderman dismissed the case. It further appeared that, after the above suit was commenced before the alderman, the said Evans stated to Mrs. Barthoulott, that if her husband would pay him \$52.50. the suit would be discontinued and no criminal prosecution commenced.

There was also evidence that this was but one of a large number of suits before the same alderman for alleged violation of the law referred to. All of these suits were commenced upon complaint of the aforesaid David Evans, upon information furnished by these relators. In some of them there were offers to settle upon payment of penalty, with costs, to Mr. Evans, and one at least of the defendants testified that

he had so settled with Mr. Evans, the latter agreeing to abandon any criminal prosecution.

For the relators it was urged that they were engaged in a lawful object, to wit, the enforcement of the Sunday Liquor Law. If this was in truth their object, it was certainly a lawful one, and worthy of all commendation. Assuming such to have been their purpose, did they resort to any unlawful means to accomplish it? If they did, and if they acted in concert in the pursuance of a common design, there was a conspiracy. It was never intended that a man should violate the law in order to vindicate the law.

I am of the opinion that these relators, in their anxiety to procure evidence against Mr. Barthoulott, went a step too far. He was not engaged in any violation of law when they entered his place. They urged and persuaded him to furnish the beer; in fact they resorted to artifice and deception for that purpose. If any crime was committed, they were present aiding and abetting.

It was urged in extenuation of the conduct of the relators that their action was entirely in accordance with the practice in the detective service, not only of the police, but in other departments of the Government. This is not my understanding of the detective service. I have never known an instance of detectives deliberately procuring a man to commit a crime in order to lodge information against him. Such informers have been infamous from the time of Titus Oates.

We can have no sympathy with the men who sell liquor on Sunday in defiance of law. That there is a class of persons who habitually and insolently defy the law is a reproach to all who are charged with the prosecution of such offences. It is the duty of every good citizen to aid in the suppression of this Sunday traffic. The evils which flow from it are beyond all computation in dollars, and are felt and seen by every citizen. And I have no hesitation in saying, that few persons are more deeply interested in enforcing this law than those who are legitimately engaged in the liquor business. There is nothing which has done more to arouse an antagonism to the whole system than the spectacle witnessed every Sabbath, of drunken men reeling upon our streets.

I am aware of the difficulty of procuring testimony against this class of offenders. It is believed, however, that with proper vigilance on the part of the police, and a hearty co-operation on the part of all good citizens, the selling of liquor on Sunday cannot be carried on to any great extent. Be this as it may, the resort to such means as the Commonwealth alleges were employed in this case is more than questionable. The law does not sanction it, and no solid moral reform will be promoted by it. It is quite possible that when the relators come to be heard in their defence, they may show an entirely different state of facts from those above stated. What I have said is based upon the facts as they now appear. The relators will have an ample opportunity of vindicating themselves before a jury, and for that purpose they are remanded.