

tion. If we extend it to raw or unprepared foods, then the "reductio ad absurdum" becomes a "reductio ad absurdissimum." The only way in which the judgment can be protected is to apply the dictum of Lord Halsbury, in *Quinn v. Leatham* (1901), A.C. 506; where it was solemnly held that law was not logical. We observe that the learned judge agrees with what Lord Kenyon said in *Rex v. Younger*—"I am for the observation of the Sabbath, but not for the pharisaical observation of it." We all agree with that statement, but in the application we admit the infirmity of not seeing how it affects the point at issue. In *Fennell v. Ridler*, 5 B. & C. 406; Bayley J., says:—"The act cannot be construed according to its spirit, unless it is so construed as to check the career of worldly traffic." In *Phillips v. Innes*, 4 Clark & Finely, 246, (the celebrated case involving Sunday shaving, which was held illegal), the Court said—"But the magistrates of Dundee and the Court of Session did make that distinction—rather making an Act of Parliament, than construing an Act." We submit that these quotations are pertinent.

The learned judge also speaks of the "absence of any statutory Lord's Day bill of fare fixing what kinds of food shall be eaten on the Lord's Day." There is a sentence in Bacon's Essay on "Judicature" which may be worth his referring to, and it is this—"Judges ought to be more learned than witty, more reverent than plausible, and more advised than confident."

For the reasons given we are compelled to dissent from the findings both in the *Alberti case* and in the *Devins case*. In our opinion they do not correctly set forth the law on the subject, and our conclusions may be summarized as follows:—(1) The sales of confectionary as a general rule do not on any sound principle come within the scope of the words "works of necessity or charity" or "mercy." (2) The use of Sunday restaurants may be a necessity, for the same reason that hotels are necessary, but there is no justification for them to be regarded as store-houses of food, where food or confectionery may be purchased and carried away for consumption elsewhere on Sunday. If this is per-