

**CIHM  
Microfiche  
Series  
(Monographs)**

**ICMH  
Collection de  
microfiches  
(monographies)**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1995**

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

Coloured covers/  
Couverture de couleur

Coloured pages/  
Pages de couleur

Covers damaged/  
Couverture endommagée

Pages damaged/  
Pages endommagées

Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée

Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées

Cover title missing/  
Le titre de couverture manque

Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées

Coloured maps/  
Cartes géographiques en couleur

Pages detached/  
Pages détachées

Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)

Showthrough/  
Transparence

Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur

Quality of print varies/  
Qualité inégale de l'impression

Bound with other material/  
Relié avec d'autres documents

Continuous pagination/  
Pagination continue

Tight binding may cause shadows or distortion along interior margin/  
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure

Includes index(es)/  
Comprend un (des) index

Title on header taken from: /  
Le titre de l'en-tête provient:

Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

Title page of issue/  
Page de titre de la livraison

Caption of issue/  
Titre de départ de la livraison

Masthead/  
Générique (périodiques) de la livraison

Additional comments: / **Pagination is as follows: [i]-ix, 3-130 p. Pages iv & 93 are incorrectly numbered pages v & 39.**  
Commentaires supplémentaires:

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

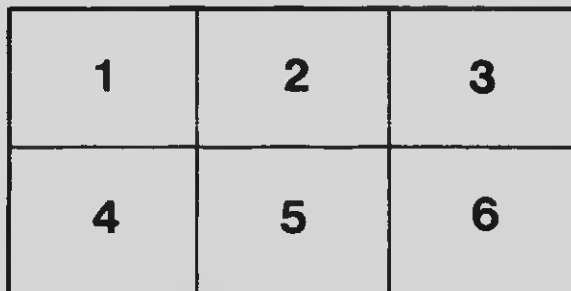
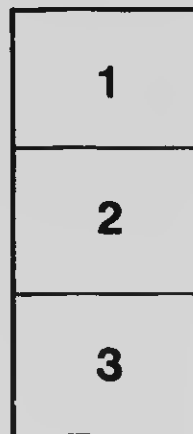
National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

**MICROCOPY RESOLUTION TEST CHART**

(ANSI and ISO TEST CHART No. 2)



5.0



3.6

4.0

4.5

5.0

5.6

6.3

7.1

8.0

9.0

10



**APPLIED IMAGE Inc**

1653 East Main Street  
Rochester, New York 14649 USA  
(716) 482 - 0300 - Phone  
(716) 288 - 5969 - Fax

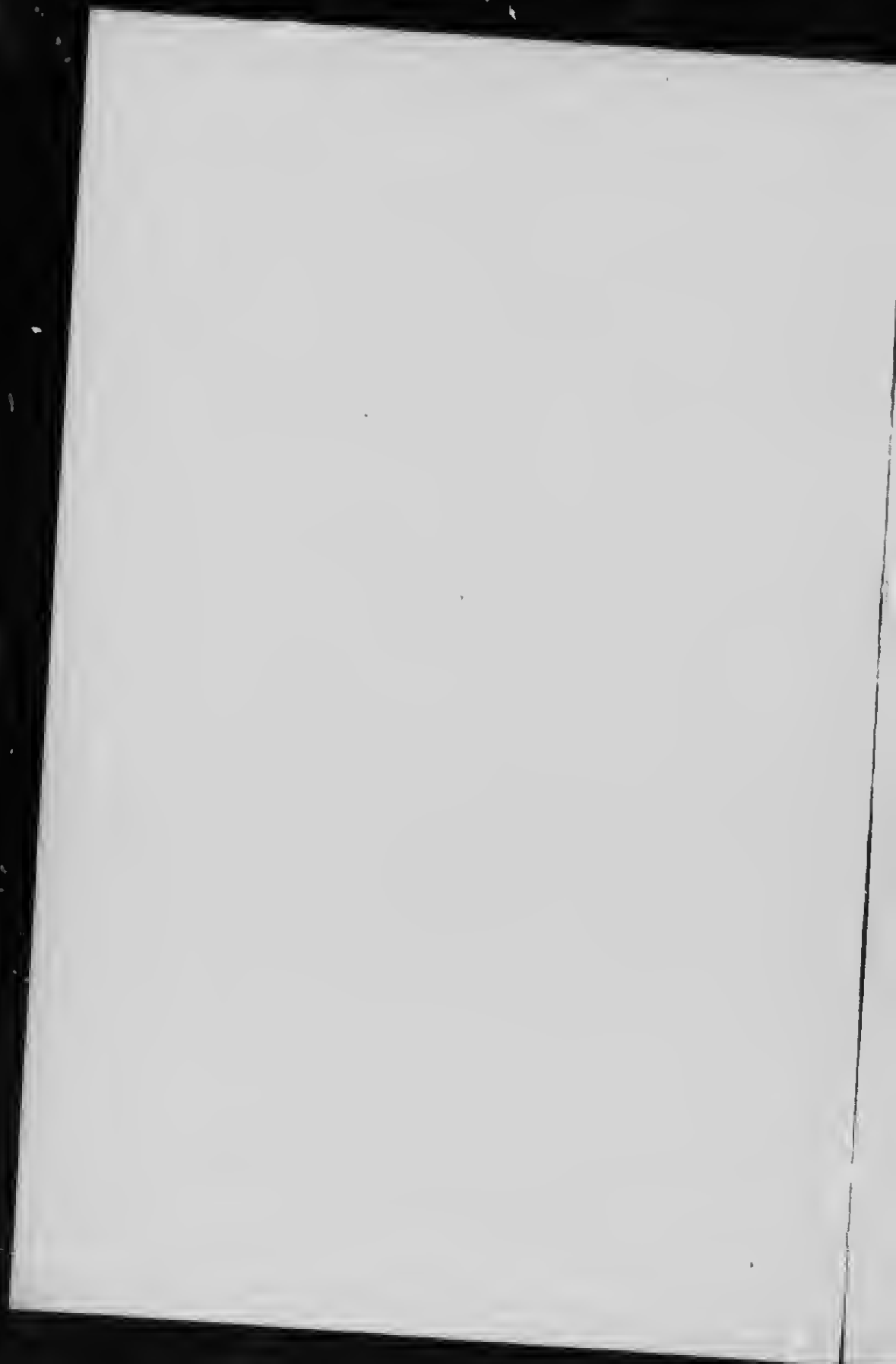
*Library of Parliament*

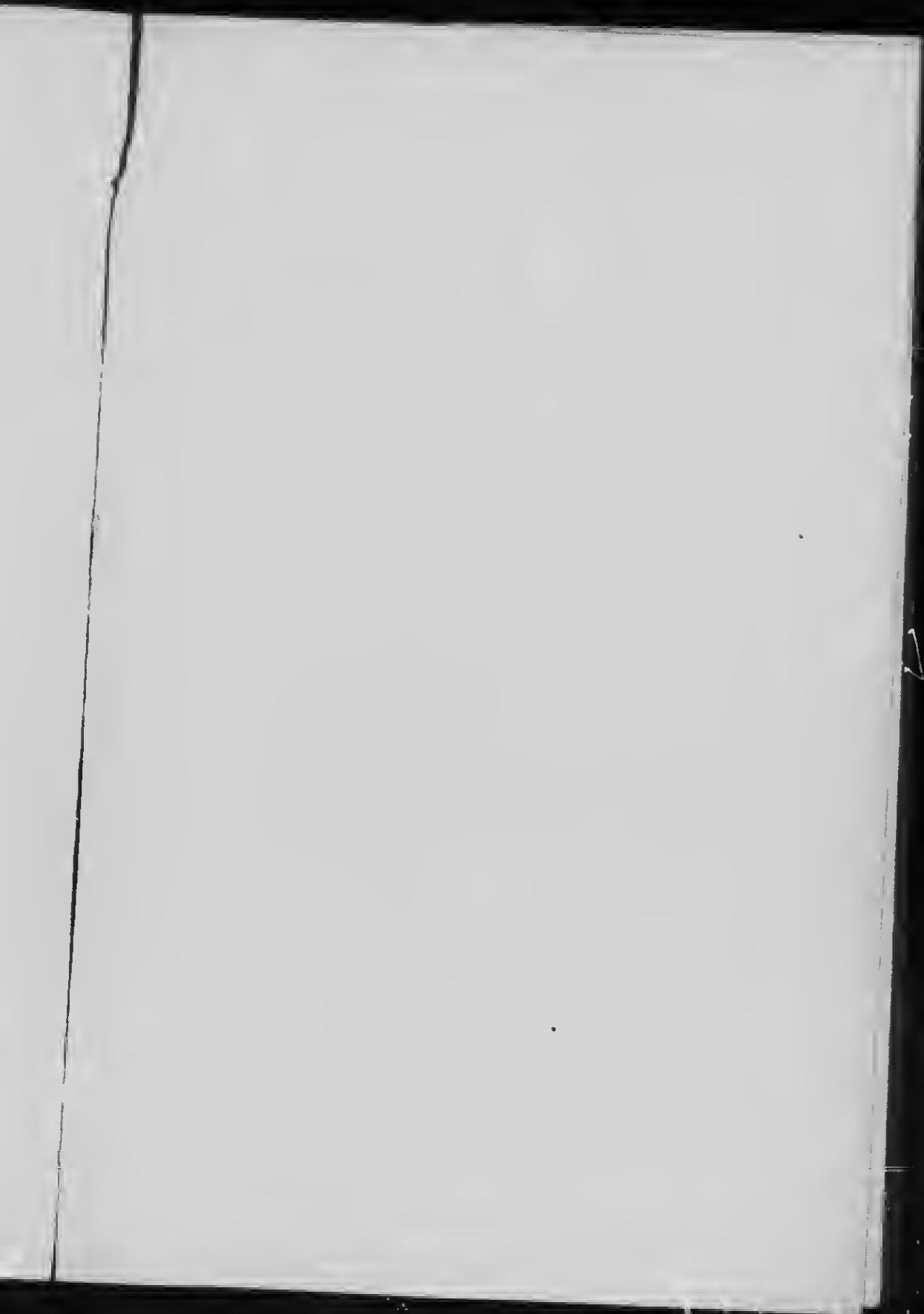
**THE SUNDAY LAW  
IN  
CANADA**

**BY  
GEORGE SMITH HOLMESTED, K.C.  
1912**

listed  
C 340  
H

87









# The Sunday Law in Canada

---

By

**Geo. S. Holmsted**

One of His Majesty's Counsel for Ontario

---

Toronto

Arthur Poole & Co., Law Publishers  
1912

nc  
KE 1971  
H64

---

Copyright Canada, 1912,  
by George Smith Holmsted.

---

## TABLE OF CASES

	PAGE.
Attorney-General (Can.) <i>v.</i> Attorney-General (Ont.), (43 S.C.R. 458) .....	87
Attorney-General <i>v.</i> Great Eastern Ry. (11 Ch. D. 449) .....	87
Attorney-General <i>v.</i> Hamilton St. Ry. (24 A.R. 170) .....	80, 81, 88, 96
Attorney-General <i>v.</i> Hamilton St. Ry. (1903 A.C. 523; 89 L.T. 107).....	69, 70, 83, 88, 89, 90, 92
Attorney-General <i>v.</i> Niagara Falls & W.P.T. Co. (19 Ont. 624; 18 A.R. 453) .....	85, 86
Baxter <i>v.</i> Langley (L.R. 4 C.P. 21).....	106, 107
Beaumont <i>v.</i> Brengeri (5 C.B. 801) .....	104
Bedoe <i>v.</i> Alpe (Sir W. Jones, 156) .....	64
Begbie <i>v.</i> Levi (1 C. & J. 180) .....	100, 101, 102
Bethune <i>v.</i> Hamilton (6 O.S. 105) .....	102
Bloxsome <i>v.</i> Williams (5 D. & R. 82; 27 R.R. 337). ..	102
Brunker <i>v.</i> Mariposa (22 Ont. 120) .....	58
Bullen <i>v.</i> Ward (93 L.T. 439) .....	95
Cudney <i>v.</i> Gives (20 Ont. 500) .....	52, 62, 105
Campbell & Stratford, Re, (14 O.L.R. 184).....	72
Chang Hang Kin <i>v.</i> Piggott (1909 A.C. 312).....	109
Child <i>v.</i> Edwards (1909, 2 K.B. 753) .....	105
Connor <i>v.</i> Quest (96 L.T. 28) .....	96
Cooper, Re, (5 P.R. 256) .....	64

	PAGE.
Cribbin & Toronto, Re, (21 Ont. 325) .....	71
Crombie v. Overholtzer (11 U.C.R. 55) .....	101
Crosson v. Bigley (12 A.R. 94) .....	104
Drury v. Defontaine (1 Taunt. 131) .....	102
Fennell v. Ridler (8 D. & R. 204; 29 R.R. 278) ....	102
Figgins v. Willie (1 W. Bl. 1186) .....	45
Fisher v. Carman (41 C.L.J. 622) .....	71
Foster v. Toronto Ry. (31 Ont. 1) .....	54, 58, 64
Girdlestone v. Brighton Aquarium (3 Ex. D. 137; 4 Ex. D. 107) .....	111
Greene, Re, (4 Can. C.C. 182; 28 N.B.R. 137)....	98
Hall v. Brush (T.T. 3-4 Vict. U.C.) .....	63
Harrison v. Smith (9 B. & C. 243) .....	45, 60
Hespeler v. Shaw (16 U.C.R. 104) .....	80
Hodge v. The Queen (9 App. Cas. 117) .....	87
Houliston v. Parsons (9 U.C.R. 681) .....	101
Johnson v. Norton (2 Rolles R. 442) .....	38
Karry & Chatham, Re, (20 O.L.R. 178; 21 O.L.R. 566) .....	72, 96
Kelly v. Hart (1910, A.C. 192) .....	81
King (The). See Rex .....	
Lai v. Stall (6 U.C.R. 506) .....	99, 100

SUNDAY LAWS.

iii

	PAGE.
Lambert, Re, (4 Can. C.C. 533; 7 B.C.R. 396) . . . . .	72
Langabier v. Fairbury P. & N. Ry. Co. (64 Ill. 243)	64
Lord's Day Act, Re, and Grand Trunk Ry. (8 Can. Ry. Cas. 23) . . . . .	77
Milch v. Frankau (1909, 2 K.B. 100) . . . . .	63
McLean v. Pinkerton (7 A.R. 490) . . . . .	106
Moss v. Elphick (1910 1 K.B. 468, 846) . . . . .	53
Norton v. Powell (4 Man. & G. 42) . . . . .	102
Palmer v. Snow (1900, 1 Q.B. 725) . . . . .	80, 92
Peate v. Dicken (1 C.M. & R. 422) . . . . .	80, 102
Peate v. Dickens (3 D.P.C. 171) . . . . .	102
Queen, (The). See Reg. . . . .	
Reg. v. Barnes (45 U.C.R. 276) . . . . .	78, 107
Reg. v. Berriman (4 Ont. 282) . . . . .	80
Reg. v. Bingham (13 June, 1900) . . . . .	93
Reg. v. Budway (8 C.L.T. Occ. N. 269) . . . . .	80
Reg. v. Cavelier (1 Can. C.C. 134; 11 Man. R. 333). . . . .	64
Reg. v. Carter (31 C.L.J. 664) . . . . .	107
Reg. v. Cleworth (4 B. & S. 927) . . . . .	80, 93
Reg. v. Daggett (1 Ont. 537) . . . . .	88
Reg. v. Frawley (46 U.C.R. 153; 7 A.R. 246) . . . . .	87
Reg. v. Howarth (33 U.C.R. 537) . . . . .	93
Reg. v. Middlesex Justices (17 L.J.M.C. 111) . . . . .	63
Reg. v. Murray (28 Ont. 549) . . . . .	58, 65
Reg. v. Petersky (1 Can. C.C. 91; 5 B.C.R. 549) . . . . .	72

▼  
*SUNDAY LAWS.*

	PAGE.
<i>Reg. v. Reid</i> (30 Ont. 732) .....	80
<i>Reg. v. Silvester</i> (33 L.J.M.C. 79) .....	80
<i>Reg. v. Somers</i> (24 Ont. 244) .....	80
<i>Reg. v. Taylor</i> (19 C.L.J. 362) .....	95
<i>Reg. v. Tinning</i> (12 U.C.R. 636) .....	88
<i>Rendall v. Crystal Palace Co.</i> (4 K. & J. 326).....	86
<i>Rex v. Anderson</i> (10 Can. C.C. 144) .....	96
<i>Rex v. Bates</i> (1911, 1 K.B. 964) .....	110
<i>Rex v. Can. Pac. Ry.</i> (12 Can. C.C. 549).....	110
<i>Rex v. Charron</i> (15 Can. C.C. 241) .....	107
<i>Rex v. Cox</i> (2 Burr 785) .....	94
<i>Rex v. Halkett</i> (1910, 1 K.B. 50) .....	111
<i>Rex v. Hamren</i> (7 Can. C.C. 188; 5 Terr. L.R. 400)	80
<i>Rex v. Pollakoff</i> (40 C.L.J. 393) .....	109
<i>Rex v. Quick</i> (17 O.W.R. 549) .....	107
<i>Rex v. Roe</i> (2 O.W.N. 1232) .....	93
<i>Rex v. Wells</i> (24 O.L.R. 77) .....	78, 93, 95, 96
<i>Rex v. Whitnash</i> (7 B. & C. 596) .....	102
<i>Rex v. Yaldon</i> (17 O.L.R. 179; 13 Can. C.C. 489)	69, 70, 108
.....	
<i>Rex v. Younger</i> (5 T.R. 449; 2 R.R. 638) .....	94
<i>Sandiman v. Breach</i> (7 B. & C. 96; 31 R.R. 169)..	103
<i>Scarfe v. Morgan</i> (4 M. & W. 270) .....	102
<i>Simpson v. Nicholls</i> (3 M. & W. 240; 5 M. & W. 702 (n)) .....	104
<i>Smith v. Sparrow</i> (29 R.R. 514; 4 Bing. 84).....	103
<i>Sparrow v. Cooper</i> (2 W. Bl. 1314) ..	45, 46, 52, 62, 102
<i>Sterling v. Silburn</i> (1910, 1 K.B. 67).....	104

*SUNDAY LAWS.*

	PAGE.
Swann <i>v.</i> Broome (3 Burr. 1595; 6 B.P.C. 333) ... .....	41, 59, 63
Terry <i>v.</i> Brighton Aquarium (10 Q.B. 306) .....	107
Thorpe <i>v.</i> Priestnall (1897, 1 Q.B. 159) .....	110
Vail <i>v.</i> Duggan (7 U.C.R. 568) .....	100
Warner <i>v.</i> Brighton Aquarium (10 Ex. 221) .....	107
Whittier <i>v.</i> McLennan (13 U.C.R. 638) .....	105
Wilt <i>v.</i> Lai (7 U.C.R. 535) .....	101
Wolton <i>v.</i> Gavin (16 Q.B. 48) .....	80



## TABLE OF STATUTES

### *Saxon Laws.*

	PAGE.
Wihtræd (A.D. 690-725) .....	16
Ine (A.D. 688-725) .....	16
Guthrum (A.D. 901-924) .....	17
Æthelstan (A.D. 925-960) .....	17
Cnut. (A.D. 1017-1035) .....	17, 18
Edward the Confessor .....	18

### *Imperial Statutes.*

William the Conqueror .....	18
Hen. 2 .....	18
3 Edw. 1, c. 51 .....	37
28 Edw. 3, c. 14 .....	14, 19
12 Ric. 2, c. 2 .....	19, 20, 27, 108
51 Hen. 3, s. 2 .....	39
11 Hen. 4, c. 4 .....	20, 78, 109
27 Hen. 6, c. 5 .....	21, 78, 97, 109
32 Hen. 8, c. 21 .....	
33 Hen. 8, c. 9 .....	78
Edw. 6. Injunctions .....	23
5-6 Edw. 6, c. 3—23, 40, 41, 42, 46, 47, 48, 53, 54, 61, 62, 78, 97.	
1 Mary St. 2, c. 2 .....	42
Elizabeth. Injunctions .....	23



	PAGE.
R.S.O. (1906), c. 119, s. 43 .....	52, 55
c. 145, s. 3 .....	109
c. 153—72-77, 78, 81, 87, 88, 89, 90, 91, 95, 96, 99, 106, 107, 110, 111.	
Dominion Statutes, 1907, p. cxvii. ....	91
Dominion Statutes, 1910, p. cl. ....	91

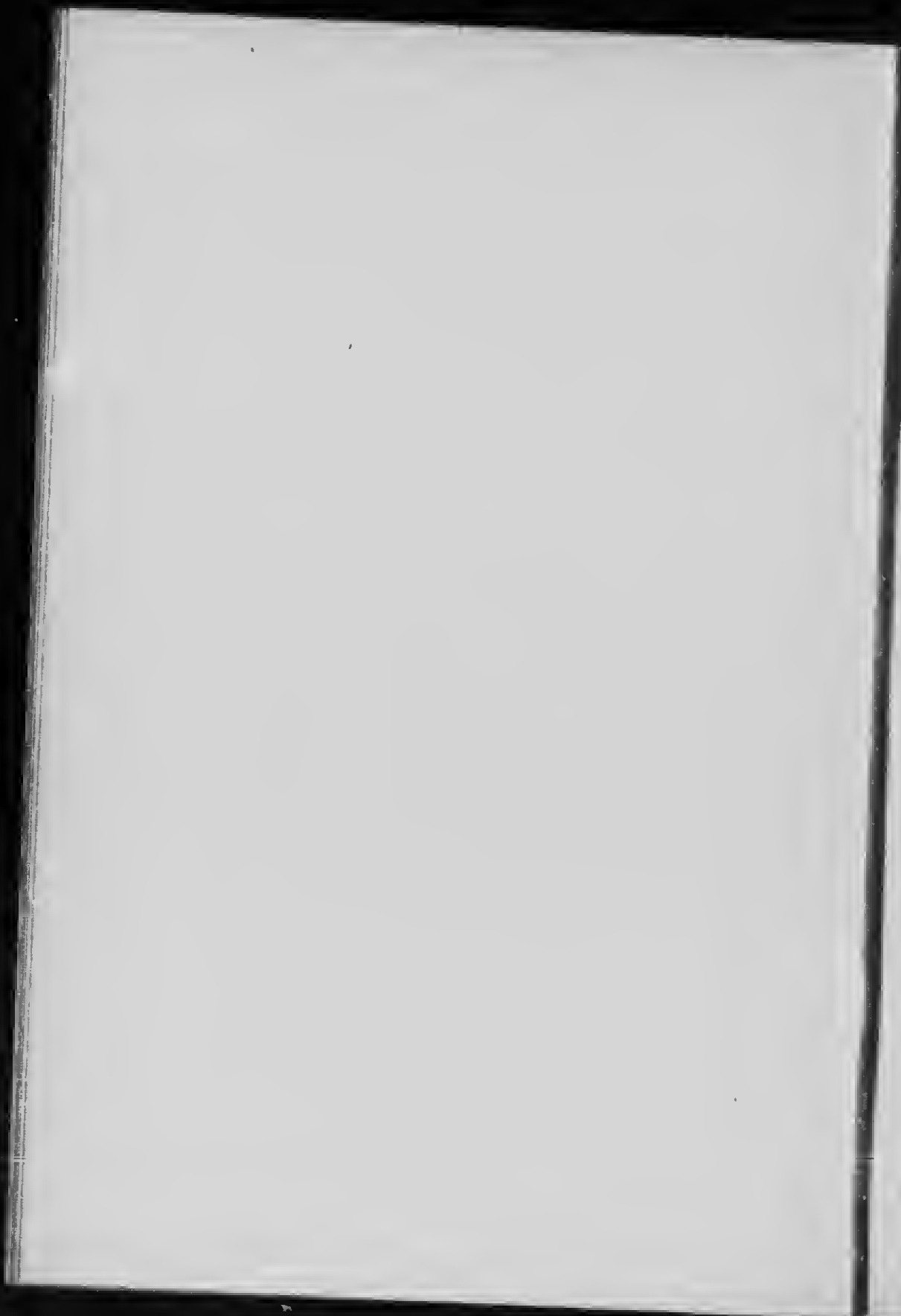
## (Provincial Statutes.)

34 Geo. 3, c. 2 (U.C.) .....	48, 49
4-5 Vict. c. 5 (U.C.) .....	50
8 Vict. c. 45 (U.C.) .....	66
19 Vict. c. 43 (U.C.) .....	50
C.S.C. (1856), c. 5 .....	50, 51, 52
C.S.C. (1856), c. 16 .....	50, 51
C.L.P. Act (1856), U.C. ....	51
C.S.U.C. c. 2, s. 13 .....	109, 110
C.S.U.C. c. 10, s. 20 .....	50
C.S.U.C. c. 42, ss. 17, 18 .....	50, 51, 52
C.S.U.C. c. 104—67, 69, 70, 78, 79, 92, 93, 95, 96, 97, 98, 99, 101, 102, 103, 108, 110.	
42 Vict. c. 15 (Ont.) s. 6 .....	50
48 Vict. c. 44 (Ont.) .....	69, 70
R.S.O. (1887), c. 171 .....	85
59 Vict. c. 62 (Ont.) .....	67, 80, 93
60 Vict. c. 14 (Ont.) .....	69
R.S.O. (1897), c. 209, s. 136 (2) .....	82
c. 209, s. 136 (2) .....	82
c. 246—67, 68, 69, 70, 83, 84, 88, 91, 97, 98, 99, 100.	

*SUNDAY LAWS.*

ix

	PAGE.
R.S.O. (1897) vol. 3, Sched. C., p. 3915 .....	54, 78
c. 324 .....	31, 63
2 Edw. 7, c. 13 (Ont.), s. 4 .....	54, 78
3 Edw. 7, c. 19 (Ont.) .....	71
6 Edw. 7, c. 30 (Ont.) .....	81, 82, 83, 84, 87, 89, 91
7 Edw. 7, c. 42 (Ont.), s. 7 (16) .....	54, 105
7 Edw. 7, c. 42 (Que.) .....	69, 107
9 Edw. 7, c. 63 (Ont.) .....	89, 91
9 Edw. 7, c. 68 (Ont.) .....	84
9 Edw. 7, c. 82 (Ont.) .....	96



## SUNDAY LAWS.

### NON JURIDICAL DAYS, AND SUNDAY OBSERVANCE.

#### 1. Dies non juridici.

##### (1) Religious observance of Sunday.

- (a) How it arose.
- (b) How enforced in Roman Empire.
- (c) How enforced in England: Saxon laws on the subject.
- (d) Laws of Edward the Confessor, confirmed by the Conqueror.

##### (2) (*Legislation after the Conquest in Pre-Reformation Era.*)

- 28 Edw. 3, c. 14.
- 12 Ric. 2, c. 2.
- 11 Hen. 4, c. 4.
- 27 Hen. 6, c. 5.

##### (3) (*Sunday Legislation in Post-Reformation Era.*)

- Edward 6.—Injunctions.
- 5-6 Edward 6, c. 3.
- Elizabeth.—Injunctions.
- James 1.—Book of Sports.
- 1 Car 1, c. 1.
- 3 Car. 1, c. 2.
- Charles 1.—Book of Sports.
- Commonwealth Ordinances.
- 29 Car. 2, c. 7.
- 24 Geo. 2, c. 23.
- 21 Geo. 3, c. 49.

## SUNDAY LAWS.

## 2. Observance by Courts of days as non juridici.

- (1) (a) Roman secular courts.
- (b) Courts Christian.
- (c) Influence of Ecclesiastical authority in prescribing days to be observed as non juridici.
- (2) (*Pre-Reformation Era, Law Terms.*)
  - (a) English Courts—Sittings in Term.
  - (b) English Courts—Sittings at Assize.
- (3) (*Post-Reformation Era, Law Terms, and Dies Non Juridici.*)
  - (a) Days observed in English Courts as non juridici how fixed,—
    - 5-6 Edw. 6, c. 3.
    - 24 Geo. 2, c. 23.
  - (b) Upper Canada and Ontario Courts.
    - Introduction of English Law.
    - Establishment of Court of King's Bench.
    - Sittings of Court.
    - How far English law as to non-judicial days prevailed.
    - Rules of Court as to holidays.
    - Provincial Statutes as to holidays.
    - C.S.C. c. 5, s. 6.
    - C.L.P. Act (U.C.).
    - C.S.U.C. c. 42, ss. 17, 18.
    - How far they repeal 5-6 Edw. 7, c. 3, and 24 Geo. 2, c. 23.
    - Dominion Statutes as to holidays and non-judicial days.

## SUNDAY LAWS.

5

Principle on which days set apart formerly, and now.

Cases in Ontario as to days to be observed as *dies non-juridici*.

*Regina v. Murray*, 28 Ont. 549.

*Foster v. Toronto Ry.*, 31 Ont. 1.

Observations on these cases.

Legal proceedings on days *non juridici*.

(1) Which may not be taken.

(2) Which may be taken.

### 3. Constitutional proceedings on Sunday.

(a) Sitting of Parliament.

(b) Consultation of Judges.

(c) Coronations.

### 4. Provincial Legislation as to Lord's Day observance.

8 Vict. c. 45—(C.S.U.C. c. 104).

48 Vict. c. 44 (O.).

59 Vict. c. 62 (O.).

60 Vict. c. 14 (O.), s. 95.

R.S.O. (1897), c. 246.

### 5. Municipal Elections and Legislation.

(a) Municipal Elections.

(b) Municipal By-laws as to Sunday observance.



6. Dominion Legislation as to Lord's Day observance.

6 Edw. 6, c. 27, (R.S.C. c. 153).

7. Statutes in force in Ontario relating to the Lord's Day.

8. Scope of 29 Car. 2, c. 7, sec. 1 and C.S.U.C. c. 104, sec. 1.

- (a) Persons not within these Statutes.
- (b) Railway companies.
- (c) Steamboats—Sunday excursions.
- (d) Trading on Sunday.
- (e) Contracts made on Sunday.

9. Games and Amusements on Sunday.

10. Prosecutions for violation of Lord's Day Observance Acts.

- (a) Limitation for prosecutions.
- (b) Leave to prosecute.
- (c) Collusive judgment for penalties.

1. *Dies Non Juridici.*

It has been recently laid down in the Province of Ontario that Sunday is now the only *dies non juridicus*, and that all other days in the year including days by statute declared to be public holidays, are juridical days on which courts may lawfully sit, and judgments may lawfully be pronounced. This view is based on decisions in American courts and does not appear to be supported by the English law relating to non juridical days.

## RELIGIOUS OBSERVANCE OF SUNDAY. 7

In the following pages it is proposed to trace the history of the observance of days as *dies non juridici* in the English courts of law, in order, if possible, to arrive at what is really the correct conclusion on the subject as regards the Province of Ontario.

And for this purpose it will be convenient to commence with the setting apart of the first day of the week, commonly called the Lord's Day as a day of religious observance, and as a *dies non juridicus* in the courts of law.

### (1) *Religious Observance of Sunday.*

The religious observance of the Lord's Day by the Christian Church dates back to New Testament times. The reason of this is probably to be found in the fact that according to the testimony of all the Evangelists the Resurrection of our Lord Jesus Christ took place on the first day of the week, and S. John (xx. 26) records His second appearance on that day to His disciples after the Resurrection. On the first day of the week, seven weeks later, the outpouring of the Holy Spirit described in Acts ii. took place. On the first day of the week the disciples met in Troas for the breaking of the Bread and Exhortation; Acts xx. 7; and S. Paul exhorts the Christians of Corinth, "On the first day of the week let every one of you lay by him in store as God hath prospered him, that there be no gatherings when I come": i. Cor. xvi. 2, the object being, as appears by the first verse, to provide alms for the Saints,—and this was a direction not only to the Corinthian, but also to Galatian Christians, as appears by the preceding verse.

In the *Teaching of the Apostles* an ancient writing which was recovered a few years ago, c. 14, is the following exhortation. "And on the Lord's Day of the Lord come together and break bread and give thanks after confessing your transgressions, that your sacrifice may be pure." Ignatius in his epistle to the Magnesians (circ. A.D. 90), c. 9, speaks of those whom he addresses "as no longer keeping the Sabbath but living in the observance of the Lord's Day on which also your life sprang up again," evidently referring to the Resurrection. Eusebius also has preserved a letter of Dionysius of Corinth to Soter Bishop of Rome, A.D. 175, in which he says, "To-day we have passed the Lord's holy day in which we have read your Epistle" (Euseb. b. iv. c. 23), and the same historian relates (b. iv. c. 26) that Melito of Sardis (A.D. 170), had written a treatise on the Lord's Day. Justin Martyr declares that the day was religiously observed because it is the first day on which God made the world (whatever he meant by that—see *infra* Apostolic Cons.), and because Jesus Christ on the same day rose from the dead. But at first, and as long as the Jewish Christian element had any prominence or influence in the Christian Church, there was a tendency to observe the Sabbath as well as the Lord's Day, Eusebius mentions that the Ebionite sect kept both days, and in Socrates' Ecclesiastical history it is stated that A.D. 401, public worship was held in the churches of Constantinople on both days: Soc. Hist. b. vi., c. 8; and the Apostolic Constitutions, which are supposed to date from an earlier era, also enjoin the keeping of both the Sabbath and the Lord's Day as festivals, "the former as the

memorial of the creation and the latter of the Resurrection." Ap. Con. b. ii. c. 5; and see h. v. c. 20; b. vii. c. 23; b. viii. c. 33. See also Epis. of Barnabas, c. xv.

But at the Council of Laodiceæ, A.D. 363, Christians were not only forbidden to rest on the Sabbath, but on the contrary they were enjoined to work on that day, "preferring the Lord's Day and so resting as Christians,"—and about this time Chrysostom in his 10th Homily on Genesis discerns the fundamental principle of the 4th commandment to be, that we should dedicate one whole day in the circle of the week, and set it apart for exercise in spiritual things: and this, at the present day, is the most generally accepted view of the Christian Church.

#### *Roman Sunday Laws.*

Prior to the time of Constantine the Christian Church was, of course, unable of its own authority to impose its laws on anyone but those who were willing to accept them. But with the conversion of the Emperor Constantine a new era set in, and henceforth in the Roman Empire the State gave a legal sanction to what had theretofore been the custom of a purely voluntary society, and laws for the observance of the Lord's Day which were obligatory, not merely on Christians, but on all classes of the community were from time to time promulgated by Roman Emperors.

The earliest secular law enforcing such observance is that of Constantine, A.D. 321, which enacted that all courts of justice, inhabitants of towns, and workshops were to be at rest on Sunday, but those engaged in agri-

cultural labour were excepted from this law. At this time England was part of the Roman Empire and subject to that law. Other provisions are to be found in the Code of Justinian, bk. iii. tit. 12 (*De Feriis*), which, as they embody the earliest secular laws for the observance of the Lord's Day are here set out in full. Dr. Hoyles, the learned principal of the Law School, having kindly furnished me with a liberal translation, from which I have taken the liberty (with his permission) to rub off the ragged edges.

*"Emperors Constantine and Maximian.*

1. Sincce, O beloved Verinus, you ask our opinion as to whether a like observance of additional holidays such as are customary for Victories should be excluded from the time for the bringing of appeals also.

It has pleased us to answer you so that you may know that in the case of appeals the regular times should be observed without any exclusion of days of this sort, and that there should by no means be any exclusion of days of this sort from the time allowed for bringing appeals.

2. *Enumeration of the Salem (usual?) holidays.*

(Emperor Theodosius.)

It is permitted that on the Lord's Day a son may be emancipated, or a slave given his freedom (manumitted), but that all other business and law suits should cease, and that from the 8th day before the Kalends of July (24th June) up to the Kalends (1st) of August a harvest holiday should be allowed, and from the first of August up to the tenth day before the Kalends of September (23rd

August) liberty should be given to transact business. But from the 23rd August to the 7th (ides) of October a vintage holiday may be allowed.

It is our pleasure that the seven days preceding and following the holy day of Easter and that Christmas Day and the Epiphany, should be kept holy (without disturbance) and that whatever may have been done contrary to this shall be null and void.

3. *Concerning the Lord's Day.*

(Constantine.)

Let all judges and citizens and the practice of all trades (handicrafts) be at rest on the holy Sunday. People, however, living in the country are at full liberty to attend to the cultivation of their (farms) fields, since it frequently happens that not so suitably on another day can corn be put in the furrows, or vines in the trenches, lest by letting slip the proper time the blessing afforded by heavenly providence be lost.

4. *Who Is Permitted to Declare Holidays.*

The same (Constantine) to Severus.

Let no judge presume to think that he can establish any holidays by his own authority. For those which an (inferior) official has proclaimed should not be called imperial holidays, and if they are deprived of the name, they will also be deprived of the authority attaching to the name.

5. *With Regard to Public and Revenue Cases and Bakers' Cases.*

The Emperors Valens, Valens, and Gratianus to Olybrius.

Let your Honour decide public and revenue cases even in the two holiday months, that is without intermission. In bakers' actions also in those times your examination will be valid for the future.

(I.e. Revenue cases and bakers' cases may be adjudicated even in the long vacation when the law courts do not sit.)

6. *Concerning Lent.*

(The 40 days' Season.)

During the 40 days which precede the rites of Easter, all investigation of criminal matters is forbidden.

7. *Enumeration of Regular Holidays.*

We order that all days (except holidays) shall be Juridical days. Those days only should remain holidays which the gracious year has set apart in the twin months for rest from toil, in the summer for assuaging the heat and in the autumn for gathering the harvest.

We set aside also the usual eight days before the 1st of January (Christmas week).

We add the natal days of the mighty cities of Rome and Constantinople, on which litigation should be postponed because in those very cities law took its origin.

We order also that the sacred days of Easter, the seven before and the seven following, should be holidays.

Christmas Day and the day of the Epiphany, and the time when a commemoration of the sufferings of the Master of Christianity is rightly duly and apostolically

celebrated throughout the whole of Christendom, on which most holy days aforesaid we do not allow the exhibition of shows.

In the same category we number the Sundays, which our ancestors rightly named the Lord's Day, as they come round in due order, in which it is necessary to observe the like respect, so that not even among the arbitrators—as to facts themselves, whether summoned by the judge or freely chosen, should there be any investigation of disputes.

On our own special days also—the days of our birth and the days of our accession to the throne. During the 15 days of Easter moreover the collection of market dues and of all public and private debts is postponed.

8. *Concerning the 15 Days of Easter.*  
(The Same Emperors.)

Let all business whether public or private be suspended during the 15 days of Easter.

On these days, however, let all be at liberty to emancipate and manumit, and in respect of these let not transactions be prohibited.

9. As to festal days we decree that the days dedicated to the most High shall not be spent in pleasures, nor profaned by the turmoil of legal proceedings [forced sales]. Accordingly we proclaim that respect shall be paid to the ever reverend Lord's day as here set forth in the following points, viz.: it shall be spared all *executiones*.

No one shall suffer from [the court's] rebuke; no one shall clamour for [exacti fideiussionis] the return of



trust moneys: usher, and crier, and sergeant shall hold their peace; the advocates shall keep aloof; that day shall not know judicial investigations: the harsh voice of the auctioneer shall be stilled; the suitors shall have rest from their wranglings, yea they shall have an interval of time: plaintiff and defendant (*adversarii*) shall come together and in place of wrath their breasts shall be filled with the spirit of forgiveness (*non timentes. . . vicaria pœnitudo*) they shall endeavour to compose their differences.

10. *Concerning Robbers and Isaurians.*

The Emperors Honorius and Theodosius to a Pretorian prefect.

Let the judges in the provinces be warned that in the trial of robbers and especially of Isaurians, they should not consider that any part of the time of Lent nor the venerated Easter Day should be excepted, lest the discovery of criminals' plans be delayed, which must be found out by the torture of robbers, since we may very reasonably expect Divine approval of an act which secures safety and security for the public.

11. *In Regard to Festal Days —In Regard to Sunday.*

(The Emperors Leo and Anthemius.)

It is our pleasure that the holidays dedicated to our august Majesty should not be used in pleasures, nor profaned by any persecution for debt or tax collection.

So also the Lord's Day we decree to be always kept in honour and veneration, and to be free from all judi-

cial prosecutions. Let no punishment afflict any one, nor let there be any calling in of bail, let attendance of lictors cease. Let all summoning cease, let the harsh voice of the crier be silent, let litigants have a breathing space from controversy and have an interval of truce (*fæderis*). Let adversaries meet without fear, let forgiveness instead constrain their minds; let them defer contention; let them speak of concord.

Nor moreover do we relaxing the quiet of this sacred day permit any one to be taken up with obscene pleasure. Let not theatrical plays be performed on that day, nor let there be contests in the arena, or exhibitions of wild beasts; and if the function which ought to be celebrated for our accession or birthday shall happen to fall upon (this day) let it be postponed.

On this day the despatch of troops, or the advertising of the sale of one's patrimony should not take place. If anyone whosoever shall on this hallowed day take part in the games, or if the lictor of any judge, under the pretext of any business either public or private, shall think that the things decreed by this law may be made light of, he shall suffer the forfeiture of his term of military service, "and shall also suffer the confiscation of his patrimony."

From this it will be seen that the only legal proceedings permissible on the Lord's Day and other *dies non juridici* throughout the extent of the Roman empire were the emancipation of children, and the manumission of slaves, though it would seem that contracts, and compromises between parties, were permissible

where no intervention of the courts was necessary. Pleasure was forbidden, the theatre, circus, and exhibitions of wild beasts, were prohibited, as well as business. Even the celebration of the Emperor's birthday, or accession was to be postponed. But Roman laws were in England swept away by the Teuton invaders and we cannot trace the Common law to that source, and the most we can say is that Roman law became a fountain from which our early jurists did not hesitate to draw inspiration in framing rules of decision and promulgating principles of law.

*Saxon Laws.*

After Christianity became the religion of the Saxon invaders of England, the bishops of the Christian Church acquired great influence and authority in the State, and with their advice and concurrence many ancient laws were passed by the Saxon Kings dealing with this matter. Thus in the laws of Wihtræd King of Kent (690-725) it is enacted, "If any esne (*i.e.*, hireling) do any servile labour contrary to his Lord's command from sunset on *Sunday-eve* till sunset on *Manday-eve* let him make a bot of 80 shillings to his lord, and if an esne so do of his own accord on that day let him make a bot of 6 (shillings) to his lord, or his hide." By the eve of Sunday we are to understand the evening of Saturday—so that labour from the sunset of Saturday to the sunset of Sunday was prohibited. This was and is still the Jewish mode of reckoning the Sabbath.\* In the laws of Ine King of the West Saxons (688-725) we read:—

"If a theowman work on Sunday by his lord's command let him be free; and let the lord pay 30 shillings

\*But see R. S. C. c. 153 *infra* p. 72.

as wite. But if the theow work without his knowledge, let him suffer in his hide, or in hide-gild. But if a freeman work on that day without his lord's command let him forfeit his freedom, or 60 shillings; and be a priest doubly liable." In the laws ascribed to Edward and Guthrum, King of Essex (901-924)—we find it provided. "If anyone engage in Sunday marketing let him forfeit the chattel and twelve 'ores' among the Danes, and 30 shillings among the English. If a freeman work on *festivals* let him forfeit his freedom or pay 'wite' or 'lah-slit.' Let a theowman suffer in his hide or hide-gild. If a lord oblige his theow to work on a *festival day* let him pay lah-slit within the Danish law, and 'wite' among the English." Here we notice no distinction is made between Sunday and other festivals. A similar provision against Sunday marketing is found in the laws of Æthelstan (925-960).

In the Ecclesiastical laws of Cnut King of England (1017-1035) we read "Sunday marketing we also strictly forbid, and every folk mote, unless it be for great necessity; and let meetings *and all other worldly works* be strictly abstained from on that holy day." And in his secular laws it is provided, "If it can be helped no condemned man should ever be put to death on a Sunday festival, unless he flee or fight. If a freeman work on a festival day then let him make bot with his healfang and above all earnestly make bot to God so as he may be instructed. If a theowman work let him pay with his hide, or hide-gild according as the deed may be. If a lord compel his theow to work upon a festival day let him forfeit his theow, and be afterwards folk-

free; and let the lord pay lah-slit among the Danes, and wite among the English, as the deed may be to clear himself."

In the laws of Cnut it is also provided that the Sunday festival is to be held from the noon of Saturday till the dawn of Monday: Cnut's Eccl. laws 14. A similar provision is found in the laws of King Edgar (959-975).

*Laws of Edward the Confessor.*

In the constitutions of Edward the Confessor among the days which are set apart as *dies pacis Dei et sanctæ Ecclesiæ*, as distinguished from *Dies pacis Regis*, are *amnibus Sabbatis ab Nava nana, et tota die sequenti, usque ad die lunæ*. By which is meant, Saturday from 3 o'clock p.m. and the whole of the following day until Monday. The laws of Edward the Confessor were expressly confirmed by William the Conqueror in these words, "*Hac quoque præcipio ut amnes habeant et teneant Legis Edwardi in omnibus rebus, adauctis his que constituimus ad utilitatem Anglorum.*" This also I advise that all shall have and hold the laws of Edward in all things in addition to those which we have enacted for the use of the English. The laws of Edward the Confessor were also ratified by Hen. 2: Spel. 81.

It is therefore reasonably clear that prior to the Conquest so far as law could do it Sunday labour, trading and hunting had been prohibited. And it must be equally clear that the setting apart of the Lord's Day was in furtherance of what was believed to be a religious duty and obligation to observe that day as a holy day. And according to the laws of Edward the Elder the same rule

applied to all "festivals" by which was meant the festivals of the Christian church.

(2) *Legislation After the Conquest in Pre-Reformation Era.*

How far these laws or the customs which they originated continued to be operative at, and after the Conquest or became Common law, it may be difficult to say, but it appears that no further attempt at legislation on this subject took place until (1354) 28 Edw. 3. c. 14, (repealed by Imp. Stat. 26-27 Vict. c. 125) which forbids the sale of wool at the staple on Sunday; from which it would appear that the prohibitions of the Saxon laws above referred to against Sunday marketing had fallen into neglect.

The next statute which was passed on the subject was 12 Ric. 2, c. 6, whereby it was provided, "That no servant of husbandry or labourer nor servant or artificer, nor of victualler shall from henceforward bear any buckled sword nor dagger upon forfeiture of the same but in the time of war for the defence of the Realm of England, and that by the surveying of the arreyers for the time being, or travailing by the country with their Master, or in their Master's message, but such servants and labourers shall have bows and arrows and use the same on the *Sundays and holy days*, and leave all playing at tennis or football and other games called coytes, dice, casting of the stone, kailes (*i.e.*, skittles) and other such importune games. And that the sheriffs, mayors, bailiffs and constables shall have power to arrest and shall arrest all doers against this statute and seize the said bucklers, swords and daggers and keep them till the

sessions of the Justices of the Peace, and the same present before the same justices in their sessions, together with the names of them that did bear the same. This Act was repealed by 21 Jac. 1, c. 28, s. 11.

The statute of 11 Hen. 4, c. 4, further provided that offenders against the Act of Rich. 2, shall be subject to imprisonment for six days, and also imposed fines on mayors and others who did not enforce the Act.

These statutes it will be seen expressly authorized the practice of archery on Sundays, although the "importune" games specified were prohibited.

The statute of 12 Ric. 2, c. 6, it will be observed was of limited application, and was directed against servants of husbandry, labourers, servants or artificers, and servants of victuallers, (for that we take must be the meaning of the words "nor of victualler"). The main object of the Act was to prevent these classes of the community from carrying bucklers, swords, and daggers; and as a compensation for their being deprived of the right to bear those lethal weapons, they were to be encouraged in the use of bows and arrows, which they were to use on Sundays, and on which days they were to refrain from the games specified. Bows and arrows were at that time still weapons of war, and the Act would be paralleled in modern times by an Act requiring those against whom it was directed to practise rifle shooting on Sunday; the Legislature having apparently in mind the necessity of fitting men for the defence of their country against possible enemies: see Fortescue's Treatise on Absolute monarchy chap. xii., to be found in Amos' Ed. of Fortescue's *De Laudibus Legum Angliæ*, p. 271.

In the year 1448-9 the 27 Hen. 6, c. 5, was passed, which is still unrepealed. This statute is deserving of notice for its recitals.

"Item, considering the abominable injuries and offences done to Almighty God and to his saints always aiders and singular assisters in our necessities because fairs and markets upon their high and principal feasts, as in the feast of the Ascension of our Lord, in the day of Corpus Christi, in the day of Whit-Sunday, in the day of Trinity Sunday, *with other Sundays* and also in the high feast of the assumption of our Lady, the day of All Saints and Good Friday, *accustomably* and miserably holden and used in the realm of England; in which principal and festival days, for great earthly covetise the people is more willingly vexed, and in bodily labour foiled, (a) than in other ferial days, as in fastening and making the booths and stalls, bearing and carrying, lifting and placing their wares outward and homeward as though they did nothing remember the horrible defying of their souls in buying and selling with many deceitful lyes and false perjury, with drunkenness and stripes, and so specially withdrawing themselves from divine service." The Act then proceeds to prohibit "all manner of fairs and markets in the said principal feasts and Sundays and the four Sundays in harvest except Good Friday" and the showing goods for sale, necessary victual only except, on pain of forfeiture of the goods. The Act also provides that where franchises had been granted aforetime to hold markets on any such days, they might be held on certain other days instead. From all which it would appear that by the time of Henry 6, Sunday

---

(a) Befouled.



marketing had become customary notwithstanding the ancient Saxon laws to the contrary.

(3) *Sunday Legislation in Post-Reformation Era.*

With the Reformation new ideas began to prevail concerning Sunday, and though the primitive church had rather discountenanced the idea that Sunday observance was governed by the Mosaic law concerning the seventh day or Sabbath, yet many of the Reformers rather favoured that idea, and it may be remarked that that view seems to have left its impress on the Prayer Book of the Church of England, which enjoins the recital of the Decalogue at every celebration of the Holy Communion and adds after each commandment including the fourth the petition, "Lord have mercy upon us and incline our hearts to keep this law." And as there is no pretence that any literal compliance with the fourth Commandment is enjoined on Christians, it seems to be assumed that its spirit and intention are sufficiently complied with by a religious observance of the first day of the week in its stead, as Chrysostom of old had contended.

But in the early stages of the Reformation of the English Church this question of Sunday observance was complicated by the idea which for a time prevailed, that by the abolition of Papal jurisdiction over the Church of England, the spiritual power or over-lordship over the Church in England which the Popes had for sometime past exercised had become vested in the Sovereign for the time being, and the Tudor and Stuart Sovereigns assumed rights and powers in this respect which have now been practically abandoned.

Both Edward 6 and Elizabeth, in apparent exercise of their assumed spiritual power, issued what were called Injunctions for the observance of the Lord's Day. Those of Edward 6 issued in 1547 on his accession were as follows:

"Whereas in our time God is more offended than pleased, more dishonoured than honoured upon the holy day (Sunday), because of idleness, pride, drunkenness, quarrelling and brawling which are most used in such days; people nevertheless persuading themselves sufficiently to honour God on that day if they hear mass and service, though they understand nothing to their edifying; therefore all the King's faithful and loving subjects shall from henceforth celebrate and keep their holy day (Sunday) according to God's holy will and pleasure, that is in hearing the Word of God read and taught, in private and public prayers, in acknowledging their offences to God, and amendment of the same in reconciling themselves charitably to their neighbours, where displeasure hath been, in oftentimes receiving the communion of the very body and blood of Christ, in visiting the poor and sick, and in using all soberness and godly conversation."

In addition to the Royal Injunctions of Edward 6 a statute regulating the Feast and Fast Days to be observed was passed in his reign (5-6 Edw. 6, c. 3) hereafter more particularly referred to.

Elizabeth's Injunctions respecting Sunday and other festival days were as follows:

"All the Queen's faithful and loving subjects shall from henceforth celebrate and keep their holy day ac-

ording to God's will and pleasure; yet, notwithstanding, all parsons, vicars, and curates shall teach and declare unto their parishoners, that they may with a safe and quiet conscience, after their common prayer in the time of harvest, labour upon the holy and festival days and save that thing which God hath sent. . . in every parish three or four discreet men which tender God's glory, and his true religion, shall be appointed by the ordinaries diligently to see, that all parishoners duly resort to their Church upon all Sundays and holy days, and there to continue the whole time of the godly service; and all such as shall be found slack and negligent in resorting to the Church having no great or urgent cause of absence, they shall straightly call upon them, and after due admonition, if they amend not, they shall denounce them to the ordinary."

From Gibson's Codex it appears that divers bills on the subject were brought into Parliament in the reigns of Elizabeth and James I. One in 27 Eliz. entitled, "A bill for the better and more reverend observing of the Sabbath Day," (the title seems to indicate its origin) which having passed both Houses (after great disputation) was nevertheless denied the Royal assent; probably as Dr. Gibson says because of Elizabeth's dislike to the Parliament intermeddling in matters of religion. It was in reference to a Bill of a similar character introduced in James' I. reign, that a young member of Parliament named Sheppard made the following flippant speech. "Everyone knows the *Dies Sabbati* is Saturday, but to forbid dancing on Sunday is in the face of the King's book of sports; and King David says, 'Let us praise God

in a dance.' This being a point of divinity let us leave it to the divines, and since King David and King James both bid us dance, let us not make a statute against dancing. He that proposed this bill is a disturber of the peace and a Puritan."

For which, we are told, Mr. Sheppard was expelled from the House as being unworthy to be a member thereof: see Campbell's *Lives of the Chief Justices*, p 309.

It is said that three attempts at legislation on this subject were made in the 3rd, 12th, and 21st years of James I. but without success.

James probably in exercise of his assumed spiritual power in the year 1618 issued a Declaration to signify his pleasure that on Sundays *after divine service* "no lawful recreation should be barred to his good people, which should not tend to the breach of the laws of his Kingdom and the canons of his (*sic*) church." This came to be called "the Book of Sports": The sports allowed were dancing, archery, leaping, vaulting, May games, whitsun-ales, morice dances, and the setting up of May poles. Among the sports excepted as unlawful were bear-baiting, bull-baiting, bowling, and interludes; and those who failed to attend divine service at their parish church were prohibited from taking part in the sports which were authorized. This Royal proclamation is said to have been occasioned by the conduct of some of the Puritan authorities in Lancashire, who, suppressing, instead of regulating, the customary recreations of the common people, had excited much discontent, and increased the influence of Romanists, by giving a repulsive

aspect to the religion of the Church of England. The proclamation was ordered to be read in all Churches, in the diocese of Chester, but the order was not enforced, and the matter was allowed to drop, to be taken up again in the next reign with disastrous results.

Royal Injunctions, as to the observance of the Lord's Day, and Proclamations as to sports to be allowed thereon were all founded on the supposed regal power to make alter, or dispense with laws, which the Tudor and Stuart Sovereigns from time to time assumed to exercise, and the persistence in which ultimately cost James II his throne: see Fortescue's *De Laudibus* (Amos' Ed.), c. xviii., and note p. 60.

In the reign of Charles I, the subject of Sunday observance again occupied the attention of Parliament on several occasions. The first Act of his reign (1625) 1 Char. I, c. 1, being "An Act for punishing divers abuses committed on the Lor.'s Day called Sunday." This Act recites "Forasmuch as there is nothing more acceptable to God than the true and sincere service and worship of Him according to His Holy Will, and that the holy keeping of the Lord's Day is a principal part of the true service of God, which in very many places of this realm hath been and now is profaned and neglected by a disorderly sort of people, in exercising and frequenting bear-baiting, bull-baiting, interludes, and common plays, and other *unlawful* exercises and pastimes upon the Lord's Day; and for that many quarrels, bloodsheds and other great inconveniences have grown by the resort and concourse of people going out of their own parishes to such disordered and unlawful exercises and pastimes,

neglecting Divine service both in their own parishes, and elsewhere." The Act then prohibits such assemblies, meetings or concourse of people out of their own parishes on the Lord's Day, 'within this realm of England or any the Dominions thereof,' for any sports and pastimes whatsoever. It also forbids any bear-baiting, bull-baiting, interludes, common plays or other unlawful exercises or pastimes used by any persons within their own parishes, and offenders are made liable to a fine of three shillings and four pence for the use of the poor of the parish. What is meant by the "other unlawful exercises" does not seem explicable, except by reference to those referred to in James 1's Book of Sports, which was possibly regarded as making unlawful the amusements therein forbidden; 12 Ric. 2, c. 6, having been repealed.

In 1627 another Act was passed, 3 Car. 1, c. 2, "for the further reformation of sundry abuses committed on the Lord's Day commonly called Sunday," which recites that the day "is much broken and profaned by carriers, waggoners, carters, wain-men, butchers and drovers of cattle to the great dishonour of God and reproach of religion," and it provides "that no carrier with any horse or horses, nor waggon men with any waggon or waggons, nor cornmen with any cart or carts, nor wainmen with any wain or wains, nor drovers with cattle shall. . . by themselves or any other, travel upon the said day—upon pain of a fine of 20 shillings—and that if any butcher by himself or any other for him by his privity or consent—shall kill or sell any victual on the said day, he shall be subject to a fine of six shillings and eight pence.

In 1633, by the advice of Archbishop Laud, Charles I published a Declaration similar to his father's "Book of Sports," and enforced the reading of it by the clergy with great severity, which aroused a corresponding degree of indignation and hostility among the Puritan party, which, combined with other causes, contributed to the ultimate downfall of the monarchy. In 1644 the Long Parliament ordered all copies of this Declaration to be called in and burned.

The Long Parliament also occupied itself on this subject and by an Ordinance of 1644, c. 51, directed the Lord's Day to be celebrated as holy, as being the Christian Sabbath. And ordinances of 1650, c. 9, and 1656, c. 15, contained descriptions of so called crimes against the sanctity of the Lord's Day including "vainly and profanely walking"<sup>1</sup> (a)

After the Restoration, Sunday observance again engaged the attention of Parliament, and it is to the reign of Charles 2, a monarch whose reputation for piety is not conspicuous, that we owe one of the principal statutes regarding the observance of the Lord's Day which still remains in force, viz.: 29 Car. 2, c. 7. That Act is expressed to be passed "For the better observation and keeping holy the Lord's Day commonly called Sunday." And it enacts "That all the laws enacted and in force

(a) In The "Blue" or "Bloody" Laws of Connecticut it was provided as follows:—

"No one shall run on the Sabbath Day or walk in his garden or elsewhere except reverently to and from meeting.  
No one shall kiss her child on the Sabbath or fasting days.  
No one shall read Common Prayer, keep Christmas or Saints' days, make minced pies, dance, play cards or on any instrument of music except the drum, trumpet or jewsharp."

concerning the observation of the Lord's Day and repairing to Church thereon, be carefully put in execution, and that all and every person and persons whatsoever shall on 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."

If it is possible for part of an Act of Parliament to become obsolete it would seem that this part of the Act is now virtually so, and that this and all other legislative attempts to make men religious, may be regarded as no longer operative, as being practically unenforcable; it being now generally recognized that it is not the province of a secular legislature to prescribe religious duties, except so far as is absolutely necessary for the peace and good order of the community. But such duties, it is sometimes forgotten, are none the less binding *in foro conscientia*, though the breach of them may not subject the offender to any temporal penalty.

With the other parts of the Act we are now more particularly concerned. It provides "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 charity and necessity only excepted)" and every person being of the age of fourteen years or upwards offending in the premises is to be subject to a penalty of five shillings: s. 1.

The Act also provides "That no person or persons whatsoever, shall publicly cry, shew forth, or expose to sale any wares, merchandizes, fruit, herbs, goods or chat-



tels whatsoever, upon the Lord's Day, or any part thereof" upon pain of forfeiting such goods: s. 1.

Furthermore it provides, "That no drover, horse-courser, waggoner, butcher, higler, their or any of their servants shall travel or come into his, her or their inn, or lodging upon the Lord's Day, or any part thereof, upon pain that each and every offender shall forfeit twenty shillings for every such offence. 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 upon extraordinary occasion to be allowed by some Justice of the Peace of the county, or head officer, or some Justice of the Peace of the city borough or town corporate where the fact shall be committed": s. 2, upon pain of forfeiting five shillings for every such offence.

But the Act provides that nothing therein contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks' shops, or victualling houses, for such as cannot otherwise be provided, nor to the crying or selling of milk before nine of the clock of the morning or after four of the clock in the afternoon": s. 3. Prosecutions are to be commenced within ten days after the offence committed: s. 4.

The Act also provided, "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), and that the service of every such writ, process, warrant, order, judgment, or decree shall be void to all intents and purposes 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, process, warrant, order, judgment or decree at all: s. 6. This last provision is now as far as Ontario is concerned, to be found in R.S.O. c. 324, s. 3.

In the reign of George 2 the Act 24 Geo. 2, c. 23 making changes in the calendar was passed, which Act also contained provisions regarding holidays hereafter more particularly referred to.\*

In the reign of George 3 further legislation took place.

By 21 Geo. 3, c. 49, which recites that whereas certain houses, rooms or places within the cities of London or Westminster, or in the neighbourhood thereof have of late frequently been opened for public entertainment or amusement upon the evening of the Lord's Day commonly called Sunday; and at other houses, rooms or places within the said cities or in the neighbourhood thereof under pretence of enquiring into religious doctrines, and explaining texts of Holy Scripture, debates have frequently been held on the evening of the Lord's Day concerning divers texts of Holy Scripture by persons unlearned and incompetent to explain the same, to the corruption of good morals and to the great encouragement of irreligion and profaneness. The Act then provides that "any house, room or other place which shall be opened or used for *public entertainment or amusement or for publicly debating entertainment on any subject whatsoever*, upon any part of the Lord's Day,

\*See post p. 45.

called Sunday, and to which persons shall be admitted by payment of money, or by tickets sold for money *shall be deemed a disorderly house or place*; and the keeper of such house, room or place shall forfeit the sum of two hundred pounds for every day that such house, room or place shall be opened or used as aforesaid on the Lord's Day to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing or conducting such entertainment or amusement on the Lord's Day, or acting as master of the ceremonies there, or as moderator, president or chairman of any such meeting for public debate on the Lord's Day, shall likewise for every such offence forfeit the sum of £100 to such person as will sue for the same; and every door-keeper, servant or other person who shall collect or receive money or tickets from persons assembling at such house, room or place on the Lord's Day, or who shall deliver out tickets for admitting persons to such house, room or place shall also forfeit the sum of £50 to such person as will sue for the same."

The Act further provides that "any person who shall at any time hereafter appear, act or behave him or herself as master or mistress, or as the person having the care, government or management of any such house, room or place shall be liable to be sued or prosecuted and punished as such notwithstanding he or she be not in fact the real owner or keeper thereof." It also provides that in the case of joint owners or keepers each of them shall be liable.

It also provides that "any house, room or place at which persons shall be supplied with tea, coffee or any other refreshments of eating or drinking on the Lord's Day of any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room or place, or at coffee houses or other houses where the same are usually sold, shall be deemed a house, room or place to which persons are admitted by the payment of money, although money be not there taken in the name of, or for admittance, or at the time when persons enter into or depart from such house, room or place; any house, room or place which shall be opened or used for any public entertainment or amusement, or for public debate on the Lord's Day at the expense of any number of subscribers or contributors to the carrying on any such entertainment or amusement or debate on the Lord's Day and to which persons shall be admitted by ticket to which subscribers or contributors shall be entitled, shall be deemed a house, room or place to which persons are admitted by the payment of money within the meaning of this Act."

The Act also imposes a penalty of £50 for advertising "any public entertainment or amusement or public meeting for debating on any subject whatever on the Lord's Day to which persons are to be admitted by the payment of money, or by tickets sold for money."

Suits for the recovery of penalties under this Act must be brought within six months of the commission of the offence.

And it is also expressly declared that the Act is not to be construed so as to take away, alter or abridge any of

the liberties or immunities to which the Protestant subjects of the Kingdom are entitled under the Act of Toleration (1 W. & M., c. 18).

## 2. Observance by Courts of Days as Non Juridici.

From very ancient times courts of law observed certain days as *non juridici*, i.e., as days on which the courts did not sit and judicial business could not be transacted. This setting apart of certain days as *non-juridici* prevailed in the ancient Roman law, the days when judicial business could be transacted being called "*Fasti*," and those on which it could not, "*Nefasti*." Although, as we have seen, from an early period in the Christian era the first day in the week came to be religiously observed in the Christian Church, yet it would seem in order to beat down the heathen superstition touching the observation of heathen festival days against which St. Augustine (circ. 395) and others wrote vehemently, Christians themselves used all days alike for hearing causes in the Courts Christian, not sparing even Sunday itself, in which as Spelman observes they fell into the other extreme, but he goes on to say that this was not without warrant of Jewish custom, for Philo Judæus in Lib. 3 of his life of Moses, reports that the cause of him that gathered sticks on the Sabbath day (see Numbers xv. 32) was adjudicated on by the Council of Princes, Priests, and the whole multitude on the Sabbath Day, and the Talmudists, and Galatinus the Hebrew, do also show that the Sanhedrim sate in the walls on the Sabbath Day, and solemn festivals, whereas other days they sate in the gates, whatever the distinction may have been,

(Spel. 75). It may be noted that the Courts Christian according to Epiphanius, in his time (circ. 367-402) did hear and determine causes on Sunday, lest Christians, against the rule of the Apostles (1 Cor. vi. 6), should go to law before heathens and infidels, but that in the year 517 it was decreed in a council that *nullius episcopus vel infra positus die Dominico causas judicare (al. ventilare) presumat*. No bishop or inferior person presume to judge or try causes on the Lord's Day. This was affirmed by Adrian Bishop of Rome and was fortified by the imperial decrees of the Emperors Theodosius, Charles, and Ludovicus: Spel. c. 4. But, as we have seen, by Imperial laws secular courts had long before been forbidden to be held on the Lord's Day; and other Christian holy days came to be observed as *dies non juridici* in the courts of the Roman Empire by similar authority. But, as Spelman observes, laws existing in England by Roman or British authority were swept away by the invading Saxons, and any legal foundation for the compulsory observance of Sunday in England would have to be found in the laws of the Saxons, or in legislation after the conquest which has been already referred to.

It may be observed that Courts Christian must, in the first instance, have been in the nature of domestic tribunals, and more like courts of arbitration, and without any coercive jurisdiction. In England in Saxon times there seem to have been no such separate tribunals, and the bishop and the earl or ealdorman sat together in the county court where both civil and ecclesiastical causes were disposed of, and it was not till the time of the Conqueror

and by his ordinance that separate Ecclesiastical courts were established in England, but this is by the way.

*Influence of Ecclesiastical Authority in Prescribing Days as Non Juridici.*

As the Christian Church acquired influence in England its rules and regulations for the observance of Sunday and other days came to be respected and enforced by the secular authorities, and days set apart by the Church in commemoration of important incidents in the life of our Lord, *e.g.*, the Annunciation (25 March); His Nativity, (Christmas Day, 25 December) His Manifestation to the Gentiles (The Epiphany, 6th January); His Crucifixion (Good Friday); His Resurrection (Easter Day and all other Sundays); His Ascension (Holy Thursday); and also days to commemorate His Saints, came to be observed by the courts as days of religious obligation, when people ought not to be called away from what were regarded as religious duties to attend to secular affairs.

It is hardly necessary here to give more than a passing notice to the acts of uniformity of 5-6 Edw. 6, c. 1, and 1 Eliz., c. 2, which essayed to make it compulsory to attend divine service on the Lord's Day, and which are merely illustrations of an endeavour to enforce the performance of religious duties by Act of Parliament, a species of legislation which never has been successful, and which is now to all intents and purposes abandoned as being beyond the province of secular legislatures. But we may note that while certain seasons were set apart as vacations or *dies non juridici* in order to afford op-

portunities for carrying on ploughing, sowing and reaping the fruits of the earth, yet apart from these seasons, days specially set apart which occurred in Term time, were always so set apart on the same grounds that Sundays were set apart, viz., for religious observance.

(2) *re-Reformation Era, (Law Terms).*

From a very early period in English legal history and apparently at least as early as the reign of Edward the Confessor the sittings of the law courts were confined to certain periods of the year called "Terms" in this respect following the precedent of Roman law. The days included in these Terms, with the exception of Sundays and other holy days which might fall therein, were originally the only *dies juridici* in the whole year, and originally even assizes could not be held except during Term time. These Terms were held at stated times in the spring, summer, autumn and winter. Two of them commenced at fixed periods, and the other two were moveable and depended on the date of Easter Day in each year. The inconvenience of confining the sittings of the courts to Term time, as regards the trial of actions, was very early felt and by the statute of Westminster, 3 Edw. 1, c. 51, it was provided, "Forasmuch as it is great charity to do right with all men at all times when need shall be, by the assent of all the prelates it was provided that assizes of novel disseisin, mort d'ancestor, and darrein presentment should be taken in Advent, Septuagesima, and Lent, even as well as inquests may be taken, and that, at the special request of the King made unto the bishops." But it would seem that



before this statute sittings of assize were held within close seasons by express dispensation of a bishop. Spelman gives a copy of three of such dispensations; see also Rymer's *Fœdera*.

As Spelman puts it "although we find not the reason of things done in ancient ages, yet nothing was done against the rules of the Church, without special licence and dispensation." All writs were made returnable in Term when all appearances were required to be made; originally, when pleadings were oral, it was only during Term that they could be made, and as the old Year Books show they were made in a sort of colloquy between the bar and the bench, and the validity of a pleading from a legal standpoint was settled by the judges off hand. But afterwards when written pleadings became the rule, their delivery in vacation was allowed.

Suits in the Common law courts had to be regularly continued from Term to Term by what were technically called "continuances." In *Johnson v. Norton*, 2 Rolles R. 442 Doddridge, J., says, "Terms were instituted to give and distribute justice and the omission of a Term in continuance is a delay of justice."

But this system of Terms and vacations did not apply to the Court of Chancery whose principal business originally was to issue writs of summons returnable in Term time in the courts of Common law, and it consequently was always open. But in cases on its law, or "petty bag" side it appears to have accommodated itself to the usages of the Common law courts: see 129 L.T. Jour. 383.

The law Terms were arranged to take place at such times as the Church and common necessity (for ploughing, sowing and collecting the fruits of the earth) left undisposed of: see Spel. c. vi. They were originally settled by a constitution of Edward the Confessor, affirmed and continued after the conquest by William the Conqueror, and other Kings: see Spel. cc. 9, 10, and 11. They were subsequently altered in some respects by statutes 51 Hen. 3, s. 2; 32 Hen. 8, c. 21; 16 Car. 1, c. 6; 24 Geo. 2, c. 48.

During the Terms the superior courts of law sat *in banc* at Westminster and all proceedings which could only be transacted before the full court were then brought up; writs as we have said were all made returnable on some day in Term, and proceedings which could not be completed within the Term, had to be adjourned until the next Term. In the Year Book 21 Edw. 4, it appears that on account of a plague the courts of law could not sit, and the business was postponed by a *yal writ* until the following Term.

Just before the Restoration, when political affairs were in a state of confusion, it also happened that the courts did not sit in Hilary Term, and one of the first statutes passed in the reign of William and Mary was an Act to remedy the legal difficulties thereby occasioned: see 1 W. & M., c. 4. The courts of law at Westminster could not at Common law pronounce judgments except during Term. And, as we have seen, even during Term, if any recognized Church festival occurred therein, it was a *dies non juridicus*.

Lord Coke says, "*Dies juridici* (except it be in assizes) are only in tearme. And there be also in the tearme *dies non juridici*. As in all the four tearmes the Sabbath Day\* is not *dies juridicus* for that ought to be consecrated to divine service. Also in Michaelmasse tearme the feasts of All Saints and of All Soules; in Hillarie tearme the purification of the Blessed Virgin Mary; and in Easter tearme the feast of the Ascension are not *dies juridici*, but set apart by the ancient judges, and sages of the law for divine service": Co. Lit. 135a. Here he is probably speaking of the way in which the non juridical days occurring during Term had been set apart prior to the statute of 5-6 Edw. 6, c. 3, but at the time he wrote it would seem that the matter was governed by the last mentioned statute, to which, strange to say, he makes no reference. He also says *dies non juridicus sunt dies dominici*, the Lord's Days throughout the whole year so called because the Lord and Saviour of the world did rise again on that day; and this was the ancient law of England, and extended not only to legal proceedings, but to contracts, etc., 2 Inst. 265. He cites the following passage from the Mirror c. 5, s. 1. "Abusion est que tient pleas per Dimenches (i.e. Sabbath dayes\*) ou per outer jours defendus, ou devant le soleil levie, ou noctantre, ou in dishonest lieu."

In the opinion of the author of the Mirror it was an abuse to hold pleas on Sundays or other forbidden doys, or before sunrise, or after dark, or in an unseemly place.

\* Lord Coke was a Puritan and after the custom of Puritans called Sunday "The Sabbath."

From which it is clear that in the time that author wrote there were other *dies non* besides Sundays.

Lord Coke, as we have seen, speaks of these days as having been set apart by the judges themselves for the purposes of religion, no doubt in deference to the Ecclesiastical authorities of the Realm, and probably that is the proper explanation of the observance of *dies non* occurring in Term time by the courts prior to the statute of 5-6 Edw. 6, c. 3. The judges no doubt regarded it as unseemly and, in the early days probably, as an irreligious act to sit on those days, which the Ecclesiastical authorities directed should be kept holy, and accordingly they did not sit, and there was no one to compel them to do so, but whether this can be said to have been Common law is doubtful.

From what is said by Lord Mansfield in *Swann v. Broome*, 3 Burr at pp. 1600-1, and see Tidd's Pr., 8 Ed., 102, it appears that even Sunday was not a *dies non* at Common law, for he says, "writs were formed in those times when the courts of justice might sit on Sundays." He came, in that case, to the conclusion, however, that Sunday was a *dies non juridicus*, but strange to say he also altogether omits to refer to 5-6 Edw. 6, c. 3, hereafter referred to which was the statute making it so. But though the courts of law except courts of assize and nisi prius could not sit out of Term, the judges of the courts were accustomed to exercise a very wide jurisdiction, in interlocutory matters affecting suits and proceedings, out of Term. The origin of these powers is not known. In Chitty's practice vol. 3, p. 19, it is said: "By long established usage each of the judges of the

courts of King's Bench, Common Pleas, and Exchequer has at Common law, and independently of any legislative authority, at his chambers, exercised very extensive jurisdiction over certain minor and practical proceedings, especially irregularities that arise in conducting an action or defence, and this, as well in vacation as during the four Terms. It would be difficult if not impracticable to trace the inception of this practice." And he goes on to suggest that the jurisdiction probably arose as regards matters of course, and trifling questions with which the time of the court could not be taken up in Term, and also as to matters of a subordinate nature in the conduct of proceedings which required to be dealt with without delay, as the setting aside of proceedings irregularly taken, from practical necessity, as otherwise the process of the court would be abused by the delay, and loss would arise if they could not be corrected except by proceedings in Term.

### 3. *Post-Reformation Era (Law Terms, and dies non juridici).*

Up to the time of the Reformation the number of Church Feasts and Fasts were very numerous and by one of the Reformation Statutes the number of days to be observed was reduced to more reasonable proportions. This was effected by 5-6 Edw. 6, c. 3. This Act it may be noted is still unrepealed in England. It was repealed with other statutes by 1 Mary St. 2, c. 2, but this repealing act was itself repealed by 1 Jac. 1, c. 25, s. 8, the effect of which was to revive the 5-6 Edw. 6, c. 3 (see Dwarris, 534-5) and see the Imperial Revised Statutes where it is printed as a statute still in force.

The recital of this statute is curious and interesting. "Forasmuch as at all tymes men be not so myndful to lawde and praise God, so readie to resorte and heare Godd's hollie Worde, and to come to the hollie communion and other lawdable rites which are to be observed in every Christian congregacion as their bowndin dewtie, and to help their infirmitie, it hath been holsomlye provyded that there sholde be some certayne tymes and dayes appointed wherein Christians *should cease from all other kynde of labours* and shoulde applie themselves onely and holie unto the aforesaid hollie workes proprely perteyning unto trewe religion, that is, to heare to learne and to remembre Almighty Godd's great benefits, his manifold mercies, his inestinable gracious goodnes so plenteously poured uppon all his creatures and that of his infinite and unspeakable goodnes without any man's desert." It then proceeds to state that the days set apart for this purpose are called holy days not because the days themselves have any particular sanctity, but on account of the spiritual duties to be performed on such days. That no certain days are prescribed "in Hollie Scripture," but "that the appointment bothe of the tyme and allso of the nombre of the daies is left by the auctortie of Godd's Worde to the liberty of Christe's Church, to be determyned and assigned ordrelye in every countrie by the rulers and ministers thereof; as they shall judge moste expedyent to the trewe setting forth of Godd's glorie and the edification of their people." It then enacts "That all the daies hereafter mentyoned shall be kept and commanded to be kepte hollie dayes and none other," that is to say, 'All Sondaies in the

yere'—and it proceeds to enumerate the following other days. "The Circumcision (1 January), The Epiphany (6 January), Purification of B.V.M. (2 February), S. Mathias (24 February), The Annunciation (25 March), S. Mark (25 April), SS. Philip and James (1 May), The Ascension (a moveable feast), Nativity of S. John Baptist (24 June), S. Peter (29 June), S. James (25 July), S. Bartholomew (24 Aug.), S. Matthew (21 Sept.), S. Michael (29 Sept.), S. Luke (18 Oct.), SS. Simon and Jude (28 Oct.), All Saints (1 Nov.), S. Thomas (21 Dec.), The Nativity (25 Dec.), S. Stephen (26 Dec.), S. John (27 Dec.), Innocents (28 Dec.), Easter Monday and Tuesday, and Monday and Tuesday in Whitsun week, and it then declares "that *none other daie* shall be kept and commanded to be kept hollie daie, or to abstaine from lawfull bodilie labour."\*

This section has been set out at some length for the purpose of showing, as it seems to do, that Sundays stood on no different footing from any of the other days specified; all were intended to be observed in precisely the same way viz., as holy days and by abstaining from bodily labour. It is true no express penalty for their non observance was imposed, then or at any other time except as regards Sunday, at the same time the breach of a statute is a misdemeanour though no express penalty be imposed. After this statute it would seem that whatever had been previously the use or custom of the courts of law as to the special days occurring in Term time to be observed as non juridical days, came to an

\*By the 6th Section works of necessity were permitted on holy days.

end, and from thenceforward the days named in the statute were the only days which could be properly observed as non juridical days, until some different rule had been laid down by statute. Hence, it seems to follow that as any of the specified days even if they fell in Term time were non juridical, so also such of them as fell in vacation would equally be non juridical so as to prevent the holding of courts of assize, or nisi prius on any such days.

By 24 Geo. 2, c. 23 which changed the calendar and altered the legal beginning of the year from the 25 March to 1 January and incidentally, according to the popular clamour of the time, robbed the people of England of 11 days, two other Saints' days were added to the list of holy days, viz.: The Conversion of S. Paul (25 January), and S. Barnabas (11 June). The 5-6 Edw. 6, c. 3, as thus amended by 24 Geo. 2, c. 23, thenceforth became the statutory rule as to the days to be observed in the English courts: see for instance *Harrison v. Smith*, 9 B. & C. 243, where the Feast of the Purification of B.V.M. (2 February) was in question, and held to be a *dies non*: see also *Sparrow v. Cooper*, 2 W. Bl. 1314; *Figgins v. Willie*, 1 W. Bl. 1186. In those cases the court came to the conclusion that *S. Barnabas Day* was not a *dies non*, but there seems to be good reason for thinking that the court came to a wrong conclusion, by reason of its attention not having been called to the fact that that day had been added to the list of holy days by the statute 24 Geo. 2, c. 23. That Act was passed in the year 1750, and it appeared by evidence in *Figgins v. Willie* (which was decided in 1777) that for



thirty-five years past the day had been kept as a *dies non* in the offices of the court; it would seem therefore that ever since the Act of 1750 came into force and for some years prior thereto the day had been observed. When therefore Gould, J., in *Sparrow v. Cooper* says "there is no ground or pretence for it, except a paltry modern encroachment directly in the face of an Act of Parliament of the 5th and 6th Edw. 6th." He and the other members of the court seem to have forgotten that the alleged "paltry modern encroachment" was in fact an Act of Parliament of the same force and validity with that to which Gould, J., referred. But if the case is interesting as showing how judges sometimes inadvertently override statutes, it is also noteworthy as showing what the custom of the court was at the period.

Sir William Blackstone says in the same case, "There are only three days in the year, Candlemas\* the Ascension, and St. John the Baptist, when the court adjourns over and does not sit at all, if those days happen to be in Term time as two of them constantly are." When he says "in the year" his words must be taken to be qualified by the concluding part of the sentence, from which it appears he is referring to days falling in Term time. Even with this qualification Sundays ought clearly also to have been included. It may be observed that the statutory authority for observing the days he refers to as *dies non* was the 5-6 Edw. 6, c. 3, which also includes numerous other days which he does not specify possibly because they did not fall in Term.

---

\*This is merely another name for the Feast of the Purification of B.V.M. (2 February).

If such of the days mentioned in 5-6 Edw. 6, c. 3, as fell during Term time were required to be observed by the full court as *dies non*, it seems to follow as a necessary consequence, that any of the days falling in vacation would have to be similarly observed by judges sitting at assizes.

In England the statutes of 5-6 Edw. 6, c. 3, and 24 Geo. 2, c. 23, so far as they prescribed days to be observed as *dies non* may now be regarded as superseded by Rules of the Supreme Court of Judicature s. 50 which provides "The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, the first Monday in August, Christmas Day and the next following working day, and all days appointed by proclamation to be observed as days of General Fast, humiliation, or Thanksgiving."

From the examination we have made of the past history of the special days observed as *dies non juridici* in England it seems to be clear that Sunday and all other such days were originally set apart for the same purpose, viz.: for religious observance and abstention from bodily labour.

When the statute of Edw. 6 required the people to religiously observe Sunday and the other days specified therein, it is obvious that if the courts were to be open, and people liable to be required to be in attendance, the days could not be religiously observed as the Act expressly declares they are to be. All of the days named in 5-6 Edw. 6, c. 3, and 24 Geo. 2, c. 23, as holy days were *dies non* in England when the Constitutional Act of

Upper Canada introducing English law was passed, and apparently became so in Ontario, and would continue so unless subsequent legislation has made a change. If they did not become *dies non* in Ontario then not even Sunday was a *dies non*, for as we have seen all stood on the same footing in law.

Good Friday, strange to say, was not specifically included in the Act of Edw. 6; or in the Act of Geo. 2, although it had been kept from the first age of Christianity: (see Wheatley C. P., p. 225). But this day as we shall see has been specifically named as a holiday in the various statutes, and rules of the courts, in this Province and would appear now to stand as a holiday on the same footing as other public holidays.

#### *Upper Canada and Ontario Courts.*

Having now given an account of the state of legislation in England regarding the observance of Sunday and other days as *dies non juridici* up to the time of the introduction of English law into Upper Canada in 1792, let us now proceed to consider the subsequent Provincial and Dominion legislation on the subject.

The Act of 34 Geo. 3, c. 2 (U. C.), establishing the King's Bench in Upper Canada, gave the court so established the like jurisdiction as the English Court of King's Bench. It says nothing about the days to be observed as *non juridici*, but it would seem that by the general introduction of English law by the Constitutional Act the days which in the English courts were required to be observed as *non juridici* became *dies non juridici* in Upper Canada until altered by statute.

The ancient English system of confining the sessions of the court *in banc* to the Terms we know was introduced into Upper Canada and prevailed in the courts of Common law for many years, and indeed up to the Judicature Act taking effect in 1881. By 34 Geo. 3, c. 2 (U. C.) the Terms to be observed by the King's Bench were established, and the time for trials of actions was fixed to be in the vacation between Trinity and Michaelmas Terms (s. 17), but in the Home District sittings for trial might be held in Term time, or *within ten days after the end of Easter or Trinity Terms*; and 37 Geo. 3, c. 9 (U. C.), enabled actions to be tried in the Home District at other times than in Term, or within ten days after Easter or Trinity Term. From the recital in 57 Geo. 3, c. 9 (U. C.), it appears that as soon as the King's Bench sat, all commissions of oyer and terminer and gaol delivery in any district were *ipso facto* superseded. That Act therefore provided that sessions of assize commenced before any Term might proceed notwithstanding the sittings in Term. The Terms as fixed by 34 Geo. 3, c. 2 (U. C.) were as follows, viz.: Hilary Term to begin the third Monday in January and end on Saturday of ensuing week. Easter Term to begin the Monday next after 16 April and end on Saturday of ensuing week; Trinity Term to begin the third Monday in July and end on Saturday in ensuing week, and Michaelmas Term to begin the first Monday in October and end on Saturday next ensuing.

These Terms with some slight alterations continued until 1881, and up to that time constituted the only periods in which the Common Law Courts sat in Banc,

except for the purpose of giving judgments, which they were enabled to do by statute: (see 4-5 V. c. 5; 19 V. c. 43, s. 316; C.S.U.C. c. 10, s. 20; and 42 Vict. c. 15, s. 6 (Ont.), and practitioners now alive will remember that rules so pronounced used to be dated, "As yet of . . . . Term," naming the last preceding Term.

The Common law rule as to Terms never applied to the English Court of Chancery which was considered always open. But originally trials in Chancery were conducted in a peculiar manner, the judge who tried the case never saw the witnesses, their testimony was taken from time to time before special examiners, and after a certain period had elapsed, "publication was closed," and no further evidence could be given, except on a special application to the court "to open publication." This system originally prevailed in the Court of Chancery established in Upper Canada, but a reform of Chancery procedure was effected in the Province of Upper Canada in 1857, and the method of examining witnesses before the judge who tried the case, was adopted, and "Terms" for trial of suits, and for re-hearing of causes were established: see Chy. Ords. of 1868, 413, 414. Such Terms for re-hearings were at fixed periods, but the Terms for hearing were at such times as might from time to time be appointed by the judges.

The Provincial Legislature dealt from time to time with the question of days to be observed as holidays. At the time of Confederation there were three statutes bearing on the subject, viz.: C.S.C. cc. 5, and 16; and C.S.U.C. c. 42. The Interpretation Act; C.S.C. c. 5, s. 6, provided that in statutes of the former Province of Can-

ada, the word "holiday" shall include "Sundays, New Year's Day, *The Epiphany*, *The Annunciation*, Good Friday, *The Ascension*, *Corpus Christi*, *S. Peter and S. Paul's Day*, *All Saints Day*, and Christmas Day, and any day appointed by Proclamation for a General Fast, or "Thanksgiving;" but by the Public Revenue Act, C.S.C. c. 16, s. 10, it was provided that the only holidays to be observed by revenue officers were Christmas Day, New Year's Day and Good Friday—not even Sundays being allowed, which appears to be a legislative declaration against the supposed superior sanctity of Sunday. By the Common Law Procedure Act, 1856, it was provided that when the last day for appearance or putting in special bail fell on Sunday, Christmas Day, or Good Friday, then the time was to be extended to the following day or following Monday.

This section it will be seen omitted to provide for all the days which by the C.S.C. c. 5, s. 6, were holidays, or which by C.S.U.C. c. 42, are declared to be non juridical days. Rule xviii. of Hilary Term (1850), appears to be the first rule of court dealing with the subject. This was followed by Rule 146 of Trin. Term (1856). The latter rule which had the force of a statute provided that the offices of the courts were not to be open on Sundays, Christmas Day, Good Friday, Easter Monday, New Year's Day, the birthday of the Sovereign, and any day appointed by public proclamation as a General Fast, or Thanksgiving. In the Chancery Orders of 1868 Ord. 424, a similar rule was laid down for the offices of the Court of Chancery. But when a rule of court or statute provides that the offices of the court are not to be open

that is inferentially a direction that the courts shall not sit on such days, because the offices of the court are in contemplation of law part of the court itself, and it is a mere matter of convenience that the duties of different officers are carried on in different rooms. As Blackstone, J., remarked in *Sparrow v. Cooper*, "the officer of the court is supposed to be every day in court, sitting at the feet of the Chief Justice, and affixing the seal of the court to all judicial writs which are witnessed at Westminster in the name of the Lord Chief Justice. The suffering him to do this in a private chamber, is a mere indulgence, convenient to the court, the suitor, and the officer, and therefore connived at, *but the supposition of law is otherwise.*"

Rule 146 did not include many of the days declared "holidays" by the Con. S. C. c. 5, s. 6. It omitted "The Epiphany," "The Annunciation," "The Ascension," "*Corpus Christi*," "St. Peter and St. Paul's Day," and "All Saints' Day," and it did not include Ash Wednesday which by statute had been declared a "non juridical day" in Upper Canada.

By the Bill of Exchange and Promissory Notes Act, C.S.U.C. c. 42, s. 17, "*for the purposes of the Act,*"\* "Sundays, Christmas Day, Good Friday, Easter Monday, Ash Wednesday, and any day set apart by Royal Proclamation for fasting or thanksgiving, the birthday of the reigning sovereign, and the 1st day of January," were declared to be "non juridical days." As regards "Christmas Day" and "Good Friday," Rose, J., was of opinion that the statute was merely declaratory of the Common law: see 20 Ont., p. 503. By s. 18 it is further

\*See somewhat similar phraseology in *The Bills of Exchange Act*, (R.S.C. c. 119), s. 43.

provided: "All other days shall be deemed and taken to be juridical days." But "a juridical day" is a day on which justice may be dispensed, and a "non juridical day" is a day on which it may not be dispensed. So that unless some different meaning can be given to the words "juridical" and "non juridical" in this Act, it is hard to see how the days in question can have been made non juridical merely and solely "for the purposes of the Act." It may also be noted that the 18th section is *not expressly limited, as is the preceding section* by the words "for the purposes of this Act;" but nevertheless it might possibly be considered as subject to that limitation; as was said by Pickford, J., "when there are two sections dealing with the same subject matter, one section being unqualified, and the other containing a qualification, effect must be given to the section containing the qualification: *Moss v. Elphick*, 1910, 1 K.B. at p. 468. On the other hand it may be asked "How can a day be juridical merely for the purposes of bills and notes; are the courts to be open for the trial of all other actions except those relating to promissory notes and bills of exchange?" Such an idea seems untenable. It is therefore doubtful whether this enactment, although contained in the Bills of Exchange Act, was not general in its effect, and inferentially made the days named in the preceding section non juridical days for all purposes, and was thus in effect a repeal of the provisions of the statutes of 5-6 Edw. 6, c. 3, and 24 Geo. 2, c. 23, as regards holy days, so far as they had previously applied to Upper Canada. The compilers of the R.S.O. of 1877 (the first revision made after Con-



federation), seem to have come to the conclusion that s. 18 related solely to Bills of Exchange, etc., and forbore to include it in R.S.O. 1877 (as being a matter within Dominion control); and so far therefore as the Province of Ontario is concerned, it has never been repealed: (see the schedule to R.S.O. (1877); but see R.S.C. (1887), p. 2324.) The question whether or not C.S.U.C. c. 42, ss. 17, 18 are still in force, is material only in view of the dictum of the Chancellor in *Foster v. Toronto Railway* hereafter referred to, as to Sunday being now the only non juridical day in Ontario, and as regards Ash Wednesday.

If the statutes and rules which have been referred to had not the effect of repealing the statutes of 5-6 Edw. 6, c. 3, and 24 Geo. 2, c. 23, so far as they affect the question of juridical and non juridical days, 5-6 Edw. 6, c. 3, is nevertheless now repealed by 2 Edw. 7, c. 13, s. 4 (Ont.), whereas 24 Geo. 2, c. 23, is still operative: see R.S.O., vol. 3, sched. C., p. 3915—except to the extent that it may be modified by Provincial Statutes or rules of court.

Those statutes (5-6 Edw. 6, c. 3, and 24 Geo. 2, c. 23) appear to have been clearly the statutes which governed the English courts at the time of the introduction of English law into this Province, and until repealed, as regards Ontario must be taken to have governed the Provincial courts.

By 7 Edw. 7, c. 2 (Ont.), s. 7 (16), the following days are declared to be holidays, viz.: Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday, or the day fixed by the proclamation of the

Governor-General for the celebration of the birthday, of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, and any day appointed by proclamation of the Governor-General or the Lieutenant-Governor as a public holiday, or for a General Fast, or Thanksgiving. If any other holiday falls on a Sunday, the next following day is to be a holiday in lieu thereof.

By Ont. Judicature Rule 9 the offices of the court are exempted from being opened on "holidays."

It is nowhere declared by any Provincial statute whether or not "holidays" are to be non juridical days, unless the Bills of Exchange Act (C.S.U.C. c. 42, ss. 17, 18) above referred to had that effect. It is submitted, however, that it is the intention of the Legislature that all days named as "holidays" should be observed as non juridical days, except, perhaps, only in cases of necessity.

By the Dominion Act, R.S.C. c. 1, s. 34 (11), in all Dominion Acts the word "holiday" includes:—

- |   |                  |
|---|------------------|
| *Sundays.   | All Saints Day.† |
| *New Year's Day.  | Conception Day.† |
| *The Epiphany.  | Easter Monday.*  |
| *Good Friday.   | Ash Wednesday.   |
| †The Ascension.   | Christmas Day.*  |
| *Birthday, or day appointed for celebrating the birthday of reigning Sovereign. |                  |
| *Victoria Day.  | Dominion Day.*   |
| *Labour Day (first Monday in September).  |                  |
| *Any day appointed by proclamation for a General Fast, or Thanksgiving.         |                  |

\*These days are also declared to be non juridical days by *The Bills of Exchange Act* (R.S.C. c. 119, s. 43).

†These days also are non juridical days, but only in Quebec: *Ib.*

This list which is not chronologically arranged, includes eight church festivals and two church fasts by name, and also a number of other days, which have no religious signification to any class of the community. This statute would, however, appear only to apply to Dominion Courts, Dominion officials, and matters within the legislative control of the Dominion Parliament, and would therefore have no operation as regards the Supreme Court of Judicature for Ontario or either of its Divisions, or any other Provincial Courts in Ontario, or in any other Province.\*

In the selection of days to be observed as holidays the old deference to the holy days of the Christian Church has been very largely abandoned. At the same time some of the days named both by the Dominion and the Provincial Statutes as holidays are the same as were included in the statute of Edw. 6 and, probably, out of respect for the religious predilections of large portions of the community. Nevertheless we cannot but admit that as far as the Ontario and Dominion Legislatures are concerned they prescribe no way in which the holidays or any of them are to be observed. Sunday labour and business is prohibited by both Provincial and Dominion legislation. Whether the introduction of the English laws by the Provincial Legislature had the effect of introducing any of their strictly religious provisions, or not, our legislatures both Provincial and Dominion would probably disclaim any power to make any such enactments, except from an economic standpoint. For instance, could anybody be successfully prosecuted for not applying themselves to the observation of the Lord's Day "by exercis-

\*But see note on p. 55.

ing themselves thereon in the duties of piety and true religion publicly and privately," contrary to the provisions of 29 Car. 2, c. 7, s. 1 in that behalf? Had the Legislature of Upper Canada, (a) or has that of Ontario any authority to make any such enactment? The B. N. A. Act appears to confer no such power on either the Dominion, or the Provincial Legislatures.

If that be so, Sunday must stand on the same footing, as any other statutory holiday in Ontario, and as far as the statute law is concerned it seems unwise for courts of law any longer to place the observance of the Lord's Day on any ecclesiastical or religious ground. It must suffice that that day, and the other specified days, are by law declared to be public holidays, and due effect should be given by the courts of law to that enactment. Although it be true that the Legislature has prescribed some of these days as holidays out of deference to the religious sentiments of the people, or some considerable part of the people; at the same time it would be an unsafe and unwise rule for courts to enter into the religious aspect of the matter, or to say that the courts may sit on some of such days, and not on others, because some are considered more holy or sacred than others. A seventh day Baptist, or a Jew, may regard Sunday as less sacred than Saturday, and some Roman Catholics or Anglicans may regard Good Friday and Christmas Day as more sacred than Sundays. If the sittings of the court on public holidays were to be regulated by the individual views of judges as to the relative sacred-

(a) See The Quebec Acts, 14 Geo. 3, c. 33, s. 15, and 31 Geo. 3, c. 31, s. 42.

ness of the day, it might lead to an endless variety of opinions, with the result that the holidays prescribed by statute would cease to be holidays. The only safe and reasonable rule therefore appears to be, to hold that all of the days specified by statute as holidays are *dies non juridici*, and no one ought to be required, either as judge, counsel, litigant, or official, to sacrifice the day to attendance on any secular court whatever, except in cases of real necessity.

It is needless to say that the days declared to be public holidays cannot be observed as holidays if the courts are to be open and business carried on as on ordinary days.

In *Regina v. Murray*, 28 Ont. 549, the validity of a commitment for trial made by a magistrate on a public holiday (Dominion Day), was in question and was upheld, although MacMahon, J., conceded that if the prisoner had been tried and convicted on that day it would have been a nullity. All public holidays, in his opinion, being *dies non juridici*. The same learned judge had expressed the same view in the previous case of *Brunker v. Mariposa*, 22 Ont. 120.

In *Foster v. Toronto Ry.*, 31 Ont. 1, a different conclusion was reached. There the lawfulness of holding a court for the trial of an action on Good Friday was in question. It appeared that both litigants, and the jury, had consented to that course, but whether the sheriff and other officials were equally agreeable is not stated, and was probably considered of no moment. If the court had no jurisdiction to sit, consent of parties could

not give it jurisdiction. (a) At the same time, as may be supposed, the objection to the legality of the proceeding did not come with a very good grace from one of the consenting parties. Such considerations may have insensibly weighed with the court and inclined it to be astute in finding reasons for supporting the judgment impeached. At all events, however that may be, the learned Chancellor in delivering the judgment of the Divisional Court said:—

“No doubt in England there are many days canonically declared to be *dies non juridici* the same as Sunday; but in this country *the only day on which no judicial act can be validly done, is the Lord's Day or Sunday. This does not result from its being a statutory holiday, but because it is dies nan juridicus as declared by early canons of the Church adapted or confirmed by the English Kings and so incorporated into the Common law, and as such introduced into this Province by its first colonization and constitution. Christmas, Good Friday and the like are holidays by statute, but they are not on the*

(a) It might be said that if a court may validly sit on a *dies non* in case of necessity, there is not a total absence of jurisdiction to sit, but only a modified incapacity which a consent would be sufficient to remove: but though conceding that perhaps a court may validly sit on a *dies non* in cases of necessity, it is submitted the necessity must appear, by the very nature of the judicial act, that it was a matter of necessity. *Swann v. Broome* which went to the House of Lords, and is therefore a case of the highest authority, decided that a judgment pronounced on a Sunday in a civil action is not a mere irregularity, but a nullity, and it is submitted that the same rule must apply to all, other *dies non*—a judicial act of obvious necessity—such as the granting of an interim injunction to restrain an irreparable wrong might be justified, but the trial of an injunction action on a Sunday or other *dies non* might be wholly nugatory, even though it take place by consent.

same footing as to separateness from ordinary or secular work as the Lord's Day, nor are they regarded as religious occasions by a great part of the population."

It is submitted, however, that at the time when English law was introduced into Upper Canada, the observance of Sunday as *dies non juridicus* did not rest on any canonical law "adopted and confirmed by the English Kings and so incorporated into the Common law;" but on the contrary it rested on the statute 5-6 Edw. 6, c. 3 above referred to, and so far from Sunday standing on some supposed different footing to Christmas Day as to separateness from ordinary or secular work, a reference to the statute will show that that position is quite untenable, and that Sunday and all other days enumerated in the statute stand, both as regards religious observance, and abstention from ordinary bodily labour, on precisely the same footing; and in the English courts it would seem that the other days enumerated in the statute of Edward 6 were just as much *dies non juridici* as Sundays: *Harrison v. Smith*, 9 B. & C. 243. To say that a day is *dies non juridicus* and yet that courts may validly sit on such days (except in cases of real necessity) seems to be a contradiction in terms. If the courts may validly sit on a given day as on ordinary days, then the day is not *non juridicus*. But when a day is appointed by statute to be observed as a public holiday is it not clearly the intention of the Legislature that the day shall be set apart from ordinary business, and that public courts shall not be carried on as on other days? It would be a farce to say that a day is to be a public holiday, and yet that the courts of law are to be open and business carried on as on other days.

The learned Chancellor further remarked that "Special reasons exist for the observance of Sunday as a holy day founded on the Divine law which are not by all considered applicable to other days, especially in a country where there is no church by law established." From this it might be inferred that in the opinion of the learned Chancellor there is a general consensus of opinion that the religious observation of Sunday is founded on "the Divine law." But the whole Jewish community and the Seventh Day Baptists would write in declaring that there is no such Divine law, for the religious observance of Sunday; and many well instructed Christians might also be unable to admit that even the universal custom of the Christian Church, though fortified by Imperial decrees, and Acts of Parliament, can properly be elevated to the dignity of a Divine law. Indeed, it is said that the very ground for passing the post-Reformation statutes to compel the observance of the Lord's Day was because of questions mooted at the time as to the Divine, or merely human, institution of the day as a holy day.

But then the learned Chancellor says that Lord Mansfield "who respected the sanctity of the Lord's Day" sat on Ash Wednesday and threatened also to sit on Good Friday.

This remark would only be pertinent to the matter, if those days had been specifically named in the statutes of 5-6 Edw. 6, c. 3, or 24 Geo. 2, c. 23, as days of religious obligation, but they were not. Neither "Ash Wednesday" nor "Good Friday" are specifically mentioned in those Acts, and there was no statute or law in England preventing Lord Mansfield or any other judge



from holding his court on those days. Although Rose, J., seems to have thought that Good Friday was a *dies non* at Common law: see 20 Ont. 503, but even if it were, the statute of 5-6 Edw. 6, c. 3, would appear to have abrogated it, for that act declares that the days specified and none other are to be observed.

Lord Mansfield in *Swann v. Broome*, 3 Burr. 1595, it may be noted, practically denies that Sunday was a *dies non* at Common law, because he says when the writs were originally framed the courts sat on Sundays.

The statement of the law in *Freeman on Judgments*, 4th Ed., 138, that, "Holidays other than Sundays are not non judicial days unless expressly made so by statute, and judgments rendered thereon are valid," for which he quotes several decisions of courts in the United States, may be sound; but when a statute declares specified days are to be "holidays"; and a Rule of Court which is equivalent to a statute directs the offices of the court to be closed on "holidays," the statutory authority for making such days non juridical in this Province seems actually to exist.

Good Friday, as far as the courts of this Province are concerned, stands on the same footing as New Year's Day, Labour Day, etc. But although it must be conceded that the Legislature does not pay the same deference as the Parliament of England did to the views of ecclesiastical authorities as to the days which should be set apart as holidays; still the naming of Good Friday (a distinctly ecclesiastical designation of a particular Friday) as a public holiday may fairly be said to indicate that it is made a holiday out of deference to the reli-

### LEGAL PROCEEDINGS ON DIES NON.

gious wishes of a certain class of people and to enable such people of the Province as do desire to observe it religiously, to do so: and if the courts of law were to say that they would carry on business on that day as usual, it would be tantamount to saying to that class of the community, "although the law has declared this day to be a public holiday, we will prevent you enjoying it as such." Such an attitude, however, would appear to be an unjustifiable interference with the religious freedom of others.

#### *Legal Proceedings on Days Non Juridici.*

By R.S.O. c. 324 (29 Car. 2, c. 7, s. 6), no writ, process, warrant, order, judgment or decree can be served or executed on the Lord's day (except in cases of treason, felony, or breach of the peace) and any such service is void, and the person serving or executing the same is liable in damages as if he had done the same without any writ, etc. This provision has been held to have the effect of excluding Sunday where it falls on the last day for giving notice in legal proceedings: see *Reg. v. Middlesex Justices*, 17 L.J. (M.C.) 111; *Milch v. Frankau* (1909) 2 K.B. 100, and a notice given on the next following juridical day is in time.\* An affidavit of debt and a writ issued on Sunday were held to be irregular: *Hall v. Brush*, T.T. 3-4 Vict. (U.C.) Query if they were not a nullity?

A judgment pronounced or entered on a Sunday is a nullity *Swann v. Broome*, 3 Burr. 1595, affirmed in the

\*Modern rules of procedure usually exclude all Sundays and other holidays in the computation of time for legal proceedings.

64 LEGAL PROCEEDINGS ON DIES NON.

House of Lords, 6 B.P.C. 333. It would seem to be equally null if pronounced on any other *dies non*: *Harrison v. Smith*, 9 B. & C. 243. But according to Spelman (who wrote before the statute 29 Car. 2) certain proceedings might always have been validly taken on a *dies non juridici*, e.g., proceedings against criminals (traitors, thieves and notorious offenders). So also acknowledgments of fines and recognisances might be taken on such days in cases of necessity, so also the bringing of appeals when right would otherwise be lost. So also the taking of the testimony of a witness whose evidence might otherwise be lost. So also proceedings in Admiralty Courts in cases of emergency. Spelman Orig. of Terms, c. 3.

The Court of Chancery was never bound by the common law Terms, but I have been unable to find any case in which the validity of an interim injunction granted on the Lord's Day has been in question; such a case has arisen in the United States and the validity of the injunction has been upheld: *Langabier v. Fairbury*, P. & N. Ry. Co., 64 Ill. 243.

In Ontario a coroner's inquest held on Sunday was held to be a nullity: *Re Cooper*, 5 P.R. 256.

In Manitoba a preliminary inquiry held before a magistrate on a Sunday was held to be a judicial proceeding, and null and void. *Reg. v. Cavalier*, 1 C.C.C. 34; 11 Man. R. 333. But the filing on a Sunday of an information for breach of a statute has been held valid: *Bedoe v. Alpe*, Sir W. Jones, 156.

As already pointed out a Divisional Court (*Foster v. Toronto Ry.*, *supra*) has expressed the opinion that the only *dies non juridici* in Ontario are the Sundays

throughout the year. The point actually decided in that case, however, was that a trial by consent of parties on Good Friday and a judgment pronounced on that day is valid. MacMahon, J., had previously come to the conclusion that all holidays appointed by statute are *dies non*: and judicial proceedings on such days are invalid: *Reg. v. Murray*, 28 Ont. 549.

### 3. Constitutional Proceedings on Sunday.

Parliament has occasionally sat on Sunday: see statute of 34 Edw. 3, which is recited to have been made on a Sunday; but such sessions are usually held only in cases of great emergency, as for example on the demise of the Crown; but, in recent years, divisions in the House of Commons have sometimes taken place early on Sunday morning; for instance, the Cattle Plague Bill passed its third reading at 20 minutes to 1 o'clock on Sunday morning, February 10, 1866; see Justin McCarthy's *Hist. of our own Times*, vol. 2, c. 53, p. 371; and it is said a question as to the legality of the Dominion Parliament sitting on Sunday was raised by the member for West Elgin in the spring of 1896, and its legality affirmed.

A very momentous event in the constitutional history of England also took place on a Sunday, for it was on that day that James I. summoned all the judges to Whitehall to know what they would say against Archbishop Bancroft's proposal, that the King should judge whatever causes he pleased in his own person, free from all risk of prohibition or appeal; when Lord Chief Justice Coke on their behalf made the memorable declaration, "That by the law of England the King in his own per-

son cannot judge any case, either criminal, or treason, felony, etc., or betwixt party and party concerning his inheritance, or goods, but these matters ought to be determined in some court of Justice." Campbell's Lives of the Chief Justices, p. 271.

On Sunday several coronations have taken place, *e.g.*, Henry 1 was crowned on Sunday, 5 Aug., 1100; Henry 2 on Sunday, 19 December, 1154; Henry 5 on Sunday, 19 April, 1413; Richard 3 on Sunday, 6 July, 1483; Henry 7 on Sunday, 30 Oct., 1485; Henry 8 on Sunday, 24 June, 1509; Mary on Sunday, 1 Oct., 1553; and Elizabeth on Sunday, 15 January, 1559.

#### 4. Provincial Legislation as to Lord's Day Observance.

By the Constitutional Act of Upper Canada of 1792, the Imperial Statutes above referred to relating to the Lord's Day were made part of the law of Upper Canada, but it is doubtful whether they were adopted in their entirety, and whether any provisions therein contained requiring people to exercise themselves in the duties of piety and true religion publicly and privately or to attend church, ever had any statutory effect in this Province. It would certainly be a difficult matter to enforce any such provisions. How far the Imperial Statutes regarding the observance of the Lord's Day remain in force in Ontario will be hereafter considered.

In 1845 the Legislature of Upper Canada by 8 Vict. c. 45 (U.C.) made further provisions "to prevent profanation of the Lord's Day" in that Province.

By that statute (8 Vict. c. 45) afterwards consolidated as C.S.U.C. c. 104, which recites, "Whereas it is expedient to enact a law against profanation of the Lord's Day, commonly called Sunday, which day ought to be duly observed and kept holy," it is provided,—

1. It is not lawful for any merchant, tradesman ["farmer" was introduced by 59 V. c. 62 (Ont.), but that Act appears to be *ultra vires*], artificer, workman, labourer or other person whatsoever on the Lord's Day to sell or publish, show forth, or expose or offer for sale or to purchase any goods, chattels, or other personal property, or any real estate whatsoever or to do or exercise any worldly labour, business or work of his ordinary calling, (conveying travellers or Her Majesty's mail, by land or by water, selling drugs and medicines, and other works of necessity, and works of charity, only excepted) : see R.S.O. c. 246, s. 1).

2. It is not lawful for any person on that day to hold, convene, or to attend any public political meeting or to tittle or allow or permit tipping in any inn, tavern, grocery or house of public entertainment, or to revel or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance or annoyance to Her Majesty's peaceable subjects: (see now R.S.O. c. 246, s. 2).

3. It is not lawful for any person on that day to play at skittles, ball, football, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot or on horseback, or in carriages, or in vehicles of any sort: (see R.S.O. c. 246, s. 3).

4. Except in defence of his property from any wolf or ravenous beast or bird of prey, it is not lawful for any person on that day to go out hunting or shooting or in quest of, or to take, kill, or destroy any deer or other game or any wild animal, or any wild fowl or bird, or to use any dog, game, rifle, or other engine, net or trap for the abovementioned purpose: (see R.S.O. c. 246, s. 4, and 63 Vict. c. 49, s. 6).

5. It is not lawful for any person on that day to go out fishing, or to take, kill or destroy any fish, or to use any gun, fishing rod, net or other engine for that purpose: (see now R.S.O. c. 246, s. 5).

6. It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated city or town, or within the view of any place of public worship, or private residence: (see R.S.O. c. 246, s. 6).

For any offence declared to be unlawful a fine not exceeding \$40 or less than \$1 may be imposed with costs: (see R.S.O. c. 246, s. 10, and *Ib.* s. 11, as to application of penalties).

It is also provided:—

8. All sales and purchases, and all contracts and agreements for sale or purchase of any real or personal property whatsoever made by any person or persons on the Lord's Day shall be utterly null and void: (see now R.S.O. c. 246, s. 9). C.S.U.C. c. 104 has been from time to time purported to be amended, revised and consolidated by the Legislature of Ontario; but the result of the decision of the Judicial Committee of the Privy Council in the case of *Atty.-General v. Hamilton St. Ry.*,

1903, A.C. 524,\* would appear to be, that the Act with the exception of s. 8 dealt with matters beyond the legislative competency of the Provincial Legislature, and therefore that all amendments, revisions and consolidations of C.S.U.C. c. 104 by the Provincial Legislature were *ultra vires*, and with the single exception of s. 8, which is now found in R.S.O. c. 246, s. 9, the Act is still in force in its original shape and unaffected by any subsequent Provincial legislation, except as abovementioned: *Rex v. Yaldon*, 17 O.L.R. 179; 13 Can. Cr. Cas. 489.

After Confederation two other Acts were passed by the Ontario Legislature, (1) 48 Vict. c. 44, forbidding Sunday excursions by steamboats and imposing a penalty of \$400 for its breach: (see R.S.O. c. 246, s. 7); and (2) 60 Vict. c. 14, s. 95, forbidding street railways and electric railways from operating their cars for passenger traffic on Sundays, but not imposing any special penalty for its breach: (see R.S.O. c. 246, s. 8).

In the consolidation of these Acts with the original Act of Upper Canada, the penalty imposed by the principal Act became applicable to these additional offences, apparently in addition to the special penalty imposed by 48 Vict. c. 44 (Ont.); but these two additions to the original Act of Upper Canada have been held to be inoperative.

In the case of *The Attorney-General (Ont.) v. Hamilton Street Railway* (1903), A.C. 524; 89 L.T. 107, the

\*Notwithstanding this decision it has been held in Quebec that a Provincial Act (7 Edw. 7, c. 42) of that Province passed after the enactment of R. S. C., c. 153, but before it came into force, imposing a penalty for Sunday trading was *intra vires* of that legislature: *sed quare*.



Judicial Committee of the Privy Council held that the amendments made to the original Act of Upper Canada were *ultra vires* of the Legislative Assembly on the ground that they purported to make the acts thereby forbidden criminal offences, and were thus an invasion of the exclusive jurisdiction of the Dominion Parliament as regards criminal law: B.N.A. Act s. 91 (27). The clauses above referred to, regarding steamboats and street railways and electric railways, would, therefore, appear to be null and void: but so much of the statute R.S.O. c. 246 as deals with matters within Provincial jurisdiction appears to be unaffected by this decision.

The only section of R.S.O. c. 246 therefore which appears to be plainly within the Provincial jurisdiction is "s. 9. All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever made by any person or persons on the Lord's Day shall be utterly null and void." All the rest of the Act exclusive of ss. 7 and 8 which are held to be *ultra vires*, and except the word "farmer" in s. 1 is, however, contained in C.S.U.C. c. 104 which has never been effectually repealed and therefore remains in force *proprio vigore*: *Rex. v. Yaldon, supra*, the Dominion Act to be presently referred to providing that nothing therein contained is to affect it.

## 5. Municipal Elections and Legislation.

### (a) Municipal Elections.

Notwithstanding New Year's Day is a public holiday, by statute, *The Consolidated Municipal Act* (3 Edw. 7, c. 19) s. 95a, provides that cities of over 100,000 may

pass by-laws for holding the general municipal elections on that day, unless it falls on Sunday, in which case the elections are to be held on the following day. This would seem to indicate that, but for such legislation it would not be lawful to hold a public municipal election on a day appointed by the Legislature to be observed as a holiday.

In reckoning time for the purposes of ss. 137-201, of *The Consolidated Municipal Act* (3 Edw. 7, c. 19), Sunday, and any day set apart for a public holiday, fast, or thanksgiving, is to be excluded: 3 Edw. 7, c. 19, s. 203.

(b) Municipal By-laws as to Sunday Observance.

By *The Consolidated Municipal Act*, 3 Edw. 7, c. 19, s. 576 (5) power is given to cities and towns to make by-laws for acquiring parks, etc., and, "for the management of the farm, park, garden, walk, or place for exhibition buildings." And under this enactment it was held that a by-law providing that no person shall on the Sabbath Day in any public park, square, garden, etc., in the city publicly preach, lecture or declaim, was valid; and was not bad for uncertainty as to the day of the week intended by reason of the use of the term "Sabbath Day": *Re Cribbin v. Toronto*, 21 Ont. 325.

A by-law of a municipality requiring all billiard rooms to be closed from 8.30 p.m. on Saturday until 7 a.m. on the following Monday was held to be valid, and no contravention of Dominion jurisdiction: *Fisher Carman* (Man. 1905), 41 C.L.J. 622; and under s. 583 (34) of the Ontario Municipal Act, 1903, which enables a municipality to pass by-laws for regulating victualling houses,

a by-law providing that they should be closed between 2 p.m. and 5 p.m. on Sunday, and from 7.30 p.m. on Sunday till 5 a.m. on Monday was upheld: *Re Karry and Chatham*, 20 O.L.R. 178; 21 O.L.R. 566 (Meredith, J.A., dissenting); *Re Campbell v. Stratford*, 14 O.L.R. 184.

But a Municipal by-law exceeding the Provincial law as to Sunday observance, by enlarging its scope, by extending it to classes not included in its provisions, has been held *ultra vires*, *Reg. v. Petersky*, 1 C.C.C. 91; 5 B.C.R. 549; *Re Lambert*, 4 C.C.C. 533; 7 B.C.R. 396.

#### 5. Dominion Legislation as to Lord's Day Observance.

In 1906 the statute 6 Edw. 7, c. 27 (now R.S.C. c. 153) was passed. That Act makes criminal certain acts committed on the Lord's Day, which, according to the Act, begins at midnight on Saturday, and ends at midnight on Sunday.\*

It does not prohibit the running of passenger trains on railways under Dominion control, nor on railways under Provincial control, unless the latter class of railways are prohibited by provincial authority from so doing.

It makes unlawful, the selling or offering for sale of personal property or real estate, or the carrying on or transacting any business of a person's ordinary calling, or in connection with such calling, or "for gain to do, or employ any other person to do on that day *any work, business or labour.*" It makes it unlawful "except in cases of emergency" to require any employee engaged

\*See *supra* p. 16.

in the work of receiving, transmitting or delivering telegraph or telephone messages, or in the work of any industrial process, or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour; but this provision does not apply to any employee engaged in the work of any industrial process, whose regular day's labour is not more than eight hours. The Act also makes it unlawful, (except as provided by any Provincial law now or hereafter in force), for any person to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat or to provide, engage in, or be present at, any performance, or public meeting elsewhere than in a church at which any fee is charged, directly or indirectly either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat; and charges for conveyance to any such meeting or performance are to be deemed an indirect payment of a fee for admission thereto.

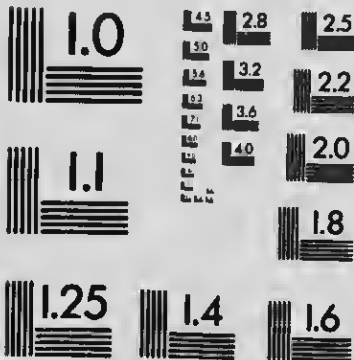
It is also unlawful (except as provided by any Provincial Act) for any person on the Lord's Day to run (*sic*\*), conduct, or convey by any mode of conveyance, any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed are not to be deemed travellers within the meaning of the Act.

\*This may be taken to be a mere colloquialism and is not intended to restore to the category of crimes, "the vainly and profanely walking" of the Commonwealth era: See *ante* p. 28.



# MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



**APPLIED IMAGE Inc.**

1653 East Main Street  
Rochester, New York 14609 USA  
(716) 482 - 0300 - Phone  
(716) 288 - 5989 - Fax

It is also unlawful to advertise in any manner whatsoever any performance or other thing prohibited by the Act.

It is also unlawful to advertise in Canada any performance or other thing which, if given or done in Canada, would be a violation of the Act. This latter provision is intended, no doubt, for the benefit of the border towns, and to prevent people being attracted to take part in the neighbouring republic, where laxer laws may prevail, in entertainments and performances on the Lord's Day which are now not permitted in Canada.

It is also made unlawful on the Lord's Day to shoot with, or use any gun, rifle, or other similar engine, either for gain, or in such manner, and in such places as to disturb other persons in attendance at public worship or in the observance of that day.

The sale of foreign newspapers on Sundays is also made unlawful.

Works of necessity or mercy are not prohibited, and for greater certainty the Act specifies acts which are to be so regarded, and the enumeration of these various so called works of necessity makes it apparent how very far our modern civilization, with its creation of wants, has led us from the Sabbatical observance of the Lord's Day. The acts specified are as follows:—

(a) Any necessary or customary work in connection with divine worship.

(b) Work for the relief of sickness and suffering, including the sale of drugs, medicines, and surgical appliances.

(c) Receiving, transmitting, or delivering telegraph or telephone messages.

(d) Starting or maintaining fires, making repairs to furnaces, and repairs in cases of emergency, and doing any other work when such fires, repairs or work are essential to any industry, or industrial process, of such a continuous nature that it cannot be stopped without serious injury to such industry, or its product, or to the plant or property used in such process.

(e) Starting or maintaining fires, and ventilating, pumping out, and inspecting mines, when any such work is essential to the protection of property, life or health.

(f) Any work without doing of which on the Lord's Day electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes.

(g) The conveying of travellers, and work incidental thereto.

(h) The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto.

(i) Loading and unloading merchandize at intermediate points on or from passenger boats, or passenger trains.

(j) Keeping railway tracks clear of snow or ice, making repairs in case of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day.

(k) Works before 6 a.m. and after 8 p.m. of yard crews in handling cars in railway yards.

(l) Loading and unloading and operating ocean-going vessels, which otherwise could not start on scheduled



time; or vessels liable to be stopped by close of navigation: or loading or unloading before 7 a.m., or after 8 p.m. any grain, coal, or ore carrying vessel, after the 15th September.

(*m*) Caring for milk, cheese, and live animals, and the unloading of, and caring for perishable products, and live animals arriving at any point on the Lord's Day.

(*n*) The operation of any toll or drawbridge, or any ferry or boat authorized by competent authority to carry passengers on the Lord's Day.

(*o*) The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by the Act.

(*p*) Any unavoidable work in the preparation of the Monday edition of daily newspapers.

(*q*) Conveying His Majesty's mails and work incident thereto.

(*r*) Delivery of milk, and work of domestic servants and watchmen.

(*s*) Operating any Canadian electric street railway whose line is interprovincial or international, of its cars for passenger traffic which on the 1st March, 1907, was regularly so operated.

(*t*) Work done by any person in the public service of His Majesty, while acting therein under any regulation or direction of any department of the Government.

(*u*) Any unavoidable work by fishermen after 6 p.m. on the Lord's Day in the taking of fish.

(*v*) All operations connected with the making of maple sugar and maple syrup in the maple grove.

(w) Any unavoidable work to save property in case of emergency, or where such property is in imminent danger of destruction or serious injury.

(x) Work which the Board of Railway Commissioners deems necessary to permit in connection with the freight traffic of any railway: see, as to this, *Re Lard's Day Act and Grand Trunk Ry.*, 8 Can. Ry. Cas. 23.

This enumeration, however, is not intended to be exhaustive or to restrict the "works of necessity and mercy" which are permissible to the cases specified.

The penalty imposed for each offence is not less than \$1, nor more than \$40.

Employers directing any thing to be done in violation of the Act are for each offence liable to a penalty of not less than \$20 nor more than \$100 in addition to any other penalty prescribed by law for the same offence," but whether it is in addition to, or in lieu of, the penalty of not less than \$1 nor more than \$40 previously prescribed for each offence is not very clear.

Corporations authorizing, directing or permitting its employees to carry on any part of their business in violation of the Act are liable to a penalty of not less than \$50 nor more than \$200, and for each subsequent offence not less than \$100 nor more than \$500 "in addition to any other penalty prescribed by law for the same offence," but whether these penalties are in addition to, or in lieu of, those previously prescribed by the Act is not clear.

A limitation of 60 days from the commission of the offence for bringing a prosecution is prescribed, and no prosecution under the Act is to take place without the leave of the Provincial Attorney-General.

## 7. Statutes in Force in Ontario Relating to the Lord's Day.

From what has been said we find that among the Imperial Statutes relating to the observance of the Lord's Day and other *dies non* introduced by the Constitutional Act of Upper Canada of 1792 were: 11 Hen. 4, c. 4;\* 27 Hen. 6, c. 5; 5-6 Edw. 6, c. 3; 1 Car. 1, c. 1; 3 Car. 1, c. 2; 29 Car. 2, c. 7; 24 Geo. 2, c. 23, and 21 Geo. 3, c. 49: (see *Reg. v. Barnes*, 45 U.C.R. 276). Of these 5-6 Edw. 6, c. 3 may probably be regarded as repealed by 2 Edw. 7, c. 13, s. 4 (Ont.). As to 24 Geo. 2, c. 23: see R.S.O. (1897), vol. 3, sched. C., p. 3915.

In addition to the abovementioned Acts there are in force in Ontario C.S.U.C. c. 104; R.S.O. c. 246 (except so far as it is *ultra vires* of the Provincial Legislature); the Dominion Acts R.S.C. cc. 119, 153, and lastly the Common law save as altered by statute. It cannot therefore be said that the law as to the Lord's Day in this Province is in a very compendious form.

## 8. Scope of 29 Car. 2, c. 7, s. 1; and C.S.U.C., c. 104, s. 1.

The differences between 29 Car. 2, c. 7, and C.S.U.C. c. 104, are thus stated by Middleton, J., in *Rex v. Wells*, 24 O.L.R. at p. 79.

The more important differences to be noted are:—

(a) While the English Act makes it an offence punishable by fine for a tradesman, etc., to pursue his ordinary calling upon the Lord's Day, the offering for sale of any goods on that day by any person whomsoever is

\*This Act is said to have been repealed by 33 Hen. 8, c. 9; *sed vide* Eng. Stat. Law Revision Act, 1863.

punishable by the forfeiture of the goods. The Ontario Act makes it an offence punishable by fine for a merchant, etc., to sell goods or pursue his calling.

(b) The class of persons enumerated is wider, merchants and mechanics being included in the Ontario Act.

(c) The exception is differently expressed. In the English Act it is "works of necessity and charity" in our Act "conveying travellers or Her Majesty's mail by land or by water, selling drugs and medicines and other works of necessity and works of charity."

(d) The English Act does not condemn the purchaser; ours does.

(e) The English Act is confined to the sale of chattels; ours deals with the sale of real estate also.

(f) In the English Act there is an exception in favour of cookshops.

(a) *Persons Not Within C.S.U.C. c. 104, s. 1, or  
29 Car. 2, c. 7, s. 1.*

The Provincial Act C.S.U.C. c. 104, s. 1, it will be observed is directed against "any MERCHANT, tradesman, artificer, MECHANIC, workman, labourer or other person whatsoever." The 29 Car. 2, c. 7, s. 1, on the other hand is directed against any "tradesman, artificer, workman, labourer or other person whatsoever." The Provincial Act includes in its enumeration of persons, two others besides these mentioned in 29 Car. 2, c. 7, viz., "merchants," and "mechanics."

The general words in both statutes have been held to be referrible only to persons *ejusdem generis* as those specifically named.

Neither Act applies to railways under Dominion control, nor to their employees: see *Reg. v. Reid*, 30 Ont. 732. Nor to the civil employees of the Dominion Government: *Regina v. Berriman*, 4 Ont. 282; nor to Railways within Provincial control or their employees: see *Attorney-General v. Hamilton St. Ry.*, 24 App. R. 170; nor to members of the Army or Navy: see *Wolton v. Gavin*, 16 Q.B. 48; nor to cab-drivers: *Reg. v. Somers*, 24 Ont. 244; *Reg. v. Budway*, 8 C.L.T. Occ. N 26).

Farmers are not within 29 Car. 2, c. 7, s. 1: *Reg. v. Silvester*, 33 L.J.M.C. 79, S.C. *sub nom*; *Reg. v. Cleworth*, 4 B. & S. 927, and see *Rex v. Hamren*, 7 C.C.C. 188; 5 Terr. L.R. 400, and see *Hespeler v. Shaw*, 16 U.C. R. 104; nor are they within C.S.U.C. c. 104, s. 1, (the amendment of 59 Vict. c. 62, being *ultra vires*). A farm labourer is within both Acts: see *Reg. v. Silvester*, *supra*. Inn-keepers and hotel-keepers do not appear to be within either the Provincial Act, or 29 Car. 2, c. 7, s. 1; see *infra*, pp. 95-6, but if they combine with the business of inn-keeping any other business, they may as to such other business be within the Act: see *infra*, pp. 95-6.

A solicitor making a contract on Sunday for the payment of his client's debt has been held not to be within the Statute of Charles 2; *Peate v. Dicken*, 1 C.M. & R. 422.

Barbers have been held not to be within the statute 29 Car. 2, c. 7, s. 1; *Palmer v. Snow*, 1900, 1 Q.B. 725, but they have been held to be within C.S.U.C. c. 104.

A case came recently before the Judicial Committee of the Privy Council on an appeal from Australia, as to

whether the Crown was bound by a Sunday Observance Act of that Commonwealth. The Act in question forbade Sunday trading. The defendant was lessee of a refreshment room of a state owned railway; his lease authorized him to sell refreshments and cigarettes to actual or intending passengers. He was prosecuted for selling cigarettes on a Sunday, and his defence was that as lessee of the Crown, he had the same rights as the Crown, and that the Crown was not bound by the Act, and therefore he also, as the Crown's lessee, was not bound by it. The case, however, was decided against the defendant because he was only authorized by his lease to sell to actual or intending passengers, and he had failed to show that the purchasers came within that category, the Judicial Committee declining to express any opinion as to whether or not the Crown was bound by the Act: *Kelly v. Hart* (1910), A.C. 192; but if the Crown was bound by the Act, then the question whether the purchasers were passengers would have been immaterial.

(b) *Railway Companies. (Under Provincial Control).*

The Dominion Act R.S.C. c. 153 provides that nothing therein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province, unless such railway is prohibited by provincial authority from so operating: s. 3 (2). Railway companies and steamboat companies, as we have seen, are not within the statute 29 Car. 2, c. 7; nor C.S.U.C. c. 104: see *Atty.-General v. Hamilton St. Ry.*, 24 A.R. 170; but by the *Ontario Railway Act* (6 Edw. 7, c. 30, Ont.), s. 193. It is provided:—

(1) No company or municipal corporation operating a street railway, tramway or electric railway, shall operate the same, or employ any person thereon on the first day of the week commonly called Sunday except for the purpose of keeping the track clear of snow or ice, or for the purpose of doing any work of necessity.

Subsection 2, however, provides that railways which before 1 April, 1897, regularly ran cars on Sunday may continue to do so; and also that any company which has by its charter or by any special Act, right or authority to run cars on Sunday may do so, and that the Act is not to affect the right of the Toronto Railway Company to run its cars on Sunday. Nor is the prohibition against running cars on Sunday to affect the right of any railway or company to run cars or trains as provided by R.S.O. c. 209, s. 136 (2) which though repealed by 6 Edw. 7, c. 30, s. 259, is to be "continued as though such statute stood unrepealed." A somewhat curious provision. R.S.O. c. 209, s. 136 (2) referred to in subsection 2 above-mentioned reads as follows:—

(2) Provided that any company operating a railway extending from any city for a distance of more than one and a half miles may run such cars or trains into the city before the hours of ten o'clock in the forenoon, and such cars and trains out of the city after the hour of five o'clock in the afternoon on the Lord's Day as may be necessary for the transportation of milk exclusively, but no freight of any other kind, and no passengers shall be carried upon such car or train, nor shall it be lawful for the company to collect any fare or tolls for the transportation of any passengers upon the Lord's Day, nor

for the transportation of any freight except for the transportation of milk as aforesaid. Provided that nothing in this section shall prevent the running of empty cars or trains either from the car sheds to any point on the line of railway for the purpose of receiving the milk for transportation as aforesaid, or back to the car sheds after the delivery of the same."

The *Ontario Railway Act* (6 Edw. 7, c. 30, Ont.), s. 193 (3) moreover imposes a penalty on railway companies contravening that Act. The provisions of s. 193 (1), (2), appear to be similar in terms to R.S.O. c. 246, s. 8, which was in question in *Attorney-General v. Hamilton Street Railway* (1903), A.C. 524; 89 L.T. 107, and was declared to be *ultra vires* of the Ontario Legislature.

The Lord Chancellor (Halsbury) delivering the judgment of the Judicial Committee of the Privy Council in July, 1903, said, "Their Lordships are of opinion that the Act in question R.S.O. c. 246 intituled "An Act to prevent the profanation of the Lord's Day," treated as a whole, was beyond the competency of the Ontario Legislature to enact." In the face of this emphatic and explicit declaration, it is hard to understand how the validity of 6 Edw. 7, c. 30 (Ont.), s. 193 can be maintained.

It may possibly, however, have some effect as a legislative prohibition and as such be aided by the Dominion Acts hereafter mentioned. The fact that the sections more particularly in question in the *Attorney-General v. Hamilton St. Ry.* related to Sunday, does not appear to have been material, the same ruling would have been applicable had the sections in question related to Monday or any other day. The ground of the decision is that



the imposition of penalties for working on any particular day, is criminal, and not civil, legislation, and therefore beyond the constitutional competency of a Provincial Legislature.

If that be the true meaning of the decision, then how can it be competent for a Provincial Legislature to impose a penalty on anyone for doing on Sunday or any other day what would be otherwise a lawful act? From this standpoint 6 Edw. 7, c. 30, Ont., s. 193 (2) so far as it imposes penalties seems to be open to precisely the same objection as R.S.O. c. 246, ss. 7, 8, 10, which have been held to be *ultra vires*.

*The Ontario Railway Act* (6 Edw. 7, c. 30), s. 193, would appear not to apply to any steam railways. The words are "no company or municipal corporation operating a street railway, tramway or electric railway;" and as to Provincial steam railways there appears to be no prohibition against operating their lines on Sunday.

By 9 Edw. 7, c. 68, Ont., further provisions are made enabling cities having a population of over 50,000 by the vote of a majority of electors qualified to vote to permit the operating of street railways therein on Sundays: but companies which have agreed with any municipality not to run any of their cars on Sunday until they have received permission by by-law of the municipality so to do, must still obtain such permission and can only operate their cars on Sunday subject to any restrictions the by-law may impose, or which may be contained in any agreement between the municipal corporation and the company. No employees are to be required or permitted to work on any street railway for more than six days of

10 hours in any one week, nor except upon alternate Sundays, subject to a penalty on the city or company permitting such work of not less than \$25 nor more than \$100, to be recovered by action, and to form a lien on the assets of the street railway.

Under a general act (R.S.O. 1887, c. 171) a company was incorporated by letters patent to build and operate (on all days except Sundays) a street railway. The company notwithstanding the restriction operated its cars on Sunday: and an action was brought by the Attorney-General claiming an injunction to restrain the company from so doing. The action was tried before MacMahon, J., who dismissed it, holding that the intervention of the Court could only be obtained, where an injury to property had been done or threatened by the act complained of, but that the act of operating cars on Sunday, though it might be illegal, affected no proprietary rights, and there was no evidence offered of any injury to the public, or to the property of the public: *Atty.-Gen. v. Niagara Falls and Wesley Park Tramway Co.*, 19 Ont. 624, 18 App. R. 453. This judgment was affirmed by the majority of the Divisional Court (Galt, C.J.C.P., and MacMahon, J., Rose, J., dissenting). Galt, C.J.C.P., taking the ground that the letters patent did not prohibit the defendants from operating their railway on Sunday, but merely gave them no authority so to do, and therefore if they did so, they had no protection from the Act (R.S.O. 1887, c. 171), in so doing. Rose, J., on the other hand, considered the operating of cars on Sunday was not only an unauthorized, but an illegal act, and that the company was liable to be restrained from doing the act com-

plained of, as being an act prohibited. The judgment of the majority of the Divisional Court was subsequently affirmed by the Court of Appeal (Hagarty, C.J.A., and Burton and Osler, J.J.A., MacLennan, J.A., dissenting): 18 App. A. 453. Both MacMahon, J., and Burton J.A., however, intimate that a company in thus exceeding its statutory powers, exposes itself to *quo warranto* proceedings, at the instance of the Crown, for the forfeiture of its charter: see Morawetz on Corporations (2nd ed.), s. 1040, and see *Rendall v. Crystal Palace Co.*, 4 K. & J. 326. In the latter case a company was granted incorporation on condition that no person should be admitted to the company's buildings or grounds on the Lord's Day in consideration of any money payment, unless the sanction of the Legislature should be first obtained. The company, having obtained an Act of Parliament, authorizing the directors of the company to agree with any holders of shares for the conversion thereof into tickets of admission for life for such holder, or his nominee, but providing that nothing therein contained should relieve the company from any condition contained in its charter; and the directors, thereupon, having issued advertisements offering to accept surrenders of shares in exchange for tickets of admission for a limited term, to be made out to bearer, and to be available for Sundays as well as ordinary days; it was held that the admission of any person on a Sunday by means of such proposed ticket, would render the company liable to a forfeiture of its charter; and, upon a bill filed by a shareholder, the company was restrained from accepting surrenders of shares in exchange for such tickets.

The result of the Provincial and Dominion legislation as regards railways under Provincial control appears to be this, that where a Provincial Act in force in 1906, forbids a railway company operating its cars on Sunday, then the Dominion Act R.S.C. c. 153 applies to such company, and it is liable to the penalties imposed by the Dominion Act; but the penalties imposed by 6 Edw. 7, c. 30, Ont., s. 193 (3) would appear to be not recoverable, on the ground that that subsection is *ultra vires* of the Provincial Legislature.

This, however, assumes that though a Provincial Legislature cannot impose penalties for non-observance of the Lord's Day, it is nevertheless competent for it to forbid work being carried on on that day. But if this be so, then it is well settled that it is competent to impose penalties for breach of any law it is competent to make: see B.N.A. Act, s. 92 (15); *Atty.-General (Can.) v. Atty.-General (Ont.)*, 23 S.C.R. 458; *Hodge v. The Queen*, 9 App. Cas. 117; *Reg. v. Frawley*, 46 U.C.R. 153; 7 App. R. 246, in which view of the matter the penalty imposed by s. 193 (3) would be valid, and even in the absence of any penalty the breach of the law would be a misdemeanour: per James L.J., in *Atty.-General v. Great Eastern Ry.*, 11 Ch. D. at p. 483. So that however the matter is viewed it appears to be full of difficulty, and needing either further legislation, or further judicial exposition, before the effect of the Provincial legislation on the subject can be properly understood.

Although by R.S.C. c. 153, s. 12 (9), the conveying of travellers and work incidental thereto, is declared to be a work of necessity, yet R.S.C. c. 153, s. 8, prohibits

"except as provided by any Provincial Act or law now or hereafter in force" anyone "to run, conduct, or convey by any made of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed travellers within the meaning of this Act." This concluding clause seems to put an end to the judicial conflict of opinion which previously existed as to whether or not mere pleasure trippers were, or were not "travellers": see *Regina v. Tinning*, 12 U.C.R. 636; *Regina v. Daggett*, 1 Ont. 537, and *Atty.-Gen. v. Hamilton St. Ry.*, 24 A.R., per Burton, J.A., at p. 181, and per Osler, J.A., at p. 182. R.S.O. c. 246, s. 8, which also dealt with excursions by railways on Sunday, as has been already said, was held to be *ultra vires* of the Provincial Legislature: *Atty.-Gen. v. Hamilton St. Ry.*, (1903) A.C. 524.

(*Railways Under Dominion Control*).

So far as railways under Dominion control are concerned the question of the validity of the Provincial Acts above referred to has now to be considered in the light of the fact that such legislation has been confirmed to some extent by the Dominion Parliament. By *The Railway Act* (R.S.C. c. 37), s. 9, it is provided "Notwithstanding anything in this Act or in any other Act every railway, steam or electric street railway or tramway situate wholly within any province of Canada, and declared by the Parliament of Canada to be either wholly or in part a work for the general advantage of Canada,

and every person employed thereon, in respect of such employment, and every person, company, corporation or municipality owning, controlling or operating the same wholly or partly in respect of such ownership, control or operation, shall be subject to any Act of the Legislature of the Province in which any such railway or tramway is situate which was in force on the tenth day of August one thousand nine hundred and four, in so far as such Act prohibits or regulates work, business or labour upon the first day of the week commonly called Sunday."

This provision it is to be noted only applies to railways within any Province which have been declared for the general benefit of Canada: (see B.N.A. Act, s. 92 (10)), and thereby withdrawn from the jurisdiction of the Provincial Legislature. It is also to be noted that it only applies to Provincial legislation in force on 10th August, 1904, and would therefore not include any subsequent Provincial legislation such as 6 Edw. 7, c. 30, s. 193, Ont., and 9 Edw. 7, c. 63, Ont., above referred to. It is also to be noted that it only affirms any Provincial Act in force on 10 August, 1904, "in so far as such Act prohibits or regulates work, business or labour" upon Sunday; but it does not say, "in so far as it imposes penalties for its breach," nor does the following subsection appear to do more.

"2. Every such Act, in so far as it purports to prohibit, *within the legislative authority of the Province*, (a)

(a) What the precise effect of the words "within the legislative authority of the Province" may be, having regard to the decision of the Privy Council in *Attorney-General v. Hamilton St. Ry.* (1905) A.C. 524, it is very difficult to say.

work, business or labour on the first day of the week is hereby ratified and confirmed and made as valid and effectual, for the purposes of this section, as if it had been duly enacted by the Parliament of Canada."

The Act goes on to provide (subsection 3) that the Governor in Council may by proclamation confirm for the purposes of the section any Provincial Act passed after the 10th day of August, 1904, "*in so far as it purports to prohibit or regulate within the legislative authority of the Province, (a) work, business or labour,*" on the first day of the week; and such Act shall *to the extent aforesaid*, be by force of such proclamation ratified and confirmed, and made as valid and effectual for the purposes of this section, as if had been enacted by the Parliament of Canada."

By the following subsection 4, steam, electric railways or tramways, though exempted from Provincial jurisdiction are nevertheless to be bound by any such Provincial Acts *in so far as it has been so confirmed*. But by subsection 5—the section is not to apply to any railway:

(a) Which forms part of a continuous route or system operated between two or more provinces, or between any province and a foreign country so as to interfere with, or affect, through traffic thereon; or

(b) Between any of the ports of the Great Lakes and such continuous route or system, so as to interfere with or affect through traffic thereon; or

(a) What the precise effect of the words "within the legislative authority of the Province" may be, having regard to the decision of the Privy Council in *Attorney-General v. Hamilton St. Ry.* (1908) A.C. 524, it is very difficult to say.

(c) Which the Governor in Council by proclamation declares to be exempt from the provisions of section 9.

The effect of subsection 5 is to exempt from Provincial legislation the class of railways mentioned in clauses (a) and (b) so far as through traffic thereon is concerned, and also all others under Dominion control which the Governor in Council may name as mentioned in clause (c).

By proclamation of the Governor in Council, dated 24th November, 1906, section 193 of the Ontario Railway Act (6 Edw. 7, c. 30) was confirmed: see Dominion Statutes, 1907, p. cxvii.; and by proclamation of His Excellency of 25th September, 1909, the amending Act, 9 Edw. 7, c. 68, Ont., was confirmed in so far as the statute purports to prohibit or regulate within the legislative authority of the said Province work, business or labour on Sunday: see Dominion Statutes, 1910, p. cl.

Street railways, tramways and electric railways therefore situate wholly in Ontario, though under Dominion control and their employees seem, (except as provided by subsection 5 abovementioned) to be bound by the prohibitions contained in *The Ontario Railway Act* (6 Edw. 7, c. 30), s. 193, as amended by 9 Edw. 7, c. 68, Ont., but not by the penalties thereby imposed, but by those imposed by R.S.C. c. 153. As to steam railways there appears to be no prohibition against operating their lines on Sunday.

(c) *Steamboats—Sunday Excursions.*

By R.S.O. c. 246, s. 7, Sunday excursions by steamboats for hire are forbidden under a penalty, but this



section, as has been already said, has been held to be invalid: see *Atty.-General v. Hamilton St. Ry.* above referred to.

Steamboat excursions on the Lord's Day however are forbidden by R.S.C. c. 153, s. 8 above referred to, but steamboats conveying *banâ fide* travellers come within the exception of R.S.C. c. 153, s. 12 (*g*), (*h*); as to persons who are to be deemed travellers: see *Ib.* s. 8, and *supra*, pp. 73, 88. Certain operations on board vessels, *e.g.*, loading and unloading merchandize at intermediate points, on or from passenger boats, *Ib.* s. 12; or loading or unloading ocean going vessels or grain, coal or ore carrying vessels: see *Ib.* (*l*) or boats used as ferry boats, *Ib.* (*n*), or for carrying mails: *Ib.* (*q*) are also excepted from the operation of the Act: see *supra*, pp. 75, 76.

But it would seem that steamboat proprietors selling candies, or cigars, or other light refreshments, would be within the Act, as not being a part of the business of transportation, though probably the sale of meals to *banâ fide* travellers would not be within the Act.

(*d*) *Trading on Sunday.*

*Barbers.*—In England under 29 Car. 2, c. 7, a barber has been held not to be within the Act: *Palmer v. Snow*, (1900), 1 Q.B. 725. On the other hand in Ontario it has been held that under the Ontario Act (C.S.U. c. 104, s. 1), a barber is included, though the words of the two statutes seem, as regards this point, identical. The English Court proceeded on the ground that a barber is not a "tradesman, artificer, workman or labourer," and that

the words "or other person whatsoever" must be construed *ejusdem generis*. The Ontario Court came to the conclusion that the barber was liable because shaving is not "a work of necessity," and a barber is a "workman." Wilson, C.J., however, intimates that a barber might make arrangements with a hotelkeeper to shave guests, so as to be considered in the light of a servant kept in a private family to do the family work of a barber on Sunday as well as other days, and he would then not be within the statute: *Reg. v. Taylor*, 19 C.L.J., 362.

*Farmers.*—A farmer was held not to be within 29 Car. 2, c. 7, s. 1: *Reg. v. Cleworth*, 4 B. & S. 927; and the same ruling would apply to C.S.U.C. c. 104, s. 1. (the amendment made to that section by 59 Vict. c. 62 appearing to be *ultra vires*).

*Druggists.*—A druggist selling peppermint lozenges on a Sunday was held not to be a contravention of the law: *Regina v. Howarth*, 33 U.C.R. 537; and it was recently held by Morson, J.C.C., that the sale by a druggist of a cigar on Sunday, was not unlawful, on its being proved that cigars are sometimes prescribed medicinally, but see *contra Rex v. Roe*, 2 O.W.N. 1232 a decision by Middleton, J.; and it would seem that if a druggist combine with the sale of drugs and medicines, the sale of other things which are not drugs or medicines, as to such other things he is within the statute: see *Rex v. Wells*, 24 O.L.R. 77, where a sale of cigars on Sunday by a druggist was held to be supportable neither as a medicine, nor as a necessity. And a sale by a druggist of ice cream soda on a Sunday was held to be unlawful: *Reg. v. Bingham*, before P. M. Toronto, 13 June, 1900.

*Bakers.*—A Jewish baker kept his shop shut on Saturday, but, for the convenience of Jewish customers, kept it open on Sunday. In view of the circumstances, the magistrate refused a summons for contravention of a local Act (3 Geo. 4, c. xvi. s. 16), and, on a motion for a *mandamus*, a Divisional Court held that the magistrate had properly exercised his discretion, and refused the motion.

*Victuallers.*—The statute 29 Car. 2, c. 7, s. 3 provides that the act is not to extend to prohibiting dressing of meat in families, or dressing or selling of meat in inns, cookshops or victualling houses for such as otherwise cannot be provided, nor to the crying and selling of milk before 9 a.m. or after 4 p.m. Accordingly it is held in England that a baker's baking puddings and pies for dinner for customers on Sunday is not an offence under the Act: *Rex v. Younger*, 5 T.R. 449; 2 R.R. 638; *Rex v. Cox*, 2 Burr. 785; but baking bread in the ordinary course of trade is: *Ib.*

It has been held that the business of a victualling house may be lawfully carried on on Sunday, as being "a work of necessity" within the exception of C.S.U.C. c. 104, s. 1; and the sale of any article of food at such a house on a Sunday, even though it be in the nature of a luxury, such as ice cream, is not unlawful: *Reg. v. Albertie*, 3 Can. Cr. Cas. 356; *Rex v. Stinson*, 10 C.C.C. 16; or candies: *Rex v. Mezer*, 39 C. L. J. 672. But where a victualler used the front part of his premises as a candy shop, the sale of candy by him on Sunday was held to be unlawful, because the sale of candy was not victualling business: *Rex v. Sabine*, 40 C.L.J. 197; 8 C.C.C. 70,

and see *Rex v. Wells*, 24 O.L.R. 77; and the court was of opinion that the licence to keep a victualling shop had been obtained in order to give a colourable right to sell ice cream, etc., on Sunday. And a restaurant keeper selling beer in bottles to be drunk off the premises is held to offend against the Act: *Rex v. Wells, supra*.

A restaurant keeper may serve meals and refreshments on Sunday in the usual course of his business as a victualler. Either food, or drink, or both, and even a cigar as an incident of a meal; but it is of the essence of his calling as a victualler that whatever he sells is for consumption on his premises. He may on a week day carry on an ancillary, or collateral business, as a merchant, or tradesman, for the sale of merchandise, candy, cigars, etc., but as to such he is a merchant, and not a victualler, and is subject to the Sunday law affecting such trade: see *Rex v. Wells*, 24 O.L.R. 77.

A shopkeeper selling fried chipped potatoes in the way of his ordinary calling was held to be within the exception of s. 3 of the statute of 29 Car. 2, c. 7, and his business "a cookshop" within that Act: *Bullen v. Ward*, 93 L.T. 439. But there is no similar exception in R.S.C. c. 153, nor in C.S.U.C. c. 104, and sales by keepers of cook-shops in the ordinary course of business seem to come within R.S.C. c. 153, s. 5; and C.S.U.C. c. 104, s. 1, unless the sale or cooking of food by such persons can be proved to be "a work of necessity."

*Hotel and Inn-keepers.*—Neither the Dominion nor Provincial Acts expressly exempt hotel-keepers and inn-keepers supplying guests with food and drink in the ordinary course of business from their operation; but

possibly such business would be held to be a "work of necessity," as the Legislature can hardly have intended that all persons staying at hotels on a Sunday should be deprived of food and drink on that day: see observations of Boyd, C., *Re Karry v. Chatham*, 20 O.L.R. at p. 181. It may, however be noticed, that the prohibition in R.S.C. c. 153, s. 5, is subject to the words "except as provided herein, or in any Provincial Act or law now or hereafter in force." The Provincial law in force in Ontario C.S.U.C. c. 104, as we have said, does not expressly prohibit an hotel-keeper from carrying on his business on a Sunday,\* provided the general words in s. 1 of that act are construed *ejusdem generis* as the specific words preceding them: see *Atty.-Gen. v. Hamilton St. Ry.*, 24 A.R. 170. But though the Provincial Act C.S.U.C. c. 104 does not prohibit, it does not expressly require a hotel business to be carried on on Sunday. On the other hand by the Common law inn-keepers are bound to keep their inns open for the accommodation of guests on all days of the week: see *Re Karry v. Chatham, supra*. Inn-keepers and hotel-keepers therefore do not appear to be within either R.S.C. c. 153, or C.S.U.C. c. 104, or 29 Car. 2, c. 7.

*Newsdealers.*—A newsdealer is a "tradesman" within the C.S.U.C. c. 104, s. 1, and also within 29 Car. 2, c. 7, s. 1; *Reg. v. Anderson*, 10 C.C.C. 144; *Rex v. Wells, supra*.

A shopkeeper who permits unlawful trading to be carried on at his shop on Sunday is liable though not

\*But as regards the sale of liquor, see 6 Edw. 7, c. 47, s. 13, as amended by 9 Edw. 7, c. 82, s. 8, Ont.

himself present and taking part in such trading: *Connor v. Quest*, 96 L.T. 28.

Some of the ancient Saxon laws, and statutes passed after the Conquest made the doing of manual labour and holding of markets on all *dies non juridici* unlawful; but since the statute of 5-6 Edw. 6, c. 3 there seems to have been no prohibition of trading on any other *dies nan juridicus* except Sunday.

Buying and selling, and agreements to buy and sell, real and personal property on Sunday are null and void: see R.S.O. c. 246, s. 9, *infra*, and *semble*, also penal under C.S.U.C. c. 104.

(e) *Contracts Made on Sunday.*

Notwithstanding what is said by Lord Coke it would seem that contracts might be validly made at Common law on Sunday or other *dies nan juridici*. The ancient Saxon laws, as we have seen, forbade bodily labour, and the holding of markets on Sundays and other festivals, but contracts at that time were in a very rudimentary stage, and an "Anglo-Saxon barely knew what credit was, and had no occasion for much regulation of contracts": Pollock and Maitland's *Hist. Eng. Law*, c. 5, and it was not till many centuries after that the subject of contracts gained that dominance in English law which it to-day holds. It is therefore not surprising that nothing is said in Anglo-Saxon's laws about contracts made on Sunday, or any other holy day; and yet Lord Coke says, "the ancient law of England forbade contracts on Sunday," 2 *Inst.*, p. 264. The only authority cited in the margin for this statement is the statute of 27 Hen. 6,

98      *CONTRACTS MADE ON SUNDAY.*

c. 5.\* In some of the cases which have been decided under the C.S.U.C. c. 104, and 29 Car. 2, c. 7, which are hereafter referred to, the courts seem to assume that at Common law a contract may be validly made on Sunday, and that it is only such as are forbidden by statute which are illegal.

The statute of 29 Car. 2, c. 7, s. 1 which enacts 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 excepted)" had the effect of invalidating all contracts made by persons coming within its provisions: but the general words "or other person whatsoever" it is held are to be construed as applying only to persons *ejusdem generis* as those specifically named, and the section has been further held only to apply to contracts made by persons coming within the section, "in the course of their ordinary calling," so that its operation has been materially restricted by judicial decisions.

By R.S.O. c. 246, s. 9, "All sales and purchases, and all contracts and agreements for sale or purchase of any real or personal property whatsoever, made by any person or persons on the Lord's Day, shall be utterly null and void."

This section which seems to be clearly *intra vires* of the Provincial Legislature: see *Re Greene*, 4 C.C.C. 182; 35 N.B.R. 137, does not invalidate all contracts made on the Lord's Day, but only contracts for the sale or pur-

\*Sec *supra* p. 21.

chase of real or personal property. This provision is merely a re-enactment of a similar provision contained in C.S.U.C. c. 104.

It was pointed out by Robinson C.J. in *Lai v. Stall*, 6 U.C.R. 506, that this section goes beyond the statute of 29 Car. 2, c. 7, and is not confined to sales within the ordinary calling of a vendor.

By the Dominion Act R.S.C. c. 153, s. 5, it is enacted "It shall not be lawful for any person on the Lord's Day *except as provided herein, or in any Provincial Act or law now or hereafter in force*, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or *for gain* to do or employ any other person to do on that day, *any work, business, or labour.*"

The meaning of the words "except as provided . . . in any Provincial Act or law now or hereafter in force" has not as yet received any judicial consideration. It would seem not unreasonable to suppose that it means that any contract made on Sunday which by any existing or Provincial law is valid, is not intended to be interfered with by the Act. The Common law in force in Ontario, as we have seen, notwithstanding what is said by Lord Coke, does not appear to have invalidated contracts made on Sunday. This, therefore, may be said to be a law of this Province allowing all contracts to be made on Sunday except such as are expressly prohibited by statutes; R.S.O. c. 246, s. 9; C.S.U.C. c. 104, and 29 Car. 2, . 7; and therefore the Dominion Act would seem



not to make any contract made on the Lord's Day in the Province of Ontario unlawful, unless it is also prohibited by one or other of the statutes above referred to.

It is to be noted that the Dominion Act like R.S.O. c. 246, s. 9, is not limited as are C.S.U.C. c. 104, s. 1, and 29 Car. 2 c. 7, s. 1, to particular classes of persons, nor does it appear to be confined to work or business done in the ordinary course of a calling. It makes "any work, business or labour" done for gain by "any person" not being a work of mercy or necessity, unlawful; and it therefore seems probable that the decisions under C.S.U.C. c. 104, s. 1, and 29 Car. 2, c. 7, s. 1, which confine their operation to particular persons coming within those specified, and to contracts made "in the ordinary course of the calling" of such persons, even if a correct exposition of those Acts, would not apply to the Dominion Act; and any acts which it makes criminal cannot be valid from a contractual point of view: see per Garrow, B., in *Begbie v. Levi*, 1 C. & J., at p. 181.

But where a contract has in fact been made on a Sunday contrary to the Provincial Act, or 29 Car. 2, c. 7, the courts do not regard the defence of illegality as a particularly righteous one, and a solicitor omitting to set it up for a client, has been held not to be guilty of any culpable negligence: *Vail v. Duggan*, 7 U.C.R. 568.

It has been held from a very early period in this Province that sales of real and personal property on Sunday are void under our Provincial statute: *Lai v. Stall*, 6 U.C.R. 506.

The report of this case is erroneous in stating that the rule, which was for a nonsuit, was made "absolute" as

it is perfectly clear from the judgment that it was in fact discharged. The action was in trover for goods, and it appeared by the evidence that the plaintiff had purported to sell them to the defendant on a Sunday, and the defendant had then purported to reconvey them to the plaintiff by way of mortgage to secure the price, and the court held that as the original sale by the plaintiff was void the goods *remained his*, as if no such sale had taken place, and therefore that he was entitled to succeed. A note made on Sunday in payment of goods sold on that day is void under C.S.U.C. 104, s. 1, as between the original parties, but not as against an indorsee for value without notice of the fact that it was given in payment of goods sold on a Sunday: *Houliston v. Parsons*, 9 U.C.R. 681; *Crombie v. Overholtzer*, 11 U.C.R. 55.

But a note or a mortgage given on Sunday for a pre-existing debt does not appear to be within either the C.S.U.C. c. 104, or 29 Chas. 2, c. 7; nor R.S.O. c. 246, s. 9: see *Wilt v. Lai*, 7 U.C.R. 535. By the Bills of Exchange Act R.S.C. c. 119, s. 10, the rules of the Common law of England including the law merchant (save in so far as they are inconsistent with the express provisions of the act) apply to bills, notes and cheques. The act does not expressly invalidate bills, cheques or notes dated on Sunday, nor does the Common law, and a bill of exchange dated on Sunday, in the absence of evidence as to its having been also accepted on that day, will not be presumed to have been accepted on that day, and until acceptance there is no contract: *Begoie v. Levi*, 1 C. & J. 180, and the instrument would be valid even though drawn in the ordinary course of the calling of the drawer.

102      *CONTRACTS MADE ON SUNDAY.*

An action will not lie on a contract which is prohibited, when made by an agent on Sunday, even though the objection to its validity is taken by the person at whose request it was made: *Smith v. Sparrow*, 4 Bing. 84. It has been held that to avoid a contract made on Sunday under 29 Car. 2, c. 7, it must be shown to have been made in the course of the ordinary calling of the person making it: *Bethune v. Hamilton*, 6 O.S. 105, and in England a similar conclusion was reached: *Drury v. Defontaine*, 1 Taunt. 131, and see *Scarfe v. Morgan*, 4 M. & W. 270; *Rex v. Whitnash*, 7 B. & C. 596; *Peate v. Dickens*, 3 D. P.C. 171; 1 C.M. & R. 422, and *Begbie v. Levi*, *supra*.\*

A guarantee given by one tradesman to another on Sunday for the faithful performance of his duty by one employed as a traveller was held not to be business done in the course of his ordinary calling, and the contract was held to be valid: *Norton v. Powell*, 4 Man. & G. 42.

And a contract of hiring is not work or business done in the course of a man's ordinary calling, and such a contract made on Sunday is not invalid under 29 Car. 2, c. 7, nor *semble* under C.S.U.C. c. 104: *Rex v. Whitnash*, 7 B. & C. 596. Where a contract for sale of a horse was made on Sunday at a price over £10, but the horse was not delivered until the following Tuesday when the money was paid, it was held that until delivery there was no complete contract, and therefore that the contract was not void under the statute, and that, even if it were void, the purchaser might recover the price as upon a failure of consideration: *Bloxsome v. Williams*, 5 D. & R. 82; 27 R. R. 337.

\*See *supra* p. 99, and *post* p. 103.

In *Fennell v. Ridler*, 8 D. & R. 204; 29 R.R. 278, it was held that the statute of Charles 2 applied to private as well as public conduct, and therefore a horse dealer could not maintain an action on a contract made on Sunday for the sale of a horse, even though the contract had been made privately, and not in the ordinary way of business.

Although, as we have seen, it has been held that in order to avoid a contract made on Sunday under the 29 Car. 2, c. 7, s. 1, or C.S.U.C. c. 104, s. 1, it must be shown to have been made in the course of the maker's "ordinary calling," the correctness of that view has been questioned.

In *Smith v. Sparrow*, 29 R.R. 514; 4 Bing. 84, Park, B., said "I do not think this court was right in the decision of *Drury v. Defontaine*. I think the construction put upon the statute in that case too narrow. The expression "any worldly labour" cannot be confined to a man's ordinary calling, but applies to any business he may carry on, whether in his ordinary calling or not." A reference to the statutes 29 Car. 2, c. 7, and C.S.U.C. c. 104, however will show that the words used, are somewhat ambiguous. And on the whole the weight of authority appears to be in favour of limiting sections 1 of those statutes to acts done in the course of a person's ordinary calling; but whether the same ruling can be applied to the Dominion Statute seems extremely doubtful. Where a coach proprietor refused to carry the plaintiff on a Sunday, and the plaintiff hired a postchaise to go to his destination, it was held that the plaintiff might recover the chaise hire from the stage coach proprietor because the 29 Car. 2, c. 7, s. 1, does not prevent stage coaches from running,

and the defendant was consequently guilty of a breach of duty in refusing to carry the plaintiff: *Sandiman v. Breach*, 7 B. & C. 96; 31 R. R. 169.

And it would seem that the statute of Charles 2, does not avoid any contract made on Sunday where the contract has been executed, and the property, either general or special, in the subject matter of the contract, has passed.

In other words if the contract is actually executed, it cannot be undone under the statute, though if either party has to seek the aid of the court to enforce it, the invalidity of the contract will be a bar to relief; and though a contract made on Sunday be void, and therefore unenforceable, still if a party to it retain the subject matter of it *semble* the owner is entitled to recover the value on a *quantum meruit*: *Crossan v. Bigley*, 12 App. R. 94. The defence of the statute must be specifically pleaded. It is no answer to a defence that a contract was made on a Sunday, that the defendant kept the goods the subject of the contract and did not return them: *Simpson v. Nicholls*, 3 M. & W. 240, and see 5 M. & W. 705 (n). The mere sending or delivery on Sunday of goods purchased on the previous day does not invalidate the sale: see *Beaumont v. Brengeri*, 5 C.B. 301.

The cases above referred to arose under the Provincial Act, or 29 Car. 2, c. 7, but it must be remembered in considering the question of the legality of contracts made on Sunday it will be necessary now to take into account the wider scope of the Dominion Act which seems to be clearly not confined to business or contracts done or entered into in the course of the ordinary calling of

parties; as was said by Bucknill, J., in *Sterling v. Silburn* (1910) 1 K.B., at p. 73, "where an enactment is in its nature punitive the legal consequence is, that a transaction which has taken place between parties, one of whom has offended against the enactment, is void."

When the day for performing a contract happens to fall on a Sunday, it is not at all clear whether the contract is performable on the day, or the next preceding, or the next succeeding juridical day. In *Whittier v. McLennan*, 13 U.C.R. 638. Robinson, C.J., inclined to the opinion that the contract was performable on the next preceding juridical day, in *Cutney v. Gives*, 20 Ont. 500, Rose, J., inclined to the opinion that it was not performable until the next succeeding juridical day: and in *Child v. Edwards* (1909), 2 K.B. 753, Ridley, J., came to the conclusion that rent falling due on a Sunday was payable on that day, so as to justify the levying of a distress therefor on the following Monday if not paid.

By the law merchant, where the last day of grace fell on a Sunday, a bill or note became due on the previous day, and this is still the law in England, although it has been altered by statute in Canada, and the time is here extended for payment to the next succeeding juridical day: see R.S.C. c. 119, s. 42.\*

By the Interpretation Act, 7 Edw. 7, c. 2, Ont., s. 7 (18). "If the time limited by an Act for any proceeding, or for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall extend to, and such thing may be done, on the day next following which is not a holiday." The effect of this provision is to extend the time for bringing actions under

\*As to what are non juridical days: see *ante* p. 55, note.

## 106 SUNDAY GAMES AND AMUSEMENTS.

the Statutes of Limitations, or registration of chattel mortgages, when the last day falls on a holiday, to the next juridical day: where previously the time would have expired on the preceding juridical day: see *McLean v. Pinkerton*, 7 A.R. 490.

There appears to be no restriction at Common law, or by statute, against making any contract, otherwise lawful, on any other holiday or *dies non juridicus* except Sunday.

### 9. Games and Amusements on Sunday.

By R.S.C. c. 153, s. 7. "Except as provided in any Provincial Act or law now or hereafter in force," it is unlawful to engage in any public game, or contest for gain or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at, any performance or public meeting, elsewhere than in a church at which any fee is charged directly or indirectly either for admission to such performance or meeting, or to any place within which the same is provided or for any service or privilege thereat.

And where any performance at which an admission fee, or any other fee, is so charged, is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance, or by any one acting as their agent, or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section.

More elaborate provisions, as we have seen, for the prevention of the carrying on of places of amusement for hire on the Lord's Day are made by 21 Geo. 3, c. 49

SUNDAY GAMES AND AMUSEMENTS. 107

(Imp.) which in *Baxter v. Langley*, L.R. 4 C.P. 21, was held to be in force in Ontario, and which is not affected by R.S.C. c. 153, see s. 16.\*

Under the 21 Geo. 3, c. 49 (Imp.), the keeping open of an aquarium for exhibition of fish, and for holding concerts of sacred music on Sunday, was held to be illegal: *Terry v. Brighton Aquarium*, 10 Q.B. 306; and the omission of a concert made no difference: *Warner v. Brighton Aquarium*, 10 Ex. 221.† This Act has been held to be in force in Ontario: *Reg. v. Barnes*, 45 U.C.R. 276. But a *bonâ fide* religious service for which tickets of admission were sold was held not to be the unlawful under that Act: *Baxter v. Langley*, L.R. 4 C.P. 21.

The games prohibited by R.S.C. c. 153, s. 7 are *public* games for gain or for any prize or reward. The statute C.S.U.C. c. 104 also prohibits skittles, ball, football rackets or any other *noisy* game, gambling with dice, foot races and horse races, with or without vehicles. The statute of 29 Charles 2, c. 7, is altogether silent as to games; but 1 Charles 1, c. 1, as we have seen, prohibits bear baiting, bull-baiting, interludes, common plays, 'or other unlawful exercises or pastimes.'‡ Playing cards for money in a private place on a Sunday is an offence under C.S.U.C. c. 104: *Rex v. Quick*, 17 O.W.R. 549.

\*See *supra* pp. 31-34.

†In Quebec it has been held that a moving picture show without any verbal explanation or musical accompaniment, but for which an admission fee is charged, is not a violation of the Provincial Act 7 Edw. 7, c. 42, prohibiting the pursuit of an ordinary business or calling, as the words in the French version of the Act show that it is intended only to apply to sales of goods, mercantile business, and manual occupation: *Rex v. Charron*, 15 Can. C. C., 241.

‡See *supra* p. 26.



Golf has been held not to come within the class of games prohibited: *Queen v. Carter*, 31 C.L.J. 664. This decision has been adversely commented on: see 44 C.L.J. 335, but it seems to be in accordance with the statutes above referred to. All games were not prohibited, cricket does not seem to have been forbidden, and archery on Sunday was once expressly enjoined by statute: see 12 Ric. 2, c. 6.

The sports allowed on Sunday were, however, intended to be engaged in only after a due attendance at public worship, but the latter preliminary is no longer enforceable, and it is to be feared is entirely overlooked by those, who without scruple neglect all Christian or religious observance of the day and devote it wholly to sports and amusements. Whether this be "making their liberty a cloak for maliciousness," need not here be discussed.

#### 10. Prosecutions for Violations of Lord's Day Observance Acts.

Under C.S.U.C. c. 104 which is held to be in force in Ontario: see *Rex v. Yaldon*, 17 O.L.R. 179; 13 Can. Cr. Cas. 489, it is provided by s. 7 that any person convicted before a Justice of the Peace of any Act thereinbefore declared unlawful upon the oath or affirmation of one, or more than one credible witness, or upon view had of the offence by the justice himself, shall for every such offence be fined in a sum not exceeding forty dollars nor less than one dollar together with costs and charges attending the proceedings and conviction.

It may be noted that this Act was passed at a time when according to the law as it then stood parties having

any interest in the matter in litigation were not "credible" witnesses. This rule was modified to the extent of making inhabitants of a municipality in which the offence was committed eligible witnesses although the municipality would be entitled to the benefit of the fine, but it is expressly provided that the party who lays the information is not an eligible witness: see s. 13, and this latter provision has been held to be still in force, notwithstanding the change in the general law removing interest as a ground of disqualification of witnesses: see R.S.C. c. 145, s. 3: *Rex v. Pollakoff*, 40 C.I.J. 393. Although the Act provides that a conviction may be made by a magistrate upon view of the offence, this would not dispense with the necessity of calling upon the defendant and giving him an opportunity to be heard in his defence, and a conviction not preceded by this necessary preliminary would be illegal, and could not be maintained in a court of law: see *Chang Hang Kin v. Piggott* (1909), A.C. 312.

(a) *Limitation for Prosecutions.*

The different periods of limitation for instituting prosecutions under the various Acts are as follows:—

11 Hen. ., c. 4—no limitation.

27 Hen. 6, c. 5—no limitation.

1 Car. 1, c. 1—one month\* from commission of offence.

\*In the original Act this meant a lunar month, although these Acts by virtue of their incorporation into the Provincial law are to be regarded as if passed by the Upper Canada Legislature, yet they do not appear to be subject to the Interpretation Act C.S.U.C. c. 2, s. 13, whereby a "month" in statutes included in the C.S.U.C. means a calendar month.

3 Car. 1, c. 2—within six months\* after offence committed.

29 Car. 2, c. 7—within 10 days after offence committed.

21 Geo. 3, c. 49—within six calendar months next after offence committed.

C.S.U.C. c. 104—within one month\* after the commission of the offence.

R.S.C. c. 153—within 60 days after the commission of the alleged offence.

(b) *Leave to Prosecute.*

By the Dominion Act (R.S.C. c. 153, s. 17) it is expressly provided that no prosecution for a violation of that Act is to be commenced without the leave of the Attorney-General of the Province in which the offence is alleged to have been committed. This leave must be obtained before the prosecution is commenced. Obtaining leave after the prosecution has been commenced will not be sufficient, and the leave will not relate back so as to validate proceedings previously taken: see *Thorpe v. Priestnall* (1897), 1 Q.B. 159. The consent must be proved on laying the information: *Rex v. Can. Pac. Ry.*, 12 Can. Cr. Cas. 549. In the absence of the consent the court has no jurisdiction, and the absence of the consent cannot be treated as involving "no substantial miscarriage of justice": *The King v. Bates*, (1911), 1 K.B. 964. In England under the Act of 1871 the necessary consent must be in writing, but the Dominion Act is silent as to

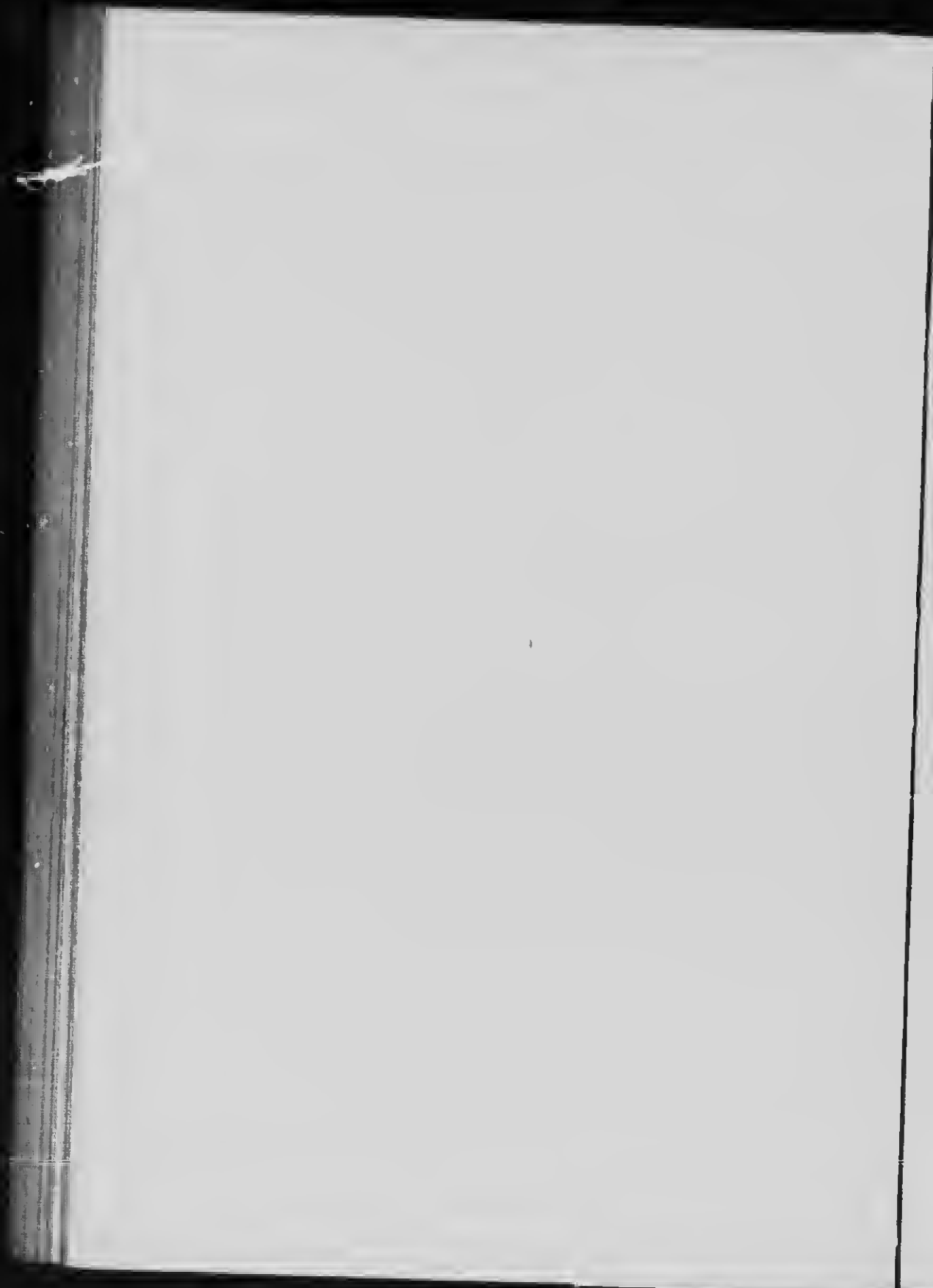
\*This means a calendar month: C.S.U.C. c. 2, s. 13.

the consent being in writing, though it will be difficult to give it in any other way, so that it may be susceptible of proof. Under the Imperial Act of 1871 the consent must be given by the "Chief officer of police," and it has been held that a police superintendent temporarily discharging the duties of the chief officer of police during his absence on his holidays, was not qualified to give the consent: *Rex v. Halkett* (1910), 1 K.B. 50; and if the same construction is given to R.S.C. c. 153, s. 17, then no one but the Provincial Attorney-General in person is competent to give the required consent.

No such consent is necessary for prosecutions for violation of any of the other statutes, relating to the Lord's Day observance.

(c) *Collusive Judgment for Penalties.*

A collusive recovery of judgment by another person is no bar to an action for penalties under 21 Geo. 3, c. 49: *Girdlestone v. Brighton Aquarium*, 3 Ex. D. 137; 4 Ex. D. 107.



## INDEX

- ADVERTISEMENTS,**  
Sunday amusements of, 33, 74.
- ATHIELSTAN,**  
law of, as to Sunday marketing, 17.
- AGREEMENTS,**  
for sale or purchase on Sunday, invalid, 68.
- ALL SAINTS' DAY,**  
*dies non*, under 5-6 Ed. 6, c. 3, 44.  
statute 27 H. 6, c. 5, as to, 21.  
statutory holiday, formerly, 51, 52.
- AMUSEMENTS. See GAMES.**  
advertisements of, for Sunday, 33, 74.  
places of, not to be open on Sunday, 106.  
presence at public places of, unlawful, 73.  
public places for, to be closed on Sunday, 31.  
sale of tickets for, on Sunday, 33.  
transportation to places of, on Sunday, 74, 106.  
charges for, 73, 106.  
unlawful on Sunday, 106.
- APOSTOLIC CONSTITUTIONS,**  
Lord's Day observance, enjoined by, 8, 9.

## ANNUNCIATION, (THE),

*dies non* under 5-6 E. 6, c. 3, 44.  
 statutory holiday, formerly, 51, 52.

## ASCENSION DAY,

statutory holiday, 55.  
 provision of 27 H. 6, c. 5, as to, 21.

## ASH WEDNESDAY,

court sitting on, 61,  
 non-juridical day (under C.S.U.C. c. 42, s. 17), 52.  
 act never repealed, 53, 54.  
 statutory holiday formerly, 52, 55.

## BAKERS,

working on Sunday, 94.

## BARBERS,

working on Sunday, 80, 92, 93.

## BATHING,

on Sunday when unlawful, 68.

## BILL OF EXCHANGE,

made on Sunday, 101.

## BIRTHDAY OF SOVEREIGN,

non-juridical day (C.S.U.C. c. 42), 52.  
 act not repealed, 53, 54.

statutory holiday, 51, 52, 55.

## BLUE LAWS OF CONNECTICUT,

provisions of, 28.

## BOOK OF SPORTS,

Charles I, of, 28.

James I, of, 25.

## BY-LAWS,

municipal, as to Lord's Day observance, 71, 72.

**CANDIES,**

sale of, on Sunday, 92, 93, 94, 95.

**CHAMBERS,**

jurisdiction in, 42.

**CHANCERY,**

Common Law Terms, not observed in, 38, 50, 64.

rehearing, Terms appointed for, 50.

trial of causes in, 50.

Terms appointed for, 50.

**CHEMISTS.** See DRUGGISTS.

**CHRISTMAS DAY,**

dictum of Rose, J., as to, 52.

non-juridical day (C.S.U.C. c. 42), 52.

act not repealed, 53, 54.

statutory holiday, 50, 52, 55.

**CHRYSOSTOM,**

teaching of, as to 4th Commandment, 9.

**CHURCH FASTS,**

days appointed to be observed as, 44, 46, 51, 52.

statutes as to observance of, 42, 43, 46, 51, 52.

**CHURCH FEASTS,**

days appointed to be observed as, 44, 45, 46, 51, 52.

statutes as to observance of, 42-47, 51, 52.

**CIGARS,**

sale of, on Sunday, 92, 93.

**CNUT,**

laws of, as to Sunday observance, 17.

**COMMONWEALTH,**

ordinances of, as to Sunday, 28.



## COMPANY,

- acting contrary to charter, 85.
- exceeding corporate powers, 85, 86.
- forfeiture of charter, 85, 86.
- injunction to restrain acts *ultra vires* of, 85, 86.
- permitting violation of Lord's Day Act, 77.

## CONCEPTION DAY,

- statutory holiday under R.S.C., 55.

## CONNECTICUT,

- old Sunday laws of, 28.

## CONTRACTS,

- for sale on Sunday, void, 70.
- made on Sunday, 68, 70, 97-103.
- not in course of ordinary calling,  
102-104.

## CORONATIONS. See SUNDAY.

## CORONER'S INQUEST,

- held on Sunday, invalid, 64.

## CORPORATIONS. See COMPANY.

## CORPUS CHRISTI,

- formerly a statutory holiday, 51.
- provisions of 27 Hen. 6, c. 5, as to, 21.

## COUNCIL OF LAODICŒA,

- decree of, as to Sunday, 9.

## COURTS. See COURTS CHRISTIAN—TERMS.

- holidays in, 51, 55.
- juridical days in, see JURIDICAL DAYS.
- non-juridical days in, see NON-JURIDICAL DAYS.
- offices of, ordered to be closed, 51, 55.
- effect of, 52.

- COURTS CHRISTIAN,  
establishment of, in England, 35, 36.  
originally domestic tribunals, 35.
- DIONYSIUS,  
letter of, to Sater Bp. of Rome, 8.
- DOMINION COURTS,  
*dies non*, in, 55.
- DOMINION DAY,  
statutory holiday, 55.
- DOMINION GOVERNMENT,  
employees of, 80.
- DOMINION STATUTE AS TO SUNDAY,  
Lord's Day observance Act, 72-78.
- DRUGS,  
sale of, on Sunday, 75, 93.
- DRUGGISTS,  
sales by, on Sunday, 75, 93.
- DRUNKENNESS,  
in street or public place on Sunday, 67.
- EASTER MONDAY,  
non-juridical day by (C.S.U.C. c. 42, s. 17), 52.  
act not repealed, 53, 54.  
statutory holiday, 50, 51, 52, 55.
- EDGAR,  
law of, as to Sunday observances, 18.
- EDWARD THE CONFESSOR,  
law of, as to Sunday, 18.  
confirmation of, 18.
- EDWARD THE ELDER,  
festivals, observance of, enjoined by, 18.

- ELECTRIC RAILWAYS. See STREET RAILWAYS.  
operating on Sundays, 76, 81.
- EPIPHANY, (THE),  
*dies non*, by statute (5-6 E. 6, c. 3), 44.  
statutory holiday under R.S.C., 51, 55.
- EUSEBIUS,  
Lord's Day observance, recorded by, 8.
- EVIDENCE. See LORD'S DAY ACTS.
- EXCURSIONS,  
Sunday, on, statute as to, 69.  
by railways, 73, 74, 88.  
steamboats, 74, 88.
- EXCURSIONISTS,  
Sunday, on, not travellers, 74, 88.
- FARM LABOURER,  
working on Sunday, 80.
- FARMERS,  
working on Sunday, 70, 80, 93.
- FAST DAY (GENERAL). See GENERAL FAST DAY.
- FESTAL DAYS,  
Roman law as to, 9-16.
- FINES. See PENALTIES.
- FISHING,  
on Sunday, unlawful, 68.  
lawful, 77.
- FOURTH COMMANDMENT,  
Chrysostom's teaching as to, 9.
- GAMBLING,  
playing cards for money on Sunday, 107.

GAMES. See AMUSEMENTS.  
 contests for gain, on Sunday, unlawful, 73.  
 lawful on Sunday, 107, 108.  
 playing cards for money on Sunday, 107.  
 public, not allowed on Sunday, 106, 107.  
 unlawful, on Sunday, 68, 73, 106.

GENERAL FAST DAY,  
 non juridical day (C.S.U.C. c. 42), 52.  
     act not repealed, 53, 54.  
     statutory holiday, 51, 52, 55.

GENERAL THANKSGIVING DAY,  
 non juridical day (C.S.U.C. c. 42), 52.  
     act not repealed, 53, 54.  
     statutory holiday, 51, 52, 55.

GOOD FRIDAY,  
 appointed to be observed as holiday, 51.  
 courts sitting on, 58, 59, 61, 62, 65.  
*dictum* of Rose, J., as to, 52.  
 formerly not a *dies non*, 48.  
 non juridical day (C.S.U.C. c. 42, s. 17), 52.  
     (R.S.C. c. 119, s. 43), 52, 55.  
 observance of enjoined (by 27 H. 6, c. 5), 21.  
 statutory holiday, 51, 52.

GUTHRUM,  
 law of, as to Sunday, 17.

HENRY II.,  
 confirmed law of Edward the Confessor, 18.

HOLIDAYS,  
 courts sitting on, 59, 60, 61.  
 days appointed to be observed as,—  
     by 12 Ric. 2, c. 6, 19.  
     C.S.C., 51, 52.

## HOLIDAYS (Continued).

C.S.U.C., 51, 52.

5-6 E. 6, c. 3, 43, 44.

R.S.C. c. 1, 55.

7 E. 7, c. 2 Ont., 54, 55.

Roman law as to, 9-16.

Rules of court as to, 47, 49, 50, 51, 52, 55.  
effect of, 52.

Statutes regulating, 43, 44, 50-52, 54, 55.

## HOTEL-KEEPERS,

carrying on business on Sunday, 80, 95-96.

## ICE CREAM,

sale of, on Sunday, 93.

## IGNATIUS, (S.),

Lord's Day observance mentioned by, 8.

## IMMACULATE CONCEPTION DAY,

statutory holiday under R.S.C., 55.

## INE,

law of, as to Sunday, 16, 17.

## INFORMATION,

filed on Sunday valid, 64.

## INJUNCTION. See COMPANY—SUNDAY.

## INNS,

tippling in on Sunday, unlawful, 67.

## INN-KEEPERS,

carrying on business on Sunday, 80, 95, 96.

## INQUEST. See CORONER'S INQUEST.

## INTOXICATION,

in street or public place on Sunday, unlawful, 67.

## JURIDICAL DAYS. See TERMS.

statute as to, in Upper Canada, 52, 53.

what are, 40.

JUSTIN MARTYR,

Lord's Day observance, testimony of, as to, 8.

LABOUR DAY (1st Monday in September),  
statutory holiday, 55, 56.

LEGAL PROCEEDINGS,

Sunday, on, forbidden, 30, 31, 63, 64.

LIMITATION,

of time, for prosecutions under Lord's Day Act,  
78, 109.

time expiring on Sunday, 105.

LORD'S DAY. See SUNDAY.

LORD'S DAY ACTS. See PENALTIES.

collusive judgment for penalty under, III.

Dominion, of, 72-78.

evidence on prosecutions for violation of, 108, 109.

leave to prosecute under, when necessary, 110.  
how to be given, 110.

limitation of time for prosecutions under, 109.

Ontario Railway Act, 81, 82, 83, 84.

prosecutions for violation of, 108.

evidence on, 109.

Upper Canada, of, 51, 52, 67.

Ontario, of, 53, 54, 63, 66-71.

MAGISTRATE,

hearing before, on Sunday, invalid, 64.

MAILS,

conveyance of, 75, 76, 92.

MEALS. See REFRESHMENTS.

MEDICINE,

sale of, on Sunday, 75, 93.

## MUNICIPAL ELECTIONS,

Sunday, not to be computed in proceedings for, 71.

## MUNICIPALITIES,

by-laws of, as to Lord's Day observance, 71, 72.

cities, over 50,000, may vote Sunday cars, 84.

street railways, not to run on Sunday without consent of, 84.

## NEWSDEALERS,

sales by, on Sunday, 96.

## NEWSPAPERS,

foreign, sale of, on Sunday forbidden, 74.

## NEW YEAR'S DAY,

non-juridical day (C.S.U.C. c. 42), 52.

act not repealed, 53, 54.

statutory holiday, 51, 55.

## NON-JURIDICAL DAYS. See HOLIDAYS.

Ash Wednesday, 52.

Bills of Exchange Act (U.C.), as to, 52, 53, 54.

birthday of Sovereign, 52.

Christmas Day, 52.

Courts Christian, in, 34, 35.

courts of law, in, 55, 57, 58, 59, 60.

days fixed as, (by C.S.U.C. c. 42, s. 17), 52.

(by R.S.C. c. 119, s. 43), 52, 55.

days observed as, in England, 36-44.

Easter Monday, 52.

General Fast Day, 52.

Thanksgiving Day, 52.

holidays by statute, whether they are, 52, 60.

influence of ecclesiastical authority as to, 36.

law Terms, occurring in, 37, 39, 40. See TERMS.

NON-JUDICIAL DAYS (Continued).

legal proceedings on, invalid, 58, 59, 60, 63, 64.  
exceptions, 59, 64.

New Year's Day, 52.

Provincial Courts, in, 48, 52.

Roman law as to, 34, 35.

statutes regulating, 43, 44, 47, 51, 52, 54.

statutory holidays, should be regarded as, 57, 58,  
59, 60.

Sunday said to be only one, 59.

Sundays, 52.

trading on, 97.

under (C.S.C.), 51, 52.

(C.S.U.C.), 51, 52.

(5-6 E. 6, c. 3), 43, 44.

(7 E. 7, c. 2, Ont.), 54.

(R.S.C. c. 1), 55.

(R.S.C. c. 119), 52, 55.

PENALTIES. See LORD'S DAY ACTS.

collusive judgment for, no bar, 111.

under Dominion Act, 77.

Imperial Statutes, 29, 30, 31, 32, 33.

Provincial Acts, 68, 87, 91, 108.

PLACES OF AMUSEMENTS. See AMUSEMENTS.

POLITICAL MEETING,

public, on Sunday, forbidden, 67.

PRE-REFORMATION,

Sunday legislation Roman, 9-16.

Saxon, 16-18.

English, 19-21.

POST-REFORMATION,

Sunday legislation, 22-26.



- PROFANITY,  
in public street on Sunday, 67.
- PROMISSORY NOTE,  
made on Sunday, 101.
- PROSECUTION. See LORD'S DAY ACTS.
- PROVINCIAL COURTS,  
*dies non* in, 48.  
former Terms of. See TERMS.
- PROVINCIAL STATUTES AS TO SUNDAY,  
Canada, 50, 51.  
Ontario, 53, 54, 63, 66-71, 82, 83.  
Upper Canada, 48, 51, 52, 67.
- PUBLIC HOLIDAYS. See HOLIDAYS.
- RAILWAYS. See STREET RAILWAY—TRAMWAY.  
agreement with municipality as to running, on Sunday, 84.  
operation of, on Sundays, 73, 74, 75, 76.  
passenger trains on, 72.  
(under Dominion control.)  
employees of, 84.  
Governor in Council, powers of, 43 to, 90.  
international, 90.  
statute as to, 72, 73.  
steam, operation of, on Sunday, 81-83, 91.  
Sunday, operation of, on, 88-91.  
(under Provincial control.)  
Dominion statute, as to, 81.  
effect of legislation as to, 87.  
employees of, 80, 84.  
milk trains, 82.  
steam, operation of, on Sunday, 91.

- RAILWAYS (Continued).  
 statutes as to, 69, 70, 81, 82, 83.  
 application of, 79, 80, 83.  
 validity of, 83.
- REFRESHMENTS,  
 sale of, on Sunday, 80, 81, 92, 94, 95, 96.
- RESTAURANTS,  
 sales at, on Sunday, 95.
- ROMAN LAWS,  
 holidays, as to, 9-16.  
 Sunday observance, as to, 9-16.
- SABBATH DAY,  
 held to mean Sunday, 71.
- SAINTS' DAYS,  
*die non* under Imp. Statutes, 44, 45.
- SALES,  
 forbidden on Sunday, 68, 70, 72, 74, 98-100, 102.
- SHOOTING,  
 forbidden on Sunday, 68, 74.
- SHOP-KEEPER,  
 liable for acts of servant, 96.
- SOCRATES,  
 Lord's Day observance, recorded by, 8.
- SOLICITOR,  
 doing business on Sunday, 80.  
 omitting to set up defence of illegality, 100.
- STAGE COACH,  
 refusal to carry passenger by, on Sunday, 103.
- STATUTES RELATING TO SUNDAYS AND  
 HOLY DAYS,  
 12 Ric. 2, c. 6 . . . 19, 20.  
 11 Hen. 4, c. 4 . . . 20.

## STATUTES RELATING TO SUNDAYS, etc., (Continued).

- 27 Hen. 6, c. 5. . . . 21.  
 5-6 Edw. 6, c. 3. . . . 42.  
 1 Car. 1, c. 1. . . . 26.  
 3 Car. 1, c. 2. . . . 27.  
 29 Car. 2, c. 7. . . . 28, 29, 30, 31, 78, 79.  
 24 Geo. 2, c. 23. . . . 45.  
 21 Geo. 3, c. 49. . . . 31-34.  
 C.S.U.C. c. 104. . . . 67-69, 78, 79.  
 C.S.C. c. 5, s. 6. . . . 51.  
 R.S.O. c. 324, s. 3. . . . 31.  
 7 E. 7, c. 2, Ont., 54.  
 R.S.C. c. 1. . . . 55.  
     c. 119. . . . 52, 55.

## STEAMBOATS,

Sunday excursions by, 69, 70, 91-92.

STEAM RAILWAYS. See COMPANY—RAILWAYS.

operation of, on Sunday, 81-83, 91.

STREET RAILWAYS. See COMPANY—RAILWAYS,  
 employees of, 84.

operation of, on Sunday, 73, 74, 75, 81-85.

SUNDAY. See LORD'S DAY ACTS,

advertising, intended violation of Dom. Act, 74.

amendments to C.S.U.C. c. 104, held invalid, 70.

amusement, public places of, to be closed, 31.

See AMUSEMENTS.

archery required to be practised on, 20.

bathing on, when unlawful, 68.

bills of exchange dated on, 101.

Book of Sports of Jac. 1, 25.

Car. 1, 28.

by-laws, municipal, for closing shops on, 71, 72.

## SUNDAY (Continued).

- business of ordinary calling on, 72.
- Commonwealth, ordinances of, as to, 28.
- constitutional proceedings on, 65.
- consultation of Judges by King, on, 65.
- contracts made on, 68, 97-104.
  - not avoided, if executed, 104.
  - day for performance of, falling on, 105.
- coronations which have taken place on, 66.
- court of law sitting on, 41.
- day of grace, last, falling on, 105.
- declaration of Jac. 1, as to, 25.
- debating, public places for, to be closed on, 31.
- dies non*, formerly not, 41, 62.
  - now is, 51, 52.
- Dominion legislation as to, 72-78.
- duration of, 72.
- execution of legal process on, forbidden, 30, 31.
- excursions on, 69, 73.
- excursionists on, not travellers, 74.
- formerly not *dies non*, 41.
- games on. See GAMES.
- guarantee given on, 102.
- hiring on, 102.
- industrial process, carrying on, 73.
- injunction granted on, 64.
- injunction to restrain company violating, 85, 86.
- Injunctions of Edward 6, as to, 23.
  - Elizabeth, as to, 23, 24.
- labour on, 16, 17, 18, 72, 73.
- mortgage made on, 101.
- municipal by-laws, as to, 71-72.

## SUNDAY (Continued).

- municipal elections, not to be computed in time for proceedings, 71.
- ordinary calling work of, 73.
- offering property for sale on, 72.
- parliament sitting on, 65.
- passenger trains running on, 72.
- penalties for breach of Dom. Act respecting, 77.  
See PENALTIES.
- period of limitation expiring on, 105, 106.
- places of public entertainment to be closed on, 31.
- post-Reformation, legislation as to, 22-26.
- proclamations, royal, as to, 26.
- promissory note, dated on, 101.
- public games, or contests for gain, on, 73.
  - meetings on, 73.
  - performances on, 73.
- refreshments, sale of, on, 32, 80, 81, 95.
- religious observance of, 7, 8, 9.
- Roman law as to, 9-16.
- royal injunctions. See *supra* Injunctions.
- sale made on, void, 68, 72, 98-100, 102.
  - of foreign newspapers on, 74.
- Saxon laws as to, 16, 17.
- selling real or personal property on, 72.
- service of process on, 30, 31.
- shooting on, 68, 74.
- statutes in force in Ontario, as to, 78.
  - relating to, 19, 20, 21, 26, 27-34, 42, 43, 78, 79.
- telegrams, delivery of, on, 73.
- telephone messages, delivery of, on, 73.

**SUNDAY (Continued).**

tickets, sale of, for places of amusement on, 32.

time limited by statute expiring on, 105, 106.

trading on, 92-97.

work forbidden on, 72-73.

of necessity permissible on, 74-77.

**SURGICAL APPLIANCES,**

sale of, on Sunday, 75.

**TAVFRNS,**

tippling in on Sunday forbidden, 67.

**TEACHING OF THE APOSTLES,**

Lord's Day observance enjoined by, 8.

**TELEGRAPH MESSAGES,**

delivery of, on Sunday, 73.

receiving on Sunday, 75.

transmitting on Sunday, 75.

**TELEPHONE MESSAGES,**

delivery of, on Sunday, 73.

receiving on Sunday, 75.

transmitting on Sunday, 75.

**TERMS,**

adopted in Upper Canada Courts, 49.

business transacted in, 39.

Chancery not observed by, 38, 50.

continuances, 38, 39.

duration of, in Upper Canada, 49.

judgments delivered out of, 50.

legislation as to, 39, 42, 49.

non-judicial days occurring in, 37, 39, 40.

origin of, 37-41.

statutes regulating, 39.

writs made returnable in, 38.

THANKSGIVING DAY. See GENERAL THANKSGIVING DAY.

TIPPLING,

in taverns or inns on Sunday forbidden, 67.

TRADING,

Sunday, on, forbidden, 92, 97.

TRAMWAY. See STREET RAILWAY.

operation of, on Sunday, 81-85.

VICTORIA DAY,

statutory holiday, 55.

VICTUALLERS,

sales by, on Sunday, 94, 95.

WHITSUNTIDE,

Monday and Tuesday, in Whitsun week, *dies non*, 44

WIHTRÆD,

laws of, as to Sunday, 16.

WILLIAM THE CONQUEROR,

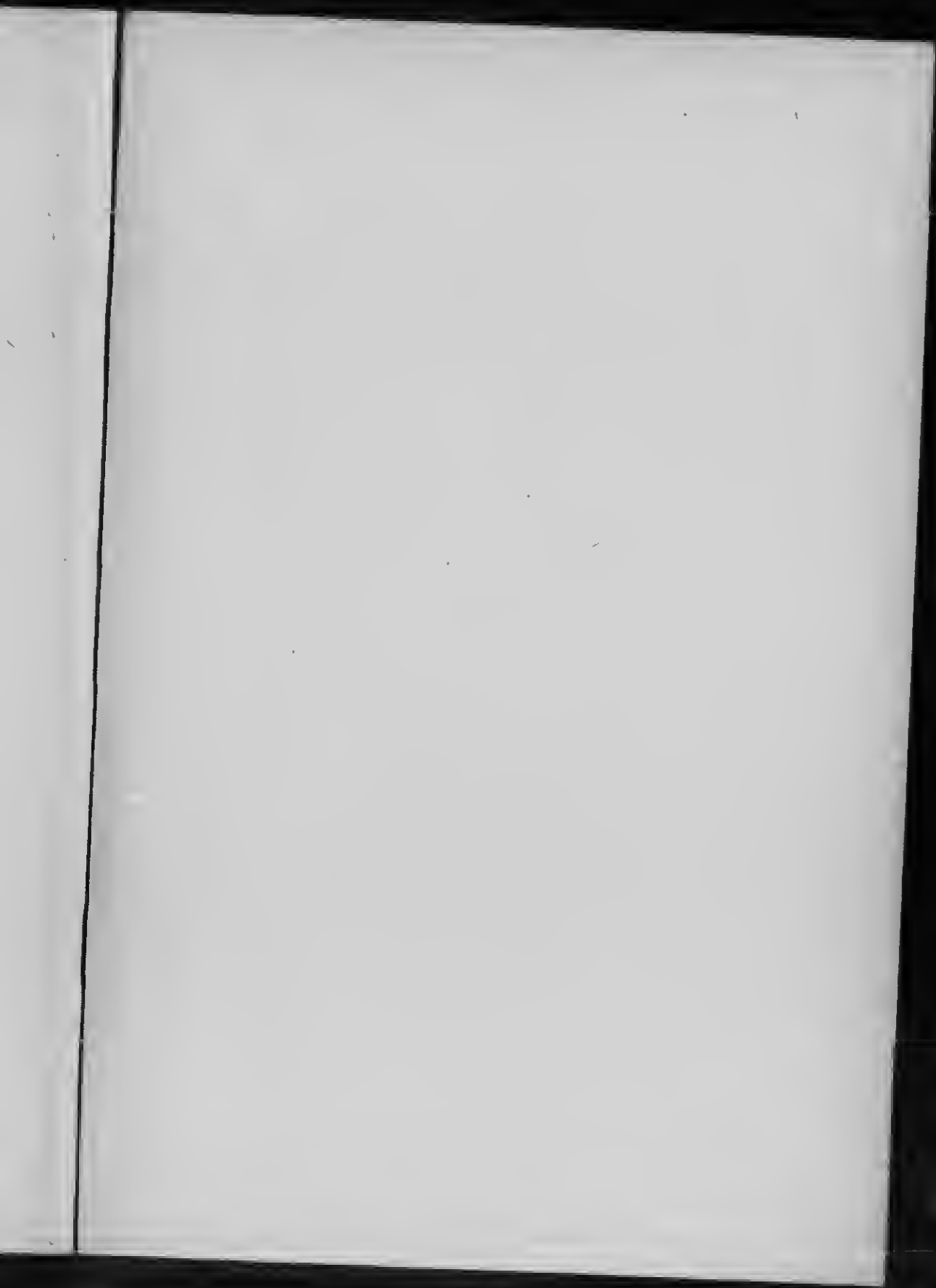
confirms laws of Edward the Confessor, 18.

WORK,

allowed on Sunday, 74-77.

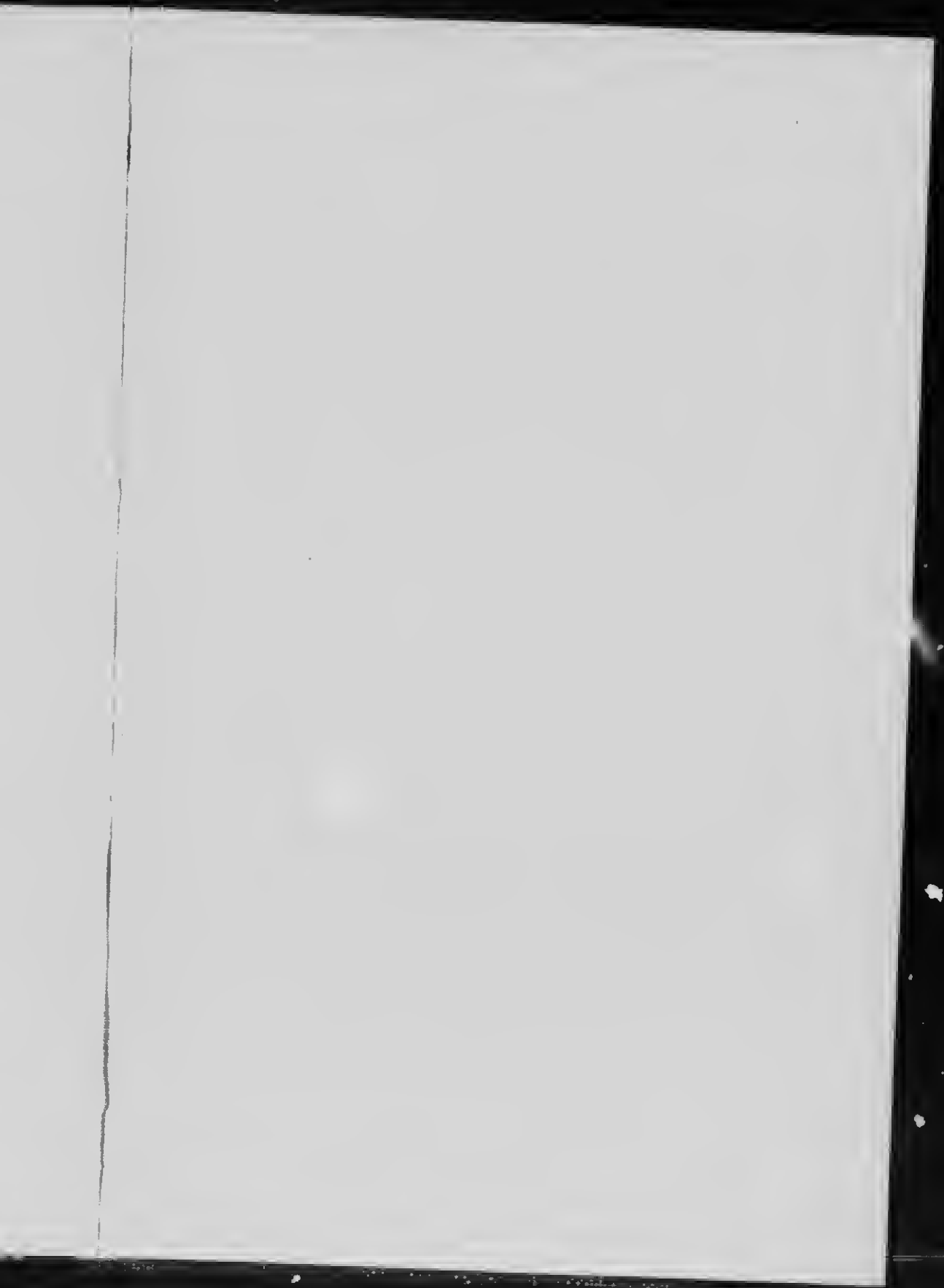
forbidden on Sunday, 72, 99, 100.

of necessity, what is, 74-77.









## ARTHUR POOLE & CO.'S LEGAL PUBLICATIONS.

	Price
<b>Bicknell &amp; Kappeler's Practical Statutes, being a collection of Statutes of Practical Utility in force in Ontario, with notes on the construction and operation thereof, 1900, hf. cf. ....</b>	<b>\$8 00</b>
<b>By-Laws of Toronto (Latest Consolidation), printed and published by order of the Municipal Council. Contains a list of the Mayors, members of the Municipal Council and Officers 1884-1904; By-Laws relating to Assessments for general purposes; By-Laws relating to Loans and Debentures, Local Improvement Debentures, Erection and Safety of Buildings, Scaffoldings, Police By-Laws of General Application, etc., etc. 550 pages, hf. cf. ....</b>	<b>4 00</b>
<b>Cameron's (E.R., K.C.) Rules of the Supreme Court of Canada, promulgated June 19th, 1907, with Notes, Forms and Precedents, 1907, hf. cf. ....</b>	<b>6 00</b>
<b>Canadian Law Times, Consolidated Index Digest, 1861-1899, compiled by the late Hon. J. W. St. John, and is the only Index to Canadian Cases as found in the various Provincial Law Reports as well as C.L.T., together with an Index to leading Articles in first 19 Vols. of C. L. T. 1,110 pages, half calf' ....</b>	<b>6 00</b>
<b>Canadian Reports Appeal Cases containing a full report of all Canadian Cases carried on Appeal to the Privy Council. Vols. 1-4, 1828-1868, and a volume for each year of 1906-1910, in all nine volumes, ready; hf. cf., each .... (Subscription in parts 1911, \$6.50.)</b>	<b>7 50</b>
<b>Clarke &amp; Scully's Drainage Cases, being Decisions of the Referees appointed for the purpose of the Drainage Laws and of the Court of Appeal for Ontario, 1898-1903. Two Vols., hf. cf., each ....</b>	<b>5 00</b>
<b>Digest of Ontario Case Law, being the reported Cases determined in the Courts of the now Province of Ontario from the commencement of Trinity Term, 1823, to the end of the year 1900. Four Vols., hf. cf. ....</b>	<b>50 00</b>
<b>Digest of Mercantile Laws of Canada and Newfoundland, by W. H. Anger, B.A. Seventh Ed., 1911; cloth ....</b>	<b>2 00</b>
<b>Emden's Winding-up of Companies and Reconstruction, eighth Ed., by Henry Johnston, of Lincoln's Inn 1909; cloth ....</b>	<b>5 50</b>
<b>Godfrey's Shavings, a Semi-Legal Medley, by J. J. Godfrey, of Osgoode Hall, 1907; cloth ....</b>	<b>50</b>
<b>Hassard's Private International Law (Westlake Digested), by A. R. Hassard, B.C.L., of Osgoode Hall, Barrister at Law, 1899; cloth..</b>	<b>2 00</b>

	Price
<b>Holmested, Sunday Law in Canada</b> , being a concise summary of the history of the law relating to the observance of the Lord's Day and present state of the Law in Canada, by George S. Holmested, K.C., 1911; cloth .....	2.00 \$2 00
<b>Holmested, Marriage Law of Canada</b> , by George S. Holmested, K.C. The author deals with the question of what is the Marriage Law prevailing throughout Canada, pointing out the diversities of Principle and Jurisdiction which exist and explains the nature of the Marriage Contract, viewed both from its civil and religious aspect. 1911; cloth .....	2.00 \$2 00
<b>Lear's Index to the Canadian Criminal Code</b> , by Walter Edwin Lear, of Osgoode Hall, Barrister-at-Law. This Index cites the section of the Code, Classifying and Consolidating the subject matter of the Code and Criminal Law in such manner as to make it a very convenient hook of reference. 1910; cloth .....	3 00
<b>Moore's Practical Forms Relating to Conveyancing and General Matters</b> , with variations and notes. Fifth Ed. London, 1911; cloth .....	5 50
<b>Moore's Practical Forms of Agreements</b> , with Variations and Notes. Seventh Ed. London, 1911; cloth .....	5 50
(The two books at one purchase, \$10.00.)	
<b>McAndrew's Tariffs of Costs under the Judicature Act</b> , with Practical Directions and Precedents of Bills of Costs, by J. A. McAndrew, one of the Taxing Officers of the Supreme Court of Judicature for Ontario. 1897; cloth .....	2 75
<b>Palmer's (Sir Francis Beaufort) Company Law</b> , a practical handbook for Lawyers and Business Men. Ninth Ed., 1911; cloth .....	3 50
<b>Proctor's Drainage Acts of Ontario</b> , Annotated by Frank B. Proctor, LL.B., of Osgoode Hall, Barrister-at-Law, together with the Ditch and Water Courses Acts and Amending Acts, including the Rules of Practice before Drainage Referees. 400 pages, 8vo. 1907; bf cf. ....	5 00
<b>Russell (Hon. Mr. Justice) on Bills and Notes</b> , being a Commentary on the Bills of Exchange Act, Chapter 119 of the Revised Statutes of Canada, 1906, with references to English, Canadian and American Cases, and the Opinions of Eminent Jurists. 1909; cloth .....	5 00

---

**ARTHUR POOLE & CO.,**  
**Law Publishers, Etc.,**  
**321-322 Confederation Life Bldg., Toronto, Ont,**

NLC - BNC  
3 3286 02689485 3

Handwritten text, possibly a signature or name, written vertically in cursive script. The word "Hart" is circled.

