

A HISTORICAL STUDY AND ANALYSIS OF THE
LAWS OF THE STATE OF PENNSYLVANIA
AFFECTING JEWISH OBSERVANCE

BY

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TABLE OF CONTENTS

	Page
KOSHER FOOD LAW	1 -7
 HISTORICAL BACKGROUND	 1
 ANALYSIS OF THE LAW	
Misleading displays	4
Meat Preparations	5
Sale of Both Kosher and Non-Kosher Meat	5
Labels on Food Containers	6
Punishment for Violation	6
Further Applications of This Law	6
 SUNDAY LAWS	 8-24
 HISTORICAL BACKGROUND AND ANALYSIS	
Brief History of Sunday Law Legislation	8
Validity of This Law	10
Observance of Other Day As Sabbath	12
 LEADING JUDICIAL DECISIONS	
Appearance of Jews in Court on Sabbath	19
Status of Employer and Employee	20
Municipal Ordinances	20
Charity Affairs	21
Definition of Necessity	21
Restraint of Working on Sunday	22
Punishment for Violation	22
 CONCLUSION	 23
 MISCELLANEOUS ENACTMENTS AND COURT DECISIONS	 25
 APPENDICES	 27
 BIBLIOGRAPHY	 31

PART I

KOSHER FOOD LAW OF PENNSYLVANIA

Introduction

Until 1919, no specific law regarding the sale of Kosher Food or of listing food as kosher appeared among the statutes of the Commonwealth of Pennsylvania.

On July 1, 1919, largely as a result of the "pernicious practice of false representation indulged in by many so called 'Jewish' butchers who pretended to be kosher,"¹ the legislature adopted in the Penal Code of that year, a special law regarding the false representation of food as kosher.

While this law was not the first attempt on the part of an American Legislative body to prohibit the misrepresentation of food as kosher, the Pennsylvania bill approved by the Governor on the twenty-first day of July 1919, was intended to be the "most inclusive in its operations and the most stringent in its penal provisions".²

The earliest legislation in America on this subject was adopted by the State of New York in 1915.³ The Penal law of that State contains the following:

"A person who, with intent to defraud, sells or exposes for sale any meat or meat preparation and falsely represents the same to be 'kosher', or as having been prepared under and of a product or products sanctioned by the Orthodox Hebrew Religious requirements, or

¹Quoted from an article by Louis Leventhal appearing in Jewish Exponent, Phila., Aug. 29, 1919.

²Ibid.

³Constituting Chapter 40 of the Consolidated Laws of N.Y., Sec. 435,

falsely represents any food product or the contents of any package or container to be so constituted and prepared by having or permitting to be inscribed the word 'kosher' in any language is guilty of a misdemeanor."

One year later, in 1916, the State of Massachusetts adopted a Kasher Food Bill. The Massachusetts Act provided:

"Whoever falsely stamps or labels any can, jar, or other package containing fruit or food of any kind, or permits such stamping or labeling, or ... sells or exposes for sale any meat or meat preparation, and falsely represents the same to be 'kosher', or its having been prepared in conformity with the Orthodox Hebrew requirements, or falsely represents any food product or the contents of any package or container to have been so prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language, shall be punished by a fine of not less than twenty-five dollars or more than five hundred dollars, and whosoever knowingly sells such goods so falsely stamped or labeled shall be punished by a fine of not less than ten dollars or more than one hundred dollars."

On the following year, the Legislature of the State of Connecticut introduced the following bill which was the least satisfying of any of the so-called "Kasher Bills":

"Any person who shall sell, or offer, or expose for sale, or serve or have in his possession with intent to sell, or serve, any article of food as 'kosher' which is not 'kosher', shall be fined not more than one hundred dollars, or imprisoned for not more than six months, or both."²

Thus, the Commonwealth of Pennsylvania became the fourth state to introduce Kasher Food Legislation. The Act made a clear definition of the term "kosher", included every form of misrepresentation and made the penalty so severe as to make it a very serious matter for those who have made a practice of defrauding observant Jews by

¹Act of 1916, Chapter 58.

²Act of 1917, Chapter 321.

misrepresenting the koshruth of various food products, particularly meat, meat preparations and fowl.

The Pennsylvania Act was as follows:

"Any person or persons who, with intent to defraud, sells or exposes for sale any meat or meat preparation or any fowl or preparations from fowl, and falsely represents the same to be 'kosher' or as having been prepared under, and of a product or products sanctioned by the Orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared by having or permitting to be inscribed therein the word 'kosher' in any language or have the word 'kosher' inscribed on the front of their business establishment in any language, is guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars or more than five hundred dollars, or by imprisonment of not less than thirty days or more than one year, or both, at the discretion of the Court."

A still more comprehensive law was adopted ten years later in the Penal Code of 1929,² and with but slight changes in wording is still in effect today. The complete text of the revised Kosher Food Law, adopted on June 24, 1939,³ will be found in Appendix I.

It might be mentioned that a bill was introduced in 1921⁴ making preliminary stunning mandatory, but failed to become law. It was referred to Committee from which it never emerged.⁵

To date there is only one reported case arising out of the Kosher Food Law, all other cases being of a minor nature which were brought before

¹Penn. P.L. 1919, Tit. 1063, Sec. 1.

²Penn. P.L. 1929, Tit. 105, Sec. 1.

³Penn. P.L. 1939, Tit. 572, Sec. 864.

⁴Sessions of 1921, Bill No. 1471.

⁵Isaac Lewin, et.al, Religious Freedom - The Right To Practice Shehita, New York, 1946.

4

local magistrates and hence not found in legal report journals. In the only reported case, *Manischewitz Food Products V. Rosenberg*,¹ the Court ruled that under the Kosher Food Act the defendant, Rosenberg, could not sell certain canned goods with Kosher labels, when, in fact, these were not kosher. A complete summary of the case will be found in Appendix 2.

It should be noted at the outset that where a violation of the law exists, it is usually only necessary to report this to the local District Attorney, who will then take appropriate legal action. It should be mentioned too, that although, according to the Law, it makes no difference whether the misrepresentation be orally or in writing,² oral misrepresentation is often most difficult to prove.

MISLEADING DISPLAYS

It makes no difference whether the listing of the word kosher is in English or in Hebrew letters. In fact, the Code specifies that one who falsely represents an article of food as kosher, is guilty if he displays "... any sign or mark in simulation of such work (kosher) or by the display of any insignia, six pointed star, or any mark which might be reasonably calculated to deceive or lead a reasonable person to believe that a representation is being made that the food exposed for sale, is kosher or prepared in accordance with Orthodox-Hebrew religious requirements".³ Thus it is obvious that misleading signs such as "Boser Boser", or displays of a Magen David in front of a store, are clearly a violation of the Penal Code of Pennsylvania, if the food offered

¹Federal Rules Decisions 115, (1949).

²Penn. P.L. 1939, Tit. 572, Sec. 864.

³Ibid.

5

for sale is not kosher. It is interesting to note that the Code specifies "... prepared in accordance with Orthodox Hebrew Religious requirements". These last four words do indeed cover a great deal of ground and would, of course, include Talmudic and Rabbinic law.¹ The disgraceful practice of indiscriminately pasting "Kosher I. Pesach" labels on Passover food not having proper Rabbinic supervision, could surely be restricted under this requirement.

Meat Preparations

Regarding meat or meat preparations, the Code mentions specifically that it makes no difference whether the meat be raw or prepared for human consumption, or, "... having been prepared under and of a product or product sanctioned by the Orthodox Hebrew religious requirements."²

Sale of Both Kosher and Non-Kosher Meat

Though the law does permit the sale of both kosher and non-kosher meat or meat preparations in the same place of business, several restrictions may tend to discourage this practice. A sign must be placed in the window and on all displays stating KOSHER AND NON-KOSHER MEAT SOLD HERE, or over each kind of meat exposed for sale, a sign must be placed reading KOSHER MEAT or NON-KOSHER, as the case may be. These signs must be in block letters of at least four inches in height.³

¹ See page 6 of this report.

² P.L. 872, Op. Cit.

³ Ibid.

Labels on Food Containers

Another restriction aimed primarily at the food packer, prohibits one from falsely representing any food product, or the contents of any package or container, to be so constituted and prepared, by having inscribed the word Kosher in any language.¹

In the only reported case involving the Kosher Food Law, *Manishevitz Food Products V. Rosenberg*,² the Court held, as mentioned above, that the Pennsylvania Statute prohibiting misuse of the word kosher in the sale of food products, would prevent one from selling kosher canned tomato soup which was not, in fact, kosher.

Punishment for Violation

Anyone who violates any of the provisions mentioned above, is guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than six months, or both.

Further Application of this Law

It appears that under the "Orthodox Hebrew Religious Requirements" provision of the Kosher Food Law, it may be possible to effect at least two changes in existing conditions.

It is well-known that where food is prepared with mixed dishes and utensils, that food is not kosher.³ A so-called kosher restaurant that follows such a practice would surely not be observing "Orthodox Hebrew Religious Requirements". It would seem then, that sufficient grounds exist for preventing the proprietor of such a restaurant from advertising his establishment as kosher.

¹Ibid.
²9 Federal Rules Decisions 115, (1949). See Appendix II.

³ ת"ר ה'תש"ג, ע"ב, ד"ר

We know, unfortunately, also, that there are a number of delicatessen stores and restaurants which, in addition to keeping open on the Sabbath, cook on the Sabbath. Such food as is cooked on the Sabbath is, according to Orthodox Hebrew law, not kosher.¹ It seems that, where such a situation occurs, it might be possible to secure a ruling from the Court that would prevent the proprietor of such an establishment from listing his place as kosher, — at least on the Sabbath.

¹ ש"ח הו"ע if it is cooked by an Israelite, see כ-ה"ע ; if it is cooked by a non-Jewish person, see ד-ס"ע .

8

PART II
SUNDAY LAWS

Brief History of Sunday Law Legislation

Sunday Laws were in existence long before the discovery of America. As early as 321 A.D., Constantine issued an edict which commanded that "all Judges and inhabitants of the cities must rest on the venerable day of the sun".¹ Later, in 813 A.D., Charlemagne prohibited buying and selling on Sunday.²

In England, in 1656 A.D., the Cromwellian Parliament passed an Act prohibiting the sale of articles on Sunday,³ and prior to this, in 858 A.D., we find the question arising when Pope Nicholas expressed his opinion that words of necessity might legally be performed on Sunday".⁴

During the Middle Ages, Civil authorities exercised the right to legislate in all matters concerning morals and religion. One of the laws of Edward the IV, provided that, "if anyone engages in Sunday marketing, let him forfeit chattel."⁵

The first American Blue Law of any sort was introduced by the Colony of Virginia in 1617, three years prior to the landing of the pilgrims at Plymouth. This Act provided for a fine, payable in tobacco, for the failure of anyone to attend Church on Sunday.⁶

The first Act of this type to find its way into the laws of the

¹A.H. Lewis, Critical History of Sunday Legislation, N.Y. 1888.

²Ibid.

³Erie County Law Journal, Vol. 20, pg. 292, 1939.

⁴Critical History of Sunday Legislation, op. cit.

⁵Revised Statutes of England from 1235-1685 A.D., p. 347, London, 1870.

⁶Sabbath Dec. No. 45, p. 15, New York.

Commonwealth of Pennsylvania was enacted on December 7, 1682. It declared: "For the ease of creation, people shall abstain from their usual and common toil and labor, that they may better dispose themselves to read the Scriptures of Truth at home, and frequent meetings of religious worship".¹ This was modeled after an English statute which was passed in 1676,² which further required the people to, "exercise themselves" in the duties of piety and true religion."

In 1794, the Assembly of the Commonwealth of Pennsylvania, adopted an Act regulating the performance of worldly business on Sunday.³ This enactment was the result of a Yellow Fever plague which ran rampant in the City of Philadelphia at that time. The plague was regarded as a scourge upon a wicked people, and the Legislature hastened to legislate away the wickedness of the people by shackling the devil in his most prosperous day.⁴

The Act, adopted in 1794, on the twenty-second day of April, was most inclusive in its provisions. It provided:

If any person shall do or perform any wordly employment or business whatsoever on the Lord's day, commonly called Sunday, (works of necessity and charity only excepted) shall use or practice any unlawful games, hunting, shooting, sport or diversion whatsoever on the same day, and

¹Acts of the Assembly of the Province of Pennsylvania., Vol I, p. 19, folio edition, Philadelphia 1762.

²Revised Statues of England from 1235-1685 A.D., op. cit., p.779 This law further stated that "no one should do or exercise any worldly labor or business or work ... upon the Lord's Day ... works of necessity or charity only excepted".

³3 Sm. L. 197, (1794).

⁴Erie County Law Journal, Vol. 20, p.290, 1939.

shall be convicted thereof, every such person so offending shall, for every such offence, forfeit and pay four dollars, to be levied by distress, or in case he or she shall refuse or neglect to pay the said sum, or goods and chattels cannot be found, whereof to levy the same by distress, he or she shall suffer six days' imprisonment in the house of correction in the proper county: Provided always, That nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake-houses, lodging-houses, inns and other houses of entertainment for the use of sojourners, travellers or strangers, or to hinder watermen from landing their passengers, or ferryman from carrying over the water travellers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessities of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day."/

Since that time, several of the prohibitions have been modified or repealed, especially as to the playing of sports on Sunday. As regards the Jew, and others who observe the seventh day of the week as Sabbath, the original enactment remains substantially the same.²

Validity of This Law

Several cases have challenged the validity of the Sunday prohibitions on various grounds, but in each instance the Court has upheld the constitutionality of the Act of 1794. In *Comm. V. American Baseball Club*,³ it was held that the above cited laws do not violate the Fourteenth Amendment of the Constitution of the United States, which states: "No state shall make or enforce any law which shall abridge the privileges

¹ 73 Sm.L. 177, Par. 1.
² The revised Act of the Legislature, adopted on June 24, 1939, will be found in Appendix III.
³ 138 A. 497; 290 Pa. 136 (1927).

....of the citizens of the United States.....".

In *Comm. V. Wolff*,¹ the Court held that "as a civil and political institution, the establishment and regulation of Sunday is within the just powers of the civil government", and did not encroach upon the liberties of conscience guaranteed by Article 1, Paragraph 3, of the State Constitution.²

In *Specht v. Comm.*,³ it was held once more that the Act is Constitutional "The first section of the Act of 1794 only selects and sets apart the first day of the week, or Sunday, as a day of legalized rest, and enforces the observance thereof by legal sanctions, and is essentially but a civil regulation made for the government of man as a member of society".⁴ What this amounts to is that Sunday is a day of legalized rest. One must rest when the State wants him to rest, even though he does so on another day also.

As recent as 1939, it was held that the Act of 1794 prohibiting the conduct of business on Sunday is still legal and in full effect, and is binding upon all residents of the Commonwealth.⁵

¹ 3 Serg. & R. 48 (1817).

² "All have a natural and indefeasible right to worship God according to the dictates of ones' own conscience No preference shall be given to any religious establishment or mode of worship".

³ 8 Pa. 321 (1848).

⁴ Ibid., opinion of the Court.

⁵ *Comm. V. Pedano*, Erie County Law Journal, Vol. 20, Pg. 290.

Observance of Other Day as Sabbath

Jews and others observing the seventh day as Sabbath have challenged the Act of 1794 on the basis that it violates the freedom of conscience guaranteed in Article 1, Section 3, of the Constitution of the Commonwealth.¹ In several cases² this definition of the right of conscience as given by Chief Justice Gibbons in *Comm. V. Lester*,³ has been cited:

"The right of conscience is simply a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever, or to support any religion, and to do any act for conscience's sake, the doing or forbearing of which is not prejudicial to the public welfare."

In spite of the fact that the Courts have held that the Act restricting work on Sunday, to be constitutional, serious doubt arises as to the justice of the Act especially as regards one who observes a day other than Sunday as a Sabbath.

In this connection, the question of the constitutionality of the law first arose in 1817, in the case of *Comm. V. Wolff*.⁴ The defendant, Abraham Wolff, was a Jew; by occupation, a pencil-maker. He was charged on oath of one James Pusey, before a Magistrate, with having followed his worldly employment on Sunday. He admitted the fact, but

¹ "All have a natural and indefeasible right to worship God according to the dictates of ones' own conscience No preference shall be given to any religious establishment or mode of worship".
² *Simon V. Gratz*, 2 Penn. Rep. 416; *Specht V. Comm.*, 8 Pa. 312 (1828).
³ 17 Serg. & R. 169 (1830).
⁴ 3 Serg. & R. 48, (1817).

claimed that, "a person professing the Jewish religion, and others who keep the Seventh day as their Sabbath, are not bound by the provision of the Act of 1794, but are exempted from the operation of the Statutes on the score of their faith." The Lower Court ruled against him and he was fined. The case was appealed to the Supreme Court of the State, where Judge Yates decided the Act of 1794 to be constitutional even as regards a conscientious Jew, and affirmed the conviction.

An interesting interpretation of the Fourth Commandment¹ was advanced by Council for the defendant, Wolff. He claimed that he believed the Commandment "Six days shalt thou work", was as binding upon him as, "... on the Seventh day shalt thou rest." But, he claimed, if conscience directed him to work six days and prohibited him to work on the Seventh, and if the, Act of the State prohibited working on the first day of the week, then, such Act gave "... preference to other modes of worship"² -- it allowed some six full days to labor and restrained others to five.

The opinion of the Court on this contention, was that if "Six days shalt thou work" really meant one must work six days, it might well be regarded as an invasion of one's conscientious convictions and the Law might then be regarded as unconstitutional. "But", said the Court, "no evidence to substantiate this contention of the defendant has been submitted, and we have never heard of the Fourth Commandment having

¹Exodus, XX 8-11; Observance of Sabbath
²A violation of Art. 1, Sec. 3, of Constitution of Comm. of Penna.
 See page 12 footnote 1.

received this construction by any persons who profess to believe either in the Old or New Testaments, and that the Jewish Talmud, containing the traditions of that people, and the Rabbinical commentaries and explanations of that Law assert no such doctrine. The true meaning of the Commandment is uniformly supposed to be that we shall abstain from our labor the one seventh part of our time. "Within" (quotation marks mine) six days one is directed to do all his work so that he might devote the seventh day uninterruptedly to the worship of our Deity and the exercise of our religious duties It has never been imagined that one was under obligation to fulfill each day of the six days with some worldly employment".

On this subject the opinion of the Court was definitely in accordance with Jewish belief. Though stressing the desirability for man to be occupied during the first six days of the week,¹ this has never been held to be a Positive Commandment (צו חיובי). On the contrary, Ibn Ezra comments on Exodus XXXI. 15: "Six days one is permitted to work.² Chayim Aryeh Leib Ben Yosef, in his book, Shaar Bat Rabin, goes even further when he writes:³ ".... to work on week days is permissible — it is not an obligation".⁴

The deciding of this case fully established the Law; and the question of constitutionality could no longer be considered an open

¹ Abpht de Rabbi Nathan, Chap. XI.

² "לששת ימים מותר לעבוד".

³ פני דברי, ואלהן ק"א י"א.

⁴ "מלאכה בחול היא רק רשות ולא חובה".

one. Still, private doubts must have frequently been expressed as to the propriety of the judgement; and many had supposed, that if the point could again be raised before the Court, and a fuller argument presented, the former decision might be reversed.

After a lapse of more than thirty years, such a case did arise, this case involving not a Jew but a Christian, one Specht, a farmer residing in Franklin County in the southcentral part of the State, and a member of the very respectable sect of Seventh Day Baptists. He was indicted for following the ordinary labors of his farm on Sunday, and was fined by the local court. Specht appealed, on the ground of the unconstitutionality of the law under which he was convicted, to the Supreme Court, where the proceedings of the lower Court were affirmed, and the constitutionality of the Statute reasserted.

The most singular feature of the decision, (which was given by two of the Judges) is the fact, that while the opinions of both agree in their result, they are based on diametrically opposite grounds. Judge Bell, pronouncing the Act constitutional, because it is purely a civil and not a Christian establishment; and Judge Coulter equally positively declaring the law constitutional, because it is a Christian establishment.

Thus one of the judgements must necessarily be erroneous; and both may be partially wrong, unless one is totally so.

Judge Bell

"It is still essentially but a Civil regulation made for the government of man as a member of society; and obedience to it may properly be enforced by penal sanctions It cannot be said that a primary object of the Act was authoritatively to assert the supremacy of Sunday as of divine appointment In this aspect of the Statute, there is therefore, nothing in derogation of the constitutional inhibition".

Judge Coulter

" I wish it to be distinctly understood, that I believe the Law is constitutional, because it guards the Christian Sabbath from profanation, and in the language of the Act of 1794, prohibits work or worldly employment on the Lord's day. We are a Christian People and State. I do not recognize the right of the Legislature to make a day of secular cessation from labor, independant of the Christian Sabbath."

In logical phraseology, Judge Bell may be described as denying the minor, and Judge Coulter as denying the major premise of the complainant's argument; — that the Act of 1794 prohibiting labor on Sunday gave preference to one mode of religion and was therefore, unconstitutional. It is remarkable that in so doing, each judge admitted the other's premise: so that eodem iudicio, both propositions of the opposing argument may be considered as made out, and the ground of the plaintiff completely established. The Syllogism would stand thus:

1. All laws giving preference to any religious establishment are unconstitutional. (Admitted by Bell.)
2. The Act of 1794 gives preference to a religious establishment. (Admitted by Coulter).
3. Therefore, the Act of 1794 is unconstitutional. (Q.E.D.)

In spite of this, the Law is still in effect today. It is interesting to note that both judges deciding the Specht case remarked that those observing the seventh day of the week as Sabbath do have strong argument to the Legislature as reason enough to modify the Statute. Indeed, soon after this, in April of 1848, the Baptists sent an application to the Legislature to exempt from the Act of 1794, those who observe the Seventh day of the week as Sabbath, from any punishment for working on Sunday. The Jews took no part in this petition, and it was, therefore, confined to the Sabbatarian Baptists only.

The bill stated in part that ".... nothing in the Act restricting work on Sunday shall be construed to extend to any person or persons who conscientiously observe the seventh day of the week as the Sabbath; and in all prosecutions a certificate signed by the Pastor or any Elder or officer of any religious society conscientiously observing the seventh day of the week as the Sabbath, shall be sufficient evidence of membership in said society, and on the presentation thereof, every Justice of the Peace before whom such prosecutions may be commenced, shall dismiss the case".

The bill which arose, passed the Senate of Pennsylvania, but failed in the House of Representatives, when it received an unfavorable reception by the Committee on Vice and Immorality.

We might take note of the following report issued by this Committee:

'Quoted from an article in Occident, Vol. 6, pg. 58, April 1848.

".... as ours is emphatically a Christian Commonwealth, there can be no difficulty in fixing the day in which it shall not be lawful to disturb the devotion, moral instruction and rest of the people, by unnecessary secular business, in as much as the resurrection of the great founder of the Christian religion is the even commemorated by the observance of the first day, and the command requiring a specific day of the week is a positive precept. The change of the day from the seventh to the first does not interfere with its unchangeable obligations, but is a most appropriate commemoration of that event, which, together with the example of the Apostles and early Christians, and the countenance of the Redeemer after his resurrection, has fixed the Lord's day to be the Christian Sabbath beyond a doubt."

Today, over one hundred years later, the situation remains substantially the same. During this period, the Courts have continued to uphold the constitutionality of the Act, and have continued to fine those found guilty of violating it. Even, as mentioned above,² when the Court has felt that the provisions of the Law were antiquated and served no useful purpose, still the Court is powerless to effect any remedy. Only the Legislature can do this, and, as regards the seventh day Sabbath observer, the Legislature has not done this. For him the Law remains the same as it did in 1794.

¹Quoted from a report of this bill appearing in Occident, Vol. 8 pg. 54, April 1850.

²Comm. V. Pedano, Erie County Law Journal, Vol. 20, pg. 290
 "Even if the Act is so antiquated and out of reason with modern methods of living, let us bear in mind that the Act of 1794, is, notwithstanding, a sacred and legal law on the Statute books of the Commonwealth".

Appearance of Jews in Court on Sabbath

Although it is generally known that when a case is scheduled for trial on the Sabbath an Orthodox Jew can usually get a postponement, there are two reported cases in which the Court ruled otherwise.

In the first, *Stansbury v. Marks*,¹ the Court ruled that the conscientious scruples of a Jew to appear in Court on Saturday, will not excuse him from testifying on that day.

This case cannot, however, be considered as authority. It happened that a certain Jonas Phillips, a Jew, was called by Stansbury to testify during the trial. He refused to do so because it was the Sabbath, and was immediately fined ten dollars by the Court. Whereupon Stansbury decided not to call Phillips, and the payment of the fine was cancelled.

In the second case, *Phillips v. Gratz*,² the Court held that the fact that one is a Jew is not in itself sufficient grounds for continuing a case to which he is a party. This case, too, was unusual. It was scheduled for trial on Saturday, the last day of the Court. Phillips, a Jew, and one of the parties in the case, waited until the day of the trial, and on that day appeared in Court and asked for a continuance on the grounds that it was his Sabbath. Since the date was set some time in advance, and all parties concerned were notified of the trial date, and since, also, this day was the last day of the current Court term, and if the case were to be postponed it would be

¹2 Dall. 213 (1793).

²2 Pa. & W. 412 (1831).

necessary to do so for a whole term, the Court ruled against Phillips,

It is worthwhile to note the opinion of the Court in this matter.

"... the religious scruples of persons concerned with the administration of justice, will receive all the indulgence that is compatible with the business of government; and had circumstances permitted, this case would not have been ordered for trial on the Jewish Sabbath. But when a continuance for conscience's sake is claimed as a right, and at the expense of a term's delay, the matter assumes a different aspect."

Status of Employer and Employee

One might think that the prohibition is against the worker only, and not against the proprietor of a store conducting business on Sunday, but we find in *Comm. V. Ryan*,¹ that "... the proprietor of a drugstore or other place of business is liable for the sales made by a clerk, even though the proprietor be not present." On the other hand, it is no defense that one is merely an employee and in performing work on Sunday was merely fulfilling the terms of his contract with his employer.² So we see that both employer and employee are equally liable.

Municipal Ordinance

Can a City impose further restrictions beyond those set by the Act of the Legislature? In *New Castle V. Comings*,³ it was held that a City has authority to enact an Ordinance forbidding the sale of fruits, candies, goods, wares and merchandise on Sundays and to provide a penalty of \$25.00 or imprisonment for 30 days for violation.

¹ *Comm. V. Ryan*, 3 Lack, 334, (1894). See also *Comm. V. McGonigal*, 1 Leh, 37, (1903).

² *Johnston V. Comm.* 22 Pa. 102, (1853)

³ 36 Pa. Super, 43, (1908).

Charity Affairs

Though the Act of the Legislature permits acts of charity on Sunday, the Court has ruled that where a local Ordinance prohibits the operation of mechanical or other amusement devices on Sunday, conviction for infraction of the Ordinance will be sustained even though the profit realized was to go to charity.¹

Definition of Necessity

The Court has defined the word "necessity", as applied to the Sunday prohibitions of the Act of 1794, as whatever is necessary "... for reasonable Sunday convenience in a particular community", for what may not be necessary in one community at one time, may consistently be held to be necessary in other communities, or in the same community at other times.² Would it not then be a basis for interpreting this definition as justification for the legality of keeping open a store on Sunday in a predominately Jewish neighborhood?

Restraint of Working on Sunday

The Court has ruled that the Act did not make the doing of worldly business on Sunday an indictable offence; it is neither a felony nor a misdemeanor.³ It is only a Civil Statute, and no matter how many times one is charged with violating the Sunday laws, he will not be restrained, and need not post any bond to insure that he will not violate the laws again.⁴

¹York V. Elicker, 43 York 41, (1929).

²Comm. V. Smith 28, Dist. 638, 47 Pa. C.C. 658, 266 Pa. 511 (1902).

³Comm. V. Foster, 28 Pa. Super. 40 (1904).

⁴2 North. 241 (1809).

In Comm. V. Rothrack,¹ the Court ruled that the doing of worldly employment without noise or disorder will not be enjoined, and later in Comm. V. Smith,² it was held that the mere violating of a section of this Act, not constituting a nuisance, will not be restrained.

Punishment for Violation

No matter how many acts of worldly business or employment may be committed, nor how many transactions conducted on the same Sunday, they all constitute but a single offense, and only one fine of four dollars may be imposed.³

Since, as mentioned above, the State will not compel anyone to close his business on Sunday so long as it is without noise or disorder it is obvious that the punishment imposed is far too light to prevent a violation. The law definitely is one without any teeth. Is it not, odd, that where there is no interference by local Ordinances, more stores are not kept open on Sunday?

Conclusion

Despite the fact that the Courts have upheld the constitutionality of the Sunday Law, it is quite apparent that these laws are laws in aid of the Christian religion and to discriminate against those faiths professing a day other than Sunday to be the Sabbath. Obviously a Jew whose religion requires him to do no work on Saturday is injured

¹ 2 North. 241 (1890).

² loc. cit.

³ Comm. V. Marlin, 7 C.C. 153 (1888). See also, Duncan V. Comm., 2 Deare. 213, (1874).

in his competitive ability when the law requires him to cease from labor on Sunday as well. His irreligious or non-Jewish competitor who keeps open on Saturday is definitely in a better position. As a result, pious Jews are often faced with the alternative - either keeping closed two days a week and facing the consequence of being driven out of business by competitors who must close their stores only one day a week, or keeping open Sunday and paying the fines and penalties levied upon them as part of the costs of doing business because of their adherence to their religion.

Although the fine is indeed small, to do business on Sunday is still against the law. To urge one to violate the law, no matter how repugnant the law may be, is definitely not in accordance with Jewish practice. "The law of the government, is the law you must obey",¹ has been one of our traditions for over seventeen hundred years.

Rather, as suggested by the Court over a century ago, "..... those who observe the seventh day of the week as Sabbath have strong argument to the Legislature to modify the Statute",² and it is to be urged that the Legislature should indeed modify the Statute. As

¹Babylonian Talmud, Gittin, 10b.

²Specht V. Comm., 8 Pa. 312, (1848).

far back as 1907, Connecticut enacted a law which exempts Seventh Day Sabbatarians from the operations of the general Act forbidding work on Sunday. Pressure must be exerted for Pennsylvania to do likewise!

PART III

MISCELLANEOUS ENACTMENTS AND COURT DECISIONS

The Constitution of the State of Pennsylvania, adopted in 1794, specifically guarantees the freedom of religion. "All have a natural and indefeasible right to worship God according to the dictates of one's own conscience".¹ No one can be compelled to attend any place of worship² or support any place of worship against his consent.³

The Constitution also specifically says that "no preference shall be given to any religious establishment or mode of worship".⁴ No person can be disqualified from public office because of his religion, so long as he acknowledges God.⁵

It may also be mentioned that the Constitution of the Commonwealth exempts places of worship from all state taxes.⁶

No money raised for the support of public schools may be appropriated for the use of any sectarian school.⁷ Thus it would seem that Day Schools are not entitled to any funds from the State, even for the secular studies.

In selecting guardians of minors, the Court must, in all cases, show preference in their appointment, to persons of the same religious belief and background as the parents of the minors.⁸

¹Constitution, Article 1, Section 3.

²Ibid.

³Ibid.

⁴Ibid.

⁵Ibid. Article 1, Section 4.

⁶Ibid. Article 9, Section 4.

⁷Ibid. Article 10, Section 2.

⁸P.L. 447, Par. 59(b) (June 7, 1917).

"No teacher in any public school in the Commonwealth of Pennsylvania, shall wear in said school or while engaged in the performance of his or her duty as teacher, any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect, or denomination.¹ From this, it appears that a teacher of Hebrew in the public schools is not permitted to wear a skull cap in the classroom.

No witness may be questioned, in any court case or judicial proceeding, concerning his religious belief; nor may any evidence be heard upon the subject, for the purpose of affecting either his competency or his credibility.²

In a case involving a Cantor engaged to conduct High Holiday Services in September of 1950, it was held that it was a breach of contract on the part of the congregation to change a seating arrangement calling for the separation of the sexes, (in accordance with Orthodox practice) during the period between the hiring of the Cantor and the day on which he was to begin to officiate at Services. The Judge ordered Congregation B'nai Yehudah of Philadelphia to pay \$1,100.00 to the Cantor. In his suit, the Cantor charged that when he arrived at the Synagogue, the original seating arrangement had been changed, and that he, an Orthodox person, had, therefore, refused to officiate. The contract had been signed in June of 1950, and the seating arrangements changed the following month.³

¹P.L. 395, Par. 1 (June 27, 1895)

²P.L. 110, Par. 3 (April 23, 1909)

³National Jewish Post, Indianapolis, Jan. 15, 1954.

APPENDIX I

THE KOSHER FOOD LAW OF THE COMMONWEALTH OF PENNSYLVANIA

Whoever sells or exposes for sale, in any place of business where food products are sold, any article of food falsely represented as kosher, either by direct statements orally or in writing, or by the display of the word "kosher" in English or Hebrew letters, or by the display of any sign or mark in simulation of such word, insignia, six pointed star, or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food exposed for sale or sold is kosher, or prepared in accordance with Orthodox Hebrew religious requirements; or sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the Orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language, or sells or exposes for sale in the same place of business both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, and fails to indicate on his window signs and all display advertising, in block letters of at least four (4) inches in height, "kosher and non-kosher meat sold here", or exposes for sale, on any show window or place of business, both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, and fails to display over each kind of meat or meat preparation so exposed, a sign in block letters at least four (4) inches in height, reading "kosher meat" or "non-kosher meat" as the case may be, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500.00) or undergo imprisonment not exceeding six (6) months, or both.

(Penal Law 872, par. 864, adopted June 24, 1939).

APPENDIX II

SUMMARY OF THE ONLY REPORTED CASE
ARISING FROM THE KOSHER FOOD LAW OF PENNSYLVANIAMANNISCHWITZ FOOD PRODUCTS INC. V. ROSENBERG
DECIDED IN U.S. DISTRICT COURT, EASTERN PENN., JAN. 14, 1949

Mannischewitz had received an injunction restraining the defendant, Rosenberg, from selling certain canned tomato soups bearing the Mannischewitz label. Rosenberg sought to have the injunction lifted. This case arose when Mannischewitz sought to have Rosenberg's petition dismissed, on the grounds that irreparable injury to Mannischewitz's good will and name would result if Rosenberg would be permitted to sell food which had been prepared under the Mannischewitz label and had been rejected as not measuring up to its standards of kashruth.

Plaintiff, Mannischewitz, a New York Corporation, was engaged in the distribution and sale of various food products prepared in strict accordance with the Jewish dietary laws, which are commonly referred to as kosher. It had acquired, among those who believe in the Jewish religion in this country, an excellent reputation, not only for its rigid observance of the Jewish dietary laws in the preparation of food products, but also for the high quality of those products sold and distributed under its label. On November 12, 1946, it licensed Food Cannery Corp. under a royalty agreement, to can and sell kosher food products under its label provided certain conditions were met. One of these conditions was that the plaintiff was to designate a Rabbi or Rabbis to supervise all the processes, at Food Cannery's expense. At the time, Food Cannery's had its business establishment in Philadelphia, Pennsylvania. On May 19, 1948, an involuntary petition in bankruptcy was filed against Food Cannery. Shortly prior to the filing of that petition, a warehouse company was in possession of and held a lien upon 1150 cases of canned soups belonging to Food Cannery. All the cans of soup were marked kosher and bore the (Mannischewitz) label. The 1150 cases of canned soup included 525 cases of tomato soups which plaintiff, Mannischewitz, had rejected when canned by Food Cannery, as not being kosher, and not measuring up to the standard provided for under the royalty contract. The warehouse company sold the 1150 cases to a third person who in turn sold them to the defendant, Rosenberg. Mannischewitz, therefore, sought to restrain Rosenberg from selling

the 525 cases of tomato soup under the Mannischewitz name and label.

The Court ruled that regarding the 525 cases of tomato soup which were not prepared in accordance with Jewish dietary laws, the Kasher Food Act makes it an offense for misusing the word kosher in connection with the selling or exposing for sale of food products. "If the cans of tomato soup were not kosher", said the Court, "this Act;should be sufficient deterrent to the defendant's use of that designation on those cans of soups".

Rosenberg's motion to have the injunction lifted so that he might be permitted to sell the cans of soup under the Mannischewitz label was, therefore, dismissed.

APPENDIX III

THE SUNDAY LAW OF THE COMMONWEALTH OF PENNSYLVANIA

Whoever does or performs worldly employment or business whatsoever on the Lord's day, commonly called Sunday, (works of necessity and charity only excepted), or uses or practices any game, hunting, shooting, sport or diversion whatsoever on the same day not authorized by law, shall upon conviction thereof, in a summary proceeding, be sentenced to pay a fine of four dollars for the use of the Commonwealth, or in default of the payment thereof shall suffer six days' imprisonment; provided that nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake houses, lodging houses, inns and other houses of strangers, or to hinder watermen from landing their passengers or ferrymen from carrying over the water travellers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessities of life before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day.

(P.L. 872 Par. 699.4, adopted June 24, 1939).

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