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POPULAR TALKS ON LAW

By Walter K. Towers, A. B., J. D.,
 of the Michigan Bar

NATIONAL GAME AND THE LAW

In a sense baseball is a law unto itself. It is the magnates who make the laws that govern the game, and when disputes arise it is the national commission or the genial auto-crats who act as presidents of the several leagues who settle most of the cases. When men swap horses and one of them feels that he has been cheated he is likely to take his complaint into the courts. When Frank Chance swaps Hal Chase to Callahan for Zelder and Borton and feels that he has been cheated, he takes his complaint to the head of the league. As it seems that the American League heads are to take no action in the matter, Chance might bring suit; but there is little probability that he will do so. Managers who have traded players have taken the matter into the courts and have discovered the great principle of sales caveat emptor, which is usually translated as "let the buyer take care," surely a wise injunction. But there are not a few cases involving baseball that find their way into the courts and judges have expressed some interesting opinions and made some ingenious and learned explanations of the national game. Most of the cases involving baseball are either difficulties over the player's contract or questions of Sunday baseball.

Before the law, if a club gives a player a contract for a definite time and a definite salary it must fulfill the conditions of that contract. All that is required of the player is the ordinary knowledge and skill common to members of his profession. So it is that we see players who have been discharged by the clubs bringing legal actions to enforce their rights, as Hoffman is suing the Chicago Cubs because of his discharge before the expiration of his contract.

The reserve clause in all professional baseball contracts, which gives to the club the right to the exclusive right to a player's services, even after the expiration of the term of a contract and thus prevents a player from securing a position with any other club, has involved many legal disputes. Now that baseball is thoroughly organized under the national agreement this rule is strictly enforced by the clubs and the magnates insist that it is essential to organized baseball. It was because of this reserve clause that Ty Cobb was at the mercy of the Detroit club and was forced to take his choice between playing with the Tigers and not playing at all. It was these circumstances that caused an agitation that reached Congress and that threatened to change this situation by force of law, changing baseball law by national law.

In many cases the courts have refused to sustain the reserve clause, and because the contracts were one-sided, and all in favor of the magnate, have refused to prevent a player from playing with another club than the one which "owns" him under baseball law. These matters do not now find their way into the courts, because no other club will hire such a player, and so baseball law reigns supreme.

But there have been cases in which the courts have enforced a contract against a player. Such was the famous Lajoie case which arose when "Nap" attempted to break his contract with the Philadelphia club. It brought forth an interesting opinion in which the court had the following to say of the great player:

"The court below finds from the testimony that the defendant is an expert baseball player in any position; that he has a great reputation as a second baseman; that his place would be hard to fill with as good a player; that his withdrawal from the team would weaken it, as would the withdrawal of any good player, and would probably make a difference in the size of the audiences attending the game." We think that in thus stating it, he puts it very mildly, and that the evidence would warrant a stronger finding as to the ability of the defendant as an expert ball player. He has been for several years in the service of the plaintiff club, and has been re-engaged from season to season at a constantly increasing salary. He has become thoroughly familiar with the action and methods of the other players in the club, and his own work is particularly meritorious as an integral part of the team work, which is so essential. In addition to these features, which render his services of peculiar and special value to the plaintiff, and not easily replaced, Lajoie is well known, and has great reputation among the patrons of the sport, for ability in the position which he filled, and was thus a most attractive drawing card for the public. He may not be the sun in the baseball firmament, but he is certainly a bright, particular star."

The question has been raised as to whether baseball may be arbitrarily prohibited by a municipality, and the answer seems to be no. Merely playing baseball is not, in itself, a nuisance, unless done riotously or in an improper place or at an improper time.

"Baseball," says the Missouri court, "does not belong to the same class, kind, species, or genus as horse racing, cock fighting, or card playing. It is to America what cricket is to England. It is a sport or athletic exercise, and is commonly called a game, but it is not a gambling game nor productive of immorality. In a qualified sense it is affected by chance, but it is primarily and properly a game of science and physical skill, of trained endurance, and of natural adaptability to athletic skill. It is a game of chance only to the same extent that chance or luck may enter into anything a man may do. But when chance or luck is pitted against skill and science, it is as fair an illustration of what will result as any test that could be applied. If the view of the Williams Case had been

adopted, this statute would have been elastic enough to cover every game that ever was or ever will be invented, no matter whether it was harmless, promotive of physical or mental development, or deleterious to both. It would prevent games of chess, backgammon, jacks, authors, proverbs, faro, keno, and poker alike.

While a statute may forbid the playing of baseball on Sunday altogether, it is usually only professional ball that is aimed at, and the courts seem inclined to interpret laws which do not definitely prohibit Sunday baseball in all forms as applying to baseball the business.

When Mayor Gaynor was a member of the bench he was called upon to interpret the New York statute against Sunday baseball in a case in which an effort was being made to convict a man of a crime because he played baseball on Sunday, and he had the following to say:

"It is practically the unanimous sentiment of the religious and God-fearing people of the community, that it is far better for our grown boys and young men who have to work indoors all the week for a living, to go into the fields on Sunday afternoon after attending church, and participate in or witness good, elevating, healthy physical exercise, than to be driven instead to go to dance gardens, drinking places, pool rooms and worse places; and there is no one trying to stir up any obscure or obsolete statute against that opinion except those who rule the police. Fathers and mothers would much rather know that their grown sons are at a ball or golf game on Sunday afternoon, than not know where they are. Many of our boys and young men scarcely see the sun at all during the short days of the year, except on Sundays, and have no other day for outdoor exercise from one end of the year to the other. This is something which our ministers of the Gospel well know, and the significance of which they fully appreciate."

"I agree that there is no prohibition against the man who is forced to labor during the week days," said another New York judge in regard to the same statute, "preventing him from enjoying himself in an orderly and decent manner on Sunday, so long as the repose of the community is not interrupted. But the prohibition is clear against Sunday games which are advertised, to which the general public are invited, and which they attend in great numbers, and to witness which money is charged directly or indirectly, or which are conducted for financial profit. This is not the wholesome recreation of the individual which the law will not prevent. It may be sport, but it is public sport and a quasi business undertaking. This is prohibited by the legislature, whether wisely or unwisely it is no part of the court's duty to say, if the law is improper, the remedy is by application to the legislature for its repeal; it is not for the court to make the law, or to countenance its evasion."

The question of the duty of protection which a baseball club owes to a spectator was discussed in a recent Missouri case. One Crane attended the game as a spectator and paid for admission to the grand stand. Reserved seats were not sold and he had the option of seating himself behind the netting or in an unprotected seat. He chose the latter and during the game was struck by a foul ball. He claimed damages on the ground that the company was negligent in not screening the entire stand.

The court held that the company was not an insurer of the safety of spectators, but was only bound to use reasonable care, and that it was sufficient that they had provided screened seats when Crane might have used had he chosen to.

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LETTER FROM DISMERS

Mr. and Mrs. W. H. Zehrung received a letter last week from Mr. and Mrs. F. B. Dismers who are in business at Basin, Wyo. They are doing fine and like it there, which will be good news to their many Alliance friends.

CIVIL SERVICE EXAMINATIONS

Civil Service Examinations on the following subjects, on the dates given, will be held at Alliance. Full information can be secured from J. S. Johnston, local secretary, Alliance postoffice.

August 18, 1913
 Chief, office of information (male), Department of Agriculture, salary \$2500 per year.

August 20, 1913
 Radio Subinspector (male), \$6 per day, in the Navy Yard, New York City. Assistant in crop acclimatization (male), salary \$840 to \$1200 per year. Radio electrician (male), salary \$4.48 per day, in the Navy Yard, New York City. Laboratory aid in Horticulture (male), salary \$720. Laboratory aid in physics (male), salary \$600 to \$720. Assistant preparator in paleontology (male), salary \$600 per month.

August 20-21, 1913

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AUGUST RATE BULLETIN

TO THE EAST:
 The Circuit Tours of the East, going one way, returning another, are attracting Tourists from the Middle West, who desire to include on one ticket, lake trips, eastern cities and resorts, sound and coastwise steamers, Washington, D.C., etc.

TO THE WEST:
 You have near at hand GLACIER NATIONAL PARK, the newly revealed "Wonderland", YELLOWSTONE PARK, with its personally conducted camping tours from Cody, its permanent camp tours, conventional hotel tours, all at low cost, considering the accommodations furnished in these regions.

Then there are the BLACK HILLS, with its famous resort at HOT SPRINGS, the ranch resorts in the Big Horn Mountains near SHERIDAN, THERMOPOLIS Hot Springs, in the Owl Creek Mountains. THE KNIGHTS TEMPLAR CONCLAVE in Denver, August 11th to the 16th offers a great attraction in connection with a few days' sojourn in Colorado, with side trips to Estes Park, Colorado Springs, Manitou and a hundred other nearby places.

TO THE PACIFIC COAST:
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