

voice, corporations and the like. This, however, is not strictly accurate. The confusion in this particular is attributable to either one of two things, namely, a difference in judicial interpretation of the law, or the contrivance of public officials at willful violations of the statutes.

"In some states base ball played on Sunday is expressly prohibited by statute. Thus, in Indiana, the statute forbids baseball on Sunday for an admission fee. (See State against Hogreiver, 23 Ind. 283.) In Why, Law Bull. 23 November, National League games are played in Cincinnati on Sunday and American League games in Cleveland. (The writer means American association games in Cleveland.)

"In New York the law is probably in a more confused and perplexing state than in any other jurisdiction. Section 263 of the penal code prohibits 'all shooting, hunting, immoral or profane, horse racing, gaming or other public sports, exercises, pastimes or shows upon the first day of the week, and all noise disturbing the peace of the day.' The first case construing this statute in reference to base ball was People against Denton, 35 Hun. 327, decided in 1887. It is a valid exercise of the power to play ball on private grounds, without making any noise, were not guilty of violation of the statute. The court considered section 265, together with sections 262 and 263, relating to Sunday observance, and said: 'From the three sections it is manifest that the purpose of the community on Sunday. The thing prohibited must be to a greater or lesser extent public.'

"This decision was criticized in People vs. Moses, 140 N. Y. 314, wherein it was said that the Denton case was wrongly decided. The court said: 'That playing ball by several persons in a place open to view of the people who may be in the vicinity, or who may pass by, is condemned by the principles which lie at the bottom of the Sunday laws, and is an act of playing within the meaning of the statute, cannot be doubted. It is to be observed, however, that the question of base ball playing on Sunday was in issue in the Moses case. In matter of Rupp, 33 N. Y. App. Div. 468, decided in 1896, it was held (citing People vs. Moses) that ball playing on Sunday is a misdemeanor and that an arrest therefor may be made without warrant.

"In People vs. Redell vs. Mott, 38 Misc. N. Y. 171, decided in 1902, Judge Gaynor followed People vs. Denton, declaring that it was not overruled by People vs. Moses, and held ball playing on Sunday was not a crime when it did not amount to an interruption of the repose and religious liberty of the community. In 1904 the question again came before Judge Gaynor, at supreme court chambers, in the case of People vs. Redell vs. Mott, 112 Misc. 210. The case was a habeas corpus proceeding to test the legality of certain arrests for playing ball on Sunday. The learned justice adhered to his decision in the Redell case and handed down an opinion which is so remarkable in many particulars that we feel justified in quoting from it at some length. He said: 'No complaint was made to the present case by any citizen that the repose and religious liberty of the community or himself were interrupted. The arrests were voluntarily made by the police and the information is sworn to by a captain of police only. He does not allege that the repose and religious liberty of the community were interrupted. His action seems to be in defiance of the decisions of our courts. He sets himself above the law, a thing grown very common with the police in this city of late years and of which there seems no sign of abatement by those who control the police. Mr. I and women are being arrested daily on charges which they have decided over and over again do not constitute any criminal offense. It cannot be too often said to those who rule the police that our government, like all free governments, is a government of laws and not of men.

"Those who turn it into one of men and not of laws are more dangerous to society than any other class of lawbreakers, or all other lawbreakers combined. They would destroy our system of government and substitute one of arbitrary power and unlawful force. Ten years ago the police of the city of Brooklyn took it upon themselves to chase club and men from the outskirts and remote places of the city, while many shows and places of evil report were open, and trainloads of people were being carried by them; but on the protest of citizens they were stopped in their course by a police captain who came to the playing club and ordered him, powers and duty, and of those under him, under a free government such as ours. Since then ball playing and golf playing on Sunday have been un molested here. It would seem that we are now on the eve of another similar movement by the police, and such movements come periodically, and for no reason whatever other than mere officiousness.

"There are many minor offenses which should be left for redress to the coming forward of private accusers before the magistrates or the procedure of our courts complete. The accusatory method of enforcing the criminal laws is open to every citizen. The community can take care of itself in such matters without any police meddling. Base ball and golf and other innocent and healthful games are being played everywhere outside of the city on Sunday without being meddled with by constables or policemen. Such meddling is practically unknown in this city, where, of all places, we should have humane, sensible and intelligent government. The general sentiment of the community has been consulted in respect of the enforcement of certain laws, and always has been in the Anglo-Saxon world as well as elsewhere until recently in the city of New York. It is a maxim of the law that you can not indict a whole community. The Anglo-Saxon state statutes which grow obsolete and obnoxious the same as a snake sheds its skin. He has seldom bothered to repeal them, as every one acquainted with the history of laws very well knows. No citizen any longer makes a complaint under them, and thus they become dead letter laws. It is not the business of the police to revive them. They are not employed and paid by the citizens for any such purpose.

have been as illegal as any other. Such construction would have curtailed many of the pleasures of many of our people without elevating them or improving their moral tone. Until the lawmakers expressly provide for such sweeping changes in the lives and customs and habits of our people it is not proper for the courts by construction to impair their natural rights to enjoy those sports or amusements that are neither mala in se nor mala prohibita, and which are not prohibited by any law. We, therefore, conclude that there is no law in this state which prevents playing a game of base ball on Sunday.

"Common in Illinois. "In Illinois, apparently, the only statute bearing upon the question are paragraphs 63 and 63 of the criminal code, which prohibit any one who shall disturb the peace of society or of a private family by engaging in any amusement or diversion on Sunday. Evidently it has never occurred to any one in Illinois that Sunday base ball games disturb the peace of society, for the practice is common there, any one. The courts there furnish noteworthy examples of willful violation of the statutes.

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"A month later Justice Gaynor held in another case that a public game of base ball, i. e., a game to which the public is invited and to which an admission fee is charged, is within the inhibition of the statute. He said: 'The prohibition is only against public games and exercises, namely, those to which the public is invited, because the statute presumes that they interfere with the repose of the community.' People vs. Miller (N. Y. 118). "In Dunham vs. Binghamton, etc., Assoc. at Misc. (N. Y. 112). Justice Forbes, at Binghamton, refused to dissolve an injunction secured by property owners against

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MUDDY COURSE AT OAKLAND

Pallidin, 8 to 1, Outgames Favorite in First Race and Wins in Driving Finish—Results at Los Angeles.

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