

## THE CASE OF JUSTICE FORD

New York City, N. Y.

**T**O the Editor:—In the first number of *The Commonwealth* received I was pained to see your somewhat flippant comments on the Boyd-Sumner debate. It was the pain of disappointment because I expected to find your publication at least in pronounced opposition to the immorality which is the outstanding feature of current fiction.

You will answer that you are opposed to it perhaps. So will every one decent who knows anything about how bad conditions have become.

But what are you or they doing to abate the evil? Mr. Sumner is one of those who not only opposes harmful publications but he is also among those who have started a crusade against them in the only practicable way we have been able to devise.

In that movement I took the initiative by calling a conference at the Hotel Astor, in the winter of 1922. Cardinal Hayes (then Archbishop) deputed Monsignor Lavelle to attend as his personal representative. Bishop Manning sent a representative, also. The Federation of Churches (Protestant) was represented, as were the Salvation Army and a goodly number of religious, patriotic and civic organizations. A representative of the District Attorney's office was invited to inform us on the practical difficulties blocking enforcement of the old anti-obscenity statute. Mr. Meyers was selected by Mr. Banton and sent to represent his office.

After a general discussion of conditions in the publishing field, all agreeing that they were intolerable, a committee was authorized to recommend appropriate legislation. Mr. Martin Conboy, Mr. John S. Sumner, Mr. Meyers and myself were the committee selected. We met repeatedly and after most careful consideration of the problem, drafted the bill which has been before two sessions of the legislature.

Its purpose is to stop up the holes punched in the law by the courts. It was on the recommendation of Mr. Meyers that the provision permitting a prosecution to be based on a part of a publication was inserted. We found that the federal courts did just that in enforcing the United States statute, making it a crime to deposit obscene prints or objects in the mail. Our statute in respect of the descriptive terms employed to designate the things forbidden is the same as the federal statute in substance. Furthermore, the law of Massachusetts, which is effectively enforced, prohibits publications "containing" obscene language.

You see we were eminently practical. No substantive changes in the existing law are proposed. Our amendments would restore the obvious meaning of the statute and change the procedure to conform to that of the federal courts, which really give the only common

sense meaning to the law of which it is susceptible.

Our critics are not honest. They are financially interested. Unfortunately they control practically all the instrumentalities of printed intelligence. Even the little country newspapers are induced by the press associations, which control their advertising, to join in the absurd cry of censorship against our measure.

That objection you mention, about prosecutions based on a word, or a few words of a publication of merit, is one that has been raised by the defendant in any number of prosecutions. The courts have summarily disposed of it as often, as of no force. The courts are ruled by common sense and charged with the duty to see that no injustice is done and that every law is construed reasonably and so as to promote justice. No court may become the instrument of injustice or oppression. The federal courts right here in New York entertain prosecutions based on part of a book. They have been doing so for years and years. Yet never has a book of merit been attacked. So of the law of Massachusetts, the native state of American literature, one might say. The Massachusetts statute makes any obscene language contained in a book the basis of a prosecution. In perhaps a dozen other states, similar language is found in their obscenity statutes. Yet worthy works never have been molested in any of them. The danger from such a provision is purely imaginary.

Get it clearly in mind that we are dealing with crime—a crime older than the common law. Before any prosecution can be instituted, someone must accuse his neighbor of a crime. One who does that, assumes a dangerous responsibility. An acquittal means that the defendant has a right of action against his accuser for malicious prosecution. Dozens of such cases have been tried before me. Indeed, the Society for the Suppression of Vice was so sued a few years ago and suffered a judgment for \$2,500 against it, which was affirmed by the Court of Appeals. Of course, accrued costs and interest made the sum much larger, not to mention the legal fees and other expenses of the judgment debtor.

We must make the meshes of the legal net small enough to catch our fish or we might as well stop fishing. The laws against speeding in order to prevent reckless driving had to be so formed that multitudes habitually violated them with impunity. Indeed, traffic officers at times urge drivers to illegal speed. The ordinances against obstructing sidewalks are another illustration of the dozens of laws technically violated every minute but never enforced against the violators. Yet these laws are universally recognized as necessary to promote public safety and good order. As the Court of Appeals remarked of the obscenity statute,

there is little fear of a miscarriage of justice before a discreet judge.

Again let me return to the question—if our mode of procedure to abate the evil of obscene prints is unwise, what do you propose? What does anyone propose outside of our movement? When will someone propose something else to correct conditions?

We are wedded to no particular plan. We came to our conclusions only after a most critical study of conditions and drafted our bill with exceeding care. Let somebody else propose something better. We do not care what the proposed remedy might be, we would favor it so long as its honest intent and promised result were the suppression of obscene publications. But bear in mind that the accumulated wisdom of the ages has never been able to devise any effective means of curbing printed obscenity, except by prosecuting and punishing it as a crime against society.

All the big newspapers and all their subordinate news agencies are closed to us. My prediction is that the New York Evening Post will not again give space to our side of the question. All the newspapers printed our stuff at the beginning. They closed their columns tight up, except to misrepresent and abuse as soon as it was made known to them that the big publishing houses were a unit against our proposed, or any, amendments to the present law. It suits them perfectly because it has come to as good as no law at all through judicial interpretation—interpretation which is at variance with the construction placed upon their similar laws in every state in the union, in England and throughout the Anglo-Saxon world. That our law is dead is proved by the facts before our eyes in the free circulation of printed immorality—in flood volume everywhere.

Again, if you do not like our bill, what do you propose? How shall we effectively deal with this menacing evil of printed and pictured indecency?

JOHN FORD.

## THE SKY

By MARY KOLARS

**W**ASN'T it Ruskin who prepared a detailed study of the various types of cloud, and their appearances at different altitudes? I have not read the book, but if, when I do read it, I find that he was able to make anything of the subject, I shall be very surprised. The two other most beautiful things in the world, water and trees, offer a predictable variety of mood, and suggest, even in their moments of wildest life, governing laws that are stable and seizable. But the heavens (I mean, of course, the daytime heavens, a phenomenon within the scope of our active lives; at night the curtain is merely pulled away, and infinity is let in on us) these daytime heavens hardly seem to be a part of nature. They are a separate dispensation. Not upon them has been put the constraint of form and

appointed return. They are free, with a freedom re-established from moment to moment, perpetually. They are the last refuge of the fettered soul. Into that bright anarchy it can escape and be renewed.

It needs this escape. We are made so. Ancient mankind sought refuge from the meaning of life, and Christian mankind made the impulse honorable. The Saturnalia was baptized into the Feast of Fools. Now our tides no longer run so high; our vitality no longer demands to be eased so violently; but even now, besides the exquisite irrationalities of sport and the productions of the professional humorist, the world's salaried court jester, there remains an abundance of plain, Christian nonsense to prove that the impulse is not dead. Man still refuses, at times, the glory and burden of law. He still must escape.

And the choicest of all escapes is to watch the sky. We thereby escape even from the need of formulating our own caprice, and follow instead the caprice of God. For it is not without meaning that the heavens alone have resisted the designations of man. Everything else he has tamed with his understanding and fettered with his concepts. He has watched and classified the sea and the land beyond the power to surprise him further. But the sky he cannot conquer. No eye has the perspective on that immeasurable movement, no patience can outwear that immortal change. The heavens are incomprehensible, and it is precisely in this that the soul finds its pleasure and its secret rest. It is delivered, for once, from the effort of understanding, and it still remains in the region of delight—the immediate delight of a prodigally and yet delicately gratified sense. The mind cannot come in to appropriate this joy, to order it, sophisticate it and spoil it. Whatever avenue opens into the soul through the vision is opened here directly, by sweep, movement and color alone. That part of us which laboriously joins thing to thing to make a thought, is left behind; and to mislay it is always a refreshing and recreating experience.

"The heavens"—so ran some words which I once came upon in a book, and which made an ineffaceable impression on me—"The heavens declare the glory of God." For a gloss on that text, lie on the grass on a hot, breathlessly blue day in high summer. See the white continents moving without cessation above you. Watch those beautiful, unnameable shapes which, at every moment, pass out of being forever. Ponder the opulence of that eternal rejection, the unsearchable gaiety of that endless renewal of change. What divine needlessness, what divine wilfulness, what reckless folly of beauty! Here, surely here, is the glory of God. Here is His playground, His holiday. Here is the warrant and archetype of our need for largeness, for carelessness, for play. All else He has struck into orderly being, and tethered to law: the tree stands where the acorn fell, the water must run down to the sea. The earth is sober and dutiful. But there is laughter in the heavens.