

The Sentinel

OF CHRISTIAN LIBERTY

VOL. XVIII

WASHINGTON, D. C., DECEMBER 24, 1903

NO. 51



The zeal for Sabbath reform which manifests itself in Sunday enforcement is very much misdirected.

The fact that the enforcement of Sunday laws is no longer and can no longer be other than discriminatory and partial is a special reason why all enforcement of those laws should cease.

The "right to rest one day in seven" does not include the "right" to compel people to rest on Sunday or one day in seven, as is the selfish and vicious assumption of the champions of Sunday enforcement.

A crusade in the interests of the "Christian Sabbath" is not one in which the machinery of the civil law should be employed, no matter what may be "the general sentiment of the Christian people" in the matter.

The competition which Sunday-enforcement clergymen are interested in suppressing is not, as they profess, the competition of the Sunday seller with the Sunday closer, but the competition of Sunday traffic with Sunday worship. They wish the law to secure the church in a monopoly of the day by suppressing upon it everything but the business in which the church engages. They dare not trust the church to the competition of secular business upon her own day, and therefore demand from the state for her the suppression of all secular business on Sunday.

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The Sentinel

OF CHRISTIAN LIBERTY

A weekly publication devoted to the maintenance and defense of liberty of conscience, and therefore opposed to any violation or compromise of the principle of separation of church and state. Non-sectarian and non-partisan in the application of principles.

JOHN D. BRADLEY, Editor.

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To whom all communications of a business nature should be addressed.

We believe in the religion taught and lived by Jesus Christ.

We believe in temperance, and regard the liquor traffic as a curse to society.

We believe in supporting civil government and submitting to its authority.

We believe that human rights are sacred, and that they indissolubly inhere in the moral nature of the individual.

We deny the right of any human authority to invade and violate these inalienable rights in any individual.

Therefore we deny the right of any civil government to legislate on matters of religion and conscience.

We believe it is the right, and should be the privilege, of every individual to worship God according to the dictates of his own conscience, free from all dictation, interference, or control on the part of civil government or any other external authority; or not to worship at all if he so chooses.

We also believe it to be our duty, and no less the duty of all others, to oppose religious legislation and all movements tending toward the same, to the end that all the people may freely enjoy the inestimable blessing of liberty, which is theirs by virtue of the unbounded wisdom and beneficence of the Author of their being.

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For the first time in its history of nearly twenty years the *Chicago Israelite* on December 12 issued a special number — the "Chanukah Edition" —

and a very creditable number it is. Besides containing twice the usual number of pages it is printed upon a superior grade of paper, is profusely illustrated, and is issued in a very artistic cover. Its contents is a "resume of the grand total of American Jewish activities," being a presentation, for the first time it is said, of "a history of all the national Jewish institutions of the country." It is therefore of "value in an historic way" to all concerned with or desirous of informing themselves with regard to the life and activities of American Judaism. The price of the number is 10 cents, post-paid. Address 324 Dearborn St., Chicago.



The *Life Boat*, the illustrated monthly journal "devoted to charitable, philanthropic, health and soul-saving work" especially among the poor and outcast of the cities, announces arrangements with the excellent health magazine *Good Health* whereby the two may be obtained for one year for the sum of eighty-five cents, which is less than the regular price for the *Good Health* alone. "This offer applies not only to new subscribers to the health magazine, but includes renewals to the *Life Boat* as well as new subscribers." It is stated that those who desire to avail themselves of this offer should act at once. Address the *Life Boat*, 28 Thirty-third Place, Chicago, Ill. We are glad to learn that "something like 5,000 new subscriptions to the *Life Boat* are being received each month." The excellent work in which it is engaged merits it this hearty support.



A beautiful and valuable book that is most appropriate for gift purposes is the work "Journeys by Land and Sea: A Visit to Five Continents," by G. C. Tenney. "The spirit of our age is drawing nations and men into closer union, and a better knowledge of each other; travel and books of travel are the great agents of this transforming genius," says the author in the preface. "The knowledge of our fellow-beings, of their circumstances, of the advantages they possess, of the disadvantages under which they live, furnishes the best possible basis for a life of usefulness. The object of this book is to contribute somewhat to this knowledge." The book is a most interesting report of the author's observations and experiences in a journey 'round the world, starting from the United States and going westward. While the writer follows to some extent the highways of travel it has been his purpose, both in description and illustration, to pass rapidly over the more familiar scenes of Europe and America, and give most attention to those regions with which the majority of readers are not so well acquainted. These regions are: Hawaii, Pitcairn, New Zealand, Australia, Ceylon, India, Egypt, and Palestine. A new edition of the work has just been issued after a thorough revision by the author. It is less bulky than the former edition, but contains the same amount of matter and is printed on much better paper. It contains 392 pages and 150 illustrations of superior character. It will be found a most interesting book, wholesome and instructive, and makes especially good reading for the young. Size 6½x9 in. and 1 in. thick. Beautifully bound in cloth. Price post-paid, \$1.50, with the usual discounts to the trade. Address Review and Herald Publishing Co., Battle Creek, Mich., or the publishers of this paper.

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WASHINGTON, D. C., THURSDAY, DECEMBER 24, 1903

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The Special Injustice of Present-day Sunday Enforcement

A thing that has been exemplified most conspicuously by the "Sabbath-reform" crusade of the last year in Philadelphia is the unjust and oppressive discrimination which marks Sunday-law enforcement at the present time. There never was a time when the enforcement of Sunday laws was not unjust and oppressive, for such laws are essentially unjust and oppressive. But there was a time when Sunday laws were enforced impartially, upon all alike, and therefore as justly as possible. But that time has passed. The enforcement of Sunday laws at the present time, because of conditions which have become established, is necessarily partial and discriminatory, and therefore of a character which aggravates the essential injustice and oppression of such laws. Never are these old laws enforced literally and impartially. Their literal and impartial enforcement is no longer possible and is never attempted. Almost without exception their enforcement to-day is marked by the selection of some class of persons or of certain individuals as victims; and never are these victims the influential and powerful, but are nearly always the humble and comparatively defenseless. This has been the history of present-day Sunday enforcement. Note a few examples. While the humble seventh-day observer works quietly in a retired place on Sunday painting a little house of worship, the railroad

company is selling tickets to hundreds of excursionists in the center of the town, and soon its heavy train is rumbling and thundering through town and country; the seventh-day observer is arrested, prosecuted, and fined, but not even a complaint is entered against the railroad company. Again, while seventh-day observers engage in the erection of a school building on Sunday, the great coal and iron works in the vicinity proceeds with its smelting and other industry; the seventh-day observers are indicted, convicted, and placed in the chain-gang, but there is no indictment of the managers of the coal and iron company, and no complaint against them. Again, while the small storekeeper in the city quietly makes little sales of goods that are desired and in most cases are needed by customers on Sunday, the great newspapers are being published, distributed, and sold, the street-car and railway systems are being operated, express companies are transporting goods noisily through the streets and dispatching them to distant points, and other forms of business are proceeding; the small storekeeper is arrested and fined, but the managers and directors of these other businesses, which are far more conspicuous and "disturbing to the peace and quiet of the day," are never proceeded against. No matter what the courts may have ruled nor what public opinion may have been educated to, in the light of truth and common

sense it is at least as much a violation of the old Sundays laws to run railroad excursions on Sunday as to paint churches; to carry on the manufacture of iron, etc., as to build school-houses; to publish and sell newspapers, operate street-car and railway systems, transport express, etc., as to sell groceries, fruit, candy, cigars, etc. And to treat some of these things as crimes while permitting and even sanctioning and supporting others is unjust and oppressive discrimination and partiality; and the discrimination and partiality is aggravated by the fact that it favors the rich and powerful and is against the poor and humble. The Philadelphia *Public Ledger* is right when it declares: "If it is criminal to traffic in ice-cream and candy on Sunday, it is equally criminal to buy and sell newspapers [or to publish them]. Our great industrial establishments, which cannot wholly suspend operations on Sunday, are violators of the law. Above all the law is violated by the railway companies that transport tens of thousands of people every Sunday." Last spring the small dealers in Philadelphia, aroused by the partiality and discrimination in the enforcement of the Sunday law of which they were the victims, sought to enforce it against other "worldly employment or business," and instituted prosecutions against the managers of a news company and a big ice-cream company and three of the leading newspapers. In the cases of the newspapers (the other defendants were discharged) the magistrate rendered an exhaustive opinion in which he held, in accord with the able argument of the attorney for the newspapers, that the Pennsylvania Sunday law "fails to possess those requirements necessary to give it validity or make it susceptible of [legal and constitutional] enforcement." This the opinion made perfectly

clear and established beyond all reasonable controversy. Now if the law is invalid and is not susceptible of legal and constitutional enforcement, is it not just as invalid and just as incapable of legal and constitutional enforcement in one case as in another? in the case of a single, poor, humble individual as in the case of a great corporation? in the case of a small storekeeper as in the case of a great newspaper? Certainly it is, and yet practically it is invalid and incapable of enforcement only when powerful interests are affected, and is perfectly valid and capable of enforcement when a poor and humble individual is affected. Since this decision was rendered last spring every week small shopkeepers have been arraigned and fined. And yet all this time it has been true, as it was true when the three great newspapers were prosecuted, that the Sunday law of Pennsylvania "fails to possess those requirements necessary to give it validity or make it susceptible of [legal and constitutional] enforcement"! It is high time that such unjust and oppressive discrimination was being stopped. The Pennsylvania Sunday law should either be enforced impartially or else treated in all cases as the invalid statute that it is. But of course neither of these things will be done. It is impossible at the present time to enforce the law literally and impartially, public sentiment and powerful interests will not allow that; and there is an element sufficiently strong which will not permit entire non-enforcement of the law. So the law will continue to be enforced upon some while it is entirely a dead letter with regard to others. The fact that the enforcement of Sunday laws is no longer and can no longer be other than discriminatory and partial is a special reason why all enforcement of these laws should be stopped. Laws

which cannot be enforced without partiality and discrimination should not be enforced, but should be abolished.

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**Another Sunday-
Enforcement Or-
ganization**

The activity and influence of the Philadelphia "Sabbath" Association is not confined entirely to that city. It is always on guard against any modification of the State Sunday law, and whenever any measure to that end is proposed it arouses opposition to it throughout the State and leads the forces which fight it at Harrisburg. And now it seems that it has led in the formation of a State organization, the Pennsylvania State "Sabbath" Association, which was organized at a "State convention of the friends of Sabbath observance" in session at the Market Street Church in Harrisburg on November 16 and 17. At the annual meeting of the Philadelphia organization on October 27 Secretary Mutchler informed the board of directors "that the outlook was promising for the success of the State convention of Sabbath observance associations at Harrisburg in November," and in the reports we are told that "Philadelphia champions of the Sunday laws were foremost" in the convention. Among those from Philadelphia taking an active part in the convention were: Dr. Mutchler, of the "Sabbath" Association; Rev. Floyd Tomkins, Holy Trinity Church; Rev. Kerr Boyce Tupper, First Baptist Church; Rev. Stewart Herman, who read a paper prepared by Rev. Chas. A. Fry, of St. Luke's Lutheran Church, Philadelphia; and these delegates sent by the Philadelphia Presbytery: Rev. L. Y. Graham, Olivet Presbyterian Church; Rev. Hughes O. Gibbons, Old Pine Street Presbyterian Church; and Elders W. W. Wallace and Henry Gara. There can be no doubt but that

the Philadelphia contingent predominated in the convention which formed this new Sunday-enforcement organization. Drs. McClurkin of Pittsburg and Boyce of Philadelphia in addresses "urged on the new organization the importance of keeping the Christian Sunday free from desecration," and in a paper on "The Value of Law and the Importance of Its Proper Enforcement," Dr. Gibbons, who is president of the so-called Law and Order Society of Philadelphia, "maintained that the church should insist on the enforcement of all laws for the suppression of crime, and classed the desecration of Sunday as one of the greatest evils." And so the church, in her suppression of crime by law, will rate Sunday "desecration" as one of the greatest of evils to be thus suppressed! The organization of the State "Sabbath" Association was effected at "a mass-meeting presided over by Senator Heidelbaugh, of Lancaster County, chairman of the State senate law and order committee, which at the last session of the legislature reported unfavorably upon the Berkelbach bill to repeal the Sunday-closing law." Dr. W. H. McMillin, of Philadelphia, was elected president, and T. T. Mutchler was made corresponding secretary. One report says its object is "to prevent the repeal of the Sunday laws and to secure their enforcement," and another that it is "to preserve Sunday from desecration," which of course means the same thing. The first work, it is said, will be the formation of local "Sabbath" associations "all over the State." Evidently the question of Sunday enforcement is not only to continue a live one in Philadelphia but is to become such through the whole State if the plans of the Philadelphia "Sabbath" leaders are carried out. This is good; it will turn the attention of the people to the antiquated

measure which in defiance of the principles of civil and religious liberty is still allowed to remain upon the statute books of the State, and will give them some object lessons as to its persecuting and oppressive character. The final result, it is to be hoped, will be the full and entire repeal and abolition of the Sunday law or laws. Nothing else will meet the requirements of the principles of righteousness and justice.



At the meeting of the Methodist preachers in Philadelphia on November 9, the following, which "was written and offered by Rev. T. T. Mutchler, of the Sabbath Association," was adopted:

The Methodist Preachers' Meeting of Philadelphia, having heard a communication from the tobacco jobbers of Philadelphia, in which they complain of the prosecution of cigar dealers who violate our Sunday law, we desire to say in answer: If it is necessary for these men to violate the law 'for their very existence, as is stated in the communication, then they had better engage in some business in which they can respect the law and also succeed. We heartily commend and approve the closing of these places on the Lord's day, and pledge our sympathy and support to those having the movement in hand. We suggest that if the tobacco jobbers desire to be law-abiding citizens, they join in and assist these men in securing a general compliance with the law on Sunday closing.

Somebody should say to the Philadelphia journeymen and dealers who, it is alleged by their "Sabbath" Association friends, are complaining that they must "lose" their "Sabbath" or "go out of business" "unless the law compels all to close" on Sunday, that if it is necessary for them to have the rights of others violated in order for them to continue in business and enjoy their Sabbath, they had better engage in some business in which they can enjoy their Sabbath and at the same

time respect the rights of others. Somebody should suggest to them that if they wish to be law-abiding citizens in the right and true sense, they should have regard for the rights of others, and not arbitrarily assume and demand that because they choose not to do business on Sunday everybody else should and must be compelled not to. Such a statement would far more comport with Christian and American principles than does that of the Philadelphia Methodist ministers to the tobacco jobbers.



In the cases of some Jewish merchants arraigned on the charge of Sunday selling, Judge Hine of the St. Paul, Minn., municipal court ruled on November 7 "that the civil law cannot take cognizance of religious customs." "The accused of the Jewish faith had asked to be allowed to close their stores on Saturday and to keep them open on Sunday." If the ruling made were practised there would be no Sunday legislation and enforcement. That is a strange carrying out of the very proper rule that the civil law can have nothing to do with religious customs which while enforcing the religious observance of one class refuses to take cognizance of the religious observance of another class merely to the extent of recognizing it as a reason why the one class should not be compelled by the civil law to observe the religious observance of the other class. But of course this is the only way that the rule can be carried out if at the same time the civil law is to enforce the observance of a religious custom of one class upon all classes. In the one case the rule is outrageously violated, and in the other it is construed and applied with a strictness that is utterly unwarranted.



Something remarkable was recently reported from Valparaiso, Ind. The

ministers had just formed a ministerial association and were setting about "to have every place of business, such as cigar stores, confectionery stores, groceries, clothing stores, etc., close its doors on the Sabbath day." But, says the report: "It is not the intention to invoke the aid of any State laws relating to the subject. On the contrary, argument alone will be relied on to bring about the desired result." We have heard of storekeepers themselves adopting this proper method for bringing about Sunday closing, but for ministers it is something so unusual that it is remarkable. They, who should be the last to do so, invariably appeal to and invoke the law, and the "law" is always the chief argument upon which they rely "to bring about the desired result." It is to be hoped that the ministers of Valparaiso will stick to the method which they have adopted, and that it may become the method of other ministerial associations in the matter.

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It has been announced that Rev. Dr. Newell Dwight Hillis, pastor of Plymouth Church, Brooklyn, has arranged for a series of conferences at that church on subjects which he regards as "of great importance to the religious welfare of the community." The conferences will be held on the four Sundays of January, and it is significant that the topics announced for the first two Sundays respectively are: "The Peril of Moral Illiteracy in a Republic," and "The Place of the Sunday in American Life." The first conference will no doubt promote the cause of public religious instruction, and the second the cause of Sunday observance by law. Dr. Hillis will make his morning sermon the opening address of each of the conferences, and in the afternoon there will be three speakers, "one of

whom will be a judge, one a prominent college man, and another public man." And there will be another session in the evening with three more speakers.

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A little more than a year ago the opening of the great Congressional Library at Washington on Sunday—from 2 to 10 p. m.—was commenced. In his annual report just submitted to Congress the librarian, Mr. Herbert Putnam, "is enthusiastic over the success of the Sunday opening," and says that the results, "though fully within the expectations of the officials of the library, are beyond what they had ventured to predict." The average number of visitors to the library for each Sunday from September 14, 1902, to June 30 last, was 3,258. The average number of readers in the main reading room for each Sunday was upwards of a fifth more than the average for other days, and the average number of books supplied on Sundays was a tenth more than the average for other days. Evidently the people do not agree with the professional "Sabbath defenders" who objected to the Sunday opening of the library.

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The annual convention of the Pennsylvania National "Reform" Association immediately followed the meeting of the Pennsylvania "Sabbath" Association at Harrisburg in November. They might as well have been merged into one convention, as was almost the case, for the work of the "Sabbath" Association—Sunday enforcement—is the principal part of the work of "National Reform."

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Suppression of Sunday "deseccration" is not suppression of crime. When the church undertakes the "suppression of crime" by law she is very apt to attempt to suppress something that is not crime at all.

An Indictment of New York's Sunday Law*

IX

THERE are other objections grounded on the constitution and rules of equal rights and common justice which may be raised and sustained against the law of which we are treating, to prove its erroneous principles and its unrighteous operation. The constitution declares that "no person shall be held to answer for a capital or other infamous crime unless upon presentment or indictment of a grand jury." What are we to understand by the terms "infamous crime"? That there are crimes which the law deems infamous and others not so is a truth which will not be denied. But that there are any particular or general rules by which to distinguish crimes which are infamous and those which are not so, is a matter which I have not been able to ascertain by repeated inquiries of gentlemen learned in the law or diligent research

into books treating on the subject of criminal jurisprudence. There are, however, actions which in fact are immoral, *mala in se*, bad in themselves, and are criminal whether interdicted by statute law or not; but unless interdicted by statute or common law they cannot be deemed in law infamous crimes, because no legal conviction can be had upon them. The statute law may prohibit or command an action to be done which in the absence of that law might be done or omitted without any moral turpitude; the violation of which law would not amount to an infamous crime, the action or omission only being wrong because forbidden or enjoined by statute law, and therefore termed in legal parlance a crime *malum prohibita* to distinguish it from crimes which are *mala in se*—bad in themselves, immoral. If actions which are *mala in se* (immoral in themselves) are not infamous crime, because not prohibited by law, and hence no conviction can be had against the offender, and if actions which are merely *mala prohibita* are not infamous crimes, it would seem to follow that actions which are immoral, bad in themselves, and are also prohibited by law, which subjects offenders against it to the same kind of punishment which is inflicted for the crimes of theft, robbery, perjury, fraud, etc., viz., a forfeiture of personal liberty, they are, or rather they ought to be, in law, as they are in the view of common sense, regarded as infamous crimes for which "no person should be held to answer unless by presentment or indictment of a grand jury."

Now permit me again to repeat that the "act" under consideration professes to suppress immorality, and imposes on offenders against it the penalties of fine and imprisonment, a for-

*Seventy-seven years ago there was published in New York a pamphlet, a transcript of the title page of which is as follows: "The People's Rights Reclaimed; being An Exposition of the Unconstitutionality of the Law of the State of New York Compelling the Observance of a Religious Sabbath Day, and Erroneously Entitled 'An Act for Suppressing Immorality,' Passed March 13th, 1813. Addressed to the People of the State of New York. New York, 1826. A. Spooner, Printer, Brooklyn." Its publication was called forth by the revision of the State laws then taking place and certain attempts that had been made "to effect an extension of the erroneous principles and provisions of the Sunday laws." Although the *excuse* for New York's Sunday legislation has been somewhat changed since then, it being now professedly for the prevention of "crimes against religious liberty and conscience" (although still coming under the general heading of "crimes against public decency and good morals"), whereas then it was "for suppressing immorality," it remains the same in principle, object, and effect, and the masterly and unanswerable indictment of the law as it then was made by the unknown author of the above pamphlet is still a masterly and unanswerable indictment of the law as it now is, and incidentally of all other Sunday legislation. The widespread disposition now manifested to uphold and "to affect an extension of the erroneous principles and provisions of the Sunday laws" makes the matter in this pamphlet very pertinent to-day, and hence we are publishing it in full in THE SENTINEL.—EDITOR.

feiture of property and personal liberty, which is the penalty imposed by our laws for infamous crimes where the penalty is not death; and if this does not constitute an infamous crime I know of no general rule or characteristic by which public crimes that are infamous are to be distinguished from those that are not so.

If, then, labor and recreation on Sunday, are, as the law in question affects to deem them, acts of immorality (*mala in se*), it would be right by law to interdict them and punish the offenders with fine or imprisonment, or both. But the offender against a moral and statute law is a public criminal, and is entitled to all the rights and privileges which the constitution secures to other public offenders. Now how ought an offender against the law in question to be charged, arrested and "held to answer" for that alleged immoral act, that public crime? I will first state what the constitution declares shall not be done: No person shall be held to answer for an infamous crime, unless by presentment or indictment of a grand jury. Hence if an offense against a law which prohibits actions which are *mala in se* is an infamous crime, the law in question, by authorizing the conviction and punishment of offenders "without presentment or indictment of a grand jury," directly violates the constitution.

Although I might rely with perfect confidence on this argument as sufficiently tenable to sustain the position I now have taken, I am not driven to the necessity of trusting its support to the issue of a single isolated argument. Under all circumstances I cannot expect it to obtain what I deem to be its due consideration. In truth I find the term "infamous crime," even in legal parlance, so vague, uncertain and undefined as to render it hazardous to rest

any weighty argument upon it. It is really a matter of astonishment as well as of regret that so vague a phraseology should be used in our constitution to define the rights of man and guard them against the abuse of legislative or other political power.

But allowing the alleged offense not to be in legal parlance an infamous crime, admitting it to be a crime of less degree, or a mere misdemeanor, still it is unconstitutional on another ground. The constitution further declares what shall not be done in the case before us: "No person shall be deprived of life or liberty without due process law." What is meant here by the terms "due process of law" but the "process" and proceedings directed by law to be had in criminal cases, and which the constitution, the supreme "law of the land," declares shall be "presentment or indictment of a grand jury." No one will be so weak as to contend that any person can be constitutionally "deprived of life" for a crime without the intervention of a grand jury. Is not then the "presentment or indictment of a grand jury" included in the terms "due process of law," and if so, does not the provision of the constitution last quoted mean that "no person shall be deprived of life" without the "due process" of indictment, etc.? And when the above-quoted clause of the constitution declares that "no person shall be deprived of liberty without due process of law," do not these words include in this as in the other instance "presentment or indictment of a grand jury"? Those terms are used and applied to guard the right of personal liberty, in the same sense in which they are used to guard the right of life.

If the legislature has no constitutional right to enact a law by which a person would be "deprived of life"

without the "due process" of indictment, it is equally forbidden to enact any law, like the one on which we are treating, by which people may be deprived of liberty without the like "due process" of an indictment. And so says Coke, in his "Institutes," page 50, when speaking of the terms "due process of law," as used in Magna Charta, from which it was copied into our constitution. He defines those terms to be "by indictment or presentment of good and lawful men, where such deeds be done, etc."

If the terms "due process of law" were construed to mean only such laws as the legislature might enact, in cases affecting life or liberty, the constitution would afford no guard against a legislative act to deprive people of the right of life or liberty without the intervention of a grand jury. But if the constitution, by the use of the terms "due process of law," meant to say that no person shall be deprived of life without presentment or indictment of a grand jury, and also all other process and proceedings, all the rights and privileges which the constitution and constitutional laws secure to all persons coming within the pale of the criminal law—then no person can be deprived of liberty unless by the same "due process of law" and proceedings without which "no person shall be deprived of life;" for the right of liberty, as before remarked, is protected by the constitution at the same time, in the same manner, and by the same words, "due process of law" and proceedings, which by the constitution, constitutional laws, rules of common justice, and the principles of humanity, are requisite and necessary to be had before any person can "be deprived of life" for any public crime or misdemeanor.

The statute law in question, therefore, by authorizing imprisonment as

a punishment for a public offense—a crime assumed by the said law to be *mala in se*—without the intervention of a grand jury, and other "due process of law" and proceedings, is as obviously a violation of the constitution as it is dangerous to the natural rights and political liberties of the people.

I have intimated, or said, that there are other rights and privileges, other "process" and proceedings than "presentment or indictment of a grand jury," without which no person can be constitutionally deprived of personal liberty. Of these I shall not now attempt a very particular exposition. A few hints will be sufficient to apprise the reader to what I allude, and how it bears on the question now before us. The constitution and laws of this State not only require the intervention of a grand and petit jury in cases of capital and other infamous crimes, but for crimes of less degree, and misdemeanors, the authors have secured to them the privilege of a grand jury before they can be arraigned and disgraced by a public trial before a petit jury for their alleged offense. And all who are charged with committing a public wrong or doing a private injury, before they shall be deprived of life, liberty or property, are entitled, as a matter of legal right and common justice and humanity, to a reasonable time to employ and advise with counsel in their case—to prepare for their defense, and also a right to "due process of law," to compel the attendance of their witnesses by subpoena, and a reasonable time to serve it. They have also a right to examine their own and cross-examine the witnesses against them, and confront them with each other and with the adverse party before the court and jury. All this and more perhaps than I have mentioned is allowed as a matter of constitutional and

legal right and common justice to the worst of criminals as well as those of inferior grade of turpitude. But the statute under review in no instance grants to the accused all the rights and privileges which the constitution secures to him and the laws in other cases allow to others who commit crimes or misdemeanors. And the first enacting clause withholds from him, merely because he is seen to work or play on Sunday, all of those rights and privileges which are allowed to murderers and felons and to those who commit any public crimes or misdemeanors, or even private wrongs.

By the enacting clause first mentioned, the very meanest grade of judicial officer, upon his own view, that is, on himself seeing a citizen laboring on Sunday for his own or the subsistence of his offspring, or perchance resting from his toil and taking recreation, is empowered and enjoined by the law in question, immediately, without any investigation, or any charge of crime on oath; without any "presentment or indictment of a grand jury"; without time or opportunity to employ and advise with counsel in his case; without the time or privilege of procuring process to compel the attendance of witnesses; without time to prepare for trial, or opportunity to prove his innocence; without the right to examine the justice, the only witness, or even any witness on his own or the adverse side, and of course without the chance to prove the ignorance or weakness of the justice, the malignity of his motives, or the honest error of his opinion, his testimony, or his judgment, and even without the right to appeal from his decision to show its error or to seek redress for the violation of every principle of constitutional and legal right and justice by which he has been deprived of his liberty without the judgment of his

peers or the "due process of law" to which others are entitled who commit the worst criminal offenses—and all this unjust and disgraceful proceeding is allowed, justified, nay enjoined, by the statute which has occasioned these remarks!

Reader, look at it again. A justice of the peace, on seeing a person at work on Sunday, as if omniscient and omnipotent, immediately judges his work to be neither necessary nor charitable, and that his religious creed is not orthodox according to the statute in such case made and provided, and, whether influenced by superstition, bigotry, malignity, honest error, or by the law in question, forthwith seizes on his victim, and instantly issues his warrant in nature of *lettre de cachet* and "deprives him of his liberty," imprisons, disgraces and punishes him, without even the shadow of a trial or a chance to defend himself! And for what? Reader, hear for what. Merely because he, as most professed Christians do, disbelieves in the moral obligation to keep the Jewish sabbath, and because he, with the Jews and a part of the Christian sect, disbelieves in the moral obligation to keep Sunday as a sabbath day; or because, contrary to the statute, he disbelieves in the moral obligation to keep either of those two, or any particular day more than another, as holy time! Yes, this is the reason, and the only reason, why the victim of this unrighteous law is without any of the rights or privileges secured to other persons charged with public crime, and without a chance to make defense or the semblance of a trial for his supposed offense, deprived of his liberty, and that, too, without the right of appeal in any way to show the iniquity or honest error of the judgment of this supreme court of conscience! Such is the cause for this out-

rage of all the rules of equal rights and common justice which ought to govern in the case before us; for had the victim been allowed a trial, and had availed himself of the greatest mercies of the law in question, he could only escape the loss of property or his liberty by proving "that he uniformly keeps the last day of the week as holy time," and also by proving a negative, viz. that he does not labor or work on his own sabbath day. Upon those conditions only can he avoid this judicial inquisition and escape the denunciations of the law which authorizes it. Though he should prove that he keeps any other than the first or the last day of the week, or should prove that he keeps the seventh part of each day as "holy time," or should he show that he, like some of the primitive disciples of the Christian faith, conscientiously "esteems all days alike" and that no man hath a right to judge him "in respect of the sabbath days, or of any holy day"; should he prove that he is a man of good moral character, honest, benevolent, kind and charitable to all mankind; that he does by others as he would that others should do by him; that he claims for himself no rights or privileges which he is not willing others

should enjoy—all this will avail him nothing; it is not sufficiently meritorious to enable him to pass the ordeal of this legal inquisition or escape the vengeance of this uncharitable law. Its victim must conform to one or the other of the only two religious creeds in respect to the sabbath days which the law establishes or tolerates. He must believe that which most of Christians disbelieve, that the seventh day of the week is a sabbath by Divine appointment, or against his conscience abstain from labor and act the hypocrite as if he did believe it; or else, embracing the only alternative which the law allows him, he must believe what everybody but the Christian sect and even a portion of those disbelieve, that the first day of the week is a sabbath by Divine appointment, or hypocritically act against his conscience and conform to that religious creed as if he did believe it! On no other condition can infidels to the doctrine of the law in question be exempted from its anathematical denunciations, or saved from the damnation or condemnation (the terms are synonymous) which it pronounces, in mockery of justice, against offenders!

The organ of the new England "Sabbath" Protective League reports that on a certain Sunday not long ago "open Sunday resorts near Worcester ground out more than the usual grist of fights and riots," and declares: "This is but one of many evidences that the open Sunday does not pay." It is but one of many evidences that the idle Sunday, for the maintenance of which this organ and the organization which it represents exist, does not pay. The open Sunday resorts would not accomplish nearly so much evil if it were

not for their allies, the clerical suppressors of useful industry and healthful and harmless recreation and sport on Sunday.

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"To use a law claiming to be especially in the interests of Christianity for the promotion of jealousy and rivalry in business, is a wrong of no small magnitude. To let the big fish go free, and make war on minnows because they are unable to break the net, is un-Christian and foolish."

SUNDAY ENFORCEMENT

This department is designed to record what is being done throughout the United States and elsewhere in the way of Sunday enforcement. Necessarily the items in most instances must be a bare recital of the facts. The principles involved are discussed elsewhere in the paper.

On the charge of "selling groceries on Sunday," George Denbo, a grocer of Camden, N. J., was arrested on December 2 on a warrant sworn out by a representative of the retail grocery clerks' association.

At Durango, Col., on November 28, "Rev. Mr. Bird, of the M. E. Church, accompanied by two ladies of the W. C. T. U., visited various saloons and sample rooms and notified them to remain closed on Sundays."

This was reported from Corpus Christi, Tex., on November 22: "The Sunday law was rigidly enforced today. All stores, saloons, fruit stands, etc., were compelled to close. The officers are going to enforce the law."

In response to agitation by clergymen, Mayor Hinchcliffe, of Patterson, N. J., has ordered the police to stop Sunday evening performances at the Bijou Theatre, and to prosecute the proprietor because of such performances.

At Des Moines, Iowa, on December 2, W. T. Wood, a grocer, was tried before a jury on the charge of "violating the Sunday law by selling goods," and was acquitted. Mr. Wood says he is "being persecuted by the retail grocers' association."

According to an agreement which it is said has been entered into by all the grocers of Kansas City, Kan., any grocer who is "forced to sell goods on Sunday must charge double price for them." The grocers have notified their customers that there is to be no more Sunday selling.

"Charged with violating the Sunday law," M. E. Theobald, a St. Paul, Minn.,

grocer, was arraigned in the police court of that city on December 1. His case "was continued to December 12, pending the decision on the validity of the Sunday-closing law by the State supreme court."

Seventeen grocermen were arraigned in the municipal court at St. Paul, Minn., on November 7, "on charges of keeping their stores open on Sunday." "All the cases were continued, pending the outcome of the appeal to the supreme court made by P. G. Hoffman, grocerman."

On December 1 the Commissioners of the District of Columbia "refused a request to allow the Monumental Band to accompany a funeral procession to be held on Sunday." "Major Sylvester recommended that the permit be not granted because of the regulations prohibiting disturbances of the public peace and quiet on Sunday."

A meeting of "about thirty-five members of the joint church committee on the enforcement of Sunday-closing laws" was held at the Y. M. C. A. rooms in Tacoma, Wash., on December 2. An "organization was effected," and a committee "was appointed and instructed to report at the next meeting on the various Sunday laws and the matter of their observance."

At a meeting of the Philadelphia "Union of Andrew and Philip" at the Lombard Street Presbyterian Church on the evening of November 29 "a resolution was adopted urging the mayor to enforce a proper observance of the Sunday laws." The meeting had been addressed by H. O. Gibbons, T. T. Mutchler, and G. S. Vail, the clerical leaders of the "Law and Order" and "Sabbath" organizations.

On November 29 V. Scalco, an Italian fruit and vegetable dealer of Birmingham, Ala., "opened his store for the purpose of selling a customer a mess of greens." Two days later he was tried "for keeping his store open on Sunday," and was fined \$25! The judge declared "that this practise [of Sunday selling] is perniciously pursued by some Italians in the city," and "must be broken up," and "stated positively that the fine hereafter would be \$50, and that no exception would be made in a single case." And he "gave the officers instructions to watch the merchants closely on Sundays, and bring all guilty of the offense before him. Lieutenant Hagood will make this a special business, and will station men in citizen's clothes to put an end to the Sunday traffic."

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At "a large meeting held at the Presbyterian church" in Hutchinson, Kan., on the evening of November 23, this resolution was adopted: "Resolved, That it is the opinion of this mass-meeting that the Sunday law of the State should be enforced in our city, and we ask that the officials in power shall do their duty, and we wish to assert that public sentiment is in favor of law enforcement." A committee was appointed "to present the resolution to the officers." At the meeting "a number of merchants made short speeches, all of them of course in favor of closing, as it wasn't the time for anybody else to make speeches." "There is a law of the State and an ordinance of the city providing for the closing of business houses on Sunday, and it is the object of this agitation to have these laws respected."

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While a matinee performance was in progress at the Grand Opera House in Galveston, Tex., on November 29 the manager of the opera house and the manager of the troupe were arrested "for violation of the Sunday law" on warrants sworn out by the county attorney. They were taken to police headquarters and required to furnish "excellent bonds" for their appearance the next day. Notwithstanding the arrests the performance advertised

for the evening was given, "whereupon County Attorney Wheller swore out warrants and caused the arrest of the two leading members of the playing troupe for violation of the Sunday law." Two weeks before a matinee performance on Sunday had been stopped by "twenty policemen who made their way down the aisle to the stage just as the curtain was about to rise." "The disappointed pleasure seekers in many cases refused to budge, and only by force were some removed to the box office, where their money was refunded." Judge Gillispie of the criminal district court has recently "ordered that theatres be closed on Sundays, and that the law be rigidly enforced."

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To the record of the Philadelphia Sunday-enforcement crusade given last week may be added the following: On May 18 before Magistrate South thirty-six warrants "were sworn out by Geo. S. Vail against Sunday-law violators." Two days later all were arraigned, and "fines were paid in each case without argument." On June 4 "eleven barbers were fined \$6.50 each by Magistrate Stratton for having kept their shops open on Sunday." On June 8, "at the instance of a representative of the Northwestern Business Men's Protective Association," warrants were issued "for the arrest of the proprietors and managers" of three different stands of the Union News Company and of four prominent restaurants "on the charge of having violated the Sunday law of 1794 in having sold cigars" on the previous Sunday. Members of this organization stated at the time "that the Philadelphia Sabbath Association in making its weekly arrests of breakers of this law has always totally ignored the large dealers and persecuted the small ones," and that their organization was "determined that unless all cigar dealers are permitted to remain open on Sunday none of them shall be." Four of these persons were fined \$4 and costs each in Magistrate South's court on June 10. At the same time "twenty-two other violators of the Sunday laws paid fines of \$2.50 each." Two persons whose names were called that

day for trial on "warrants sworn out by the Sabbath Association charging them with selling cigars" on the preceding Sunday, were found on the visitation of a court officer to their respective addresses to be dead. One of them had died three weeks before, and the other had been buried for four years! These are only a few of many like occurrences. Almost every Wednesday during the past summer and fall a company of small dealers have been arraigned before Magistrate South on complaint of agents of the "Sabbath" Association and fined for Sunday selling. On May 21 the secretary of the Philadelphia "Sabbath" Association had a "conference" with Director of Public Safety Smyth, and immediately following it announced that an "understanding" had been reached and that "the police department will cooperate with our society and with those interested in Sunday closing in the various lines of trade concerned, to secure a compliance with the Sunday law as follows: That no business shall be done on Sunday in banks, dry goods stores, laundries, photograph galleries, or barber shops; that meat shops, groceries, vegetable and fruit stores shall be closed at 9 o'clock on Sunday morning, and do no business for the rest of the day; that milk delivery wagons shall close at that hour and remain closed for the day; that hucksters with baskets, wagons or stands will not be allowed to sell on the streets or pavements of the city on Sunday; that merry-go-rounds, shows or amusements of the kind will not be allowed to do business on Sundays anywhere in the city." This came short of what was demanded by the "Sabbath" Association, but Dr. Mutchler declared: "Our association is willing to unite with the police upon almost any compromise that may seem right and fair. We do not wish to appear bigoted, and our association has agreed not to prosecute grocers and butchers who close their shops by 9 o'clock or milkmen who are

off the streets by 11 o'clock, with the understanding that the police will aid in keeping other business places closed all day." It was expected that Director Smyth would at once issue a special Sunday-closing order on the basis of the alleged arrangement, but the order was not issued, and Dr. Mutchler "was puzzled and annoyed" in consequence. Later, however, after the Presbyterian and Methodist ministers' associations, at the request of Mr. Mutchler, had adopted the following resolutions, the city authorities ordered the various amusements at Woodside and other parks closed on Sunday: "Whereas, The disregard for the law of our State in allowing business to be carried on on Sunday, such as banking, barbering and the laundry business, taking photographs, selling dry goods, cigars and candies and the running of amusements such as is being done on Sundays at Woodside Park, is, we believe, harmful to the best interests of our community; and, Whereas, The carrying on of each of these lines of business has been decided by the courts of our State to be a violation of the Sunday law; therefore, be it resolved, That we most respectfully and earnestly petition the Director of Public Safety, David J. Smyth, to take such action as will speedily have these violations of our Sunday laws discontinued." The amusement proprietors at first refused to obey the order, but after most of them had been arrested and fined, some of them a number of times, and they had failed to get relief from the courts, they succumbed. On June 1 "a delegation of thirty members of the Business Dealers' Protective Association called on Mayor Weaver and requested that there be less rigidity and discrimination in the enforcement of the blue laws." In reply the mayor stated that "Director Smyth has issued no orders concerning the Sunday laws," and had "authorized no one to issue any statement in regard to them," and that "in their enforcement he will not discriminate."

In Philadelphia, where civic reform is needed worse than anywhere else in the country, the sight of all this

uproar about selling cigars and candy on Sunday seems ridiculous enough.—*Syracuse (N. Y.) Post.*

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