American Presbyterian.

THURSDAY, OCTOBER 18, 1866.

SUNDAY CAR QUESTION.

ARGUMENT FOR THE COMPLAINANTS,

In the Supreme Court of Pennsylvania, Oct. 3d and 5th, Judge Strong upon the Bench.

CONCLUSION OF MR. McELROY'S ARGUMENT.

Having thus established that the acts of the defendants are contrary to law, and shown from the proofs in the case that these acts are injurious to rights of property possessed by the complainants, I pass on to consider the question whether the complainants are entitled to the relief prayed for.

They ask that the strong arm of this court may be interposed by injunction to restrain the defendants from further interference with their rights.

Directing attention first to the bill of John Sparhawk and others, and leaving that of Mr. Kenton for subsequent remark, I submit, in the first place, that this court has jurisdiction to grant the relief by reason of the general equity powers possessed by it in cases of nuisance, if this case is to be considered as coming within that description.

We have the ground of this jurisdiction pointed out in the elementary treatises, 2 *Eden on Injunction*, p. 259 *et seq.* *Story's Equity Jurisprudence*, Sec. 924 *et seq.* Although in cases of public nuisance, the ordinary course is for the Attorney-General to sue as representing the public, yet is it equally certain that individuals may ask the aid of the court to prevent a public nuisance from which they have individually sustained damage. *Attorney-General* vs. *Forbes*, 3 Mylne and Craig, 123. Where in case of a public nuisance, there is a special grievance arising out of the common cause of injury which presses upon particular individuals more than upon others not so immediately within the influence of it, it seems that they would be entitled to the interference of a court of equity for the protection of their private rights. 2 *Eden on Injunction*, 267. The general ground of interference in private nuisance is, that sort of *material injury to property* or health requiring the application to prevent as well as remedy an evil for which damages, more or less, would be given in an action at law. *Attorney-General* vs. *Nichol*, 16 Vesey, 343. Or, where the injury is such, as from its long continuance, occasions a *constantly recurring grievance*, which cannot be otherwise prevented than by an injunction. *Fishmonger's Company* vs. *East India Company*, 1 Dickens, 163. Or, where there is that sort of material injury by one to the *comfort* of another which requires the application of a power to prevent, as well as to remedy, the evil. *Earl of Bathurst* vs. *Burden*, 2 Brown's Chancery Cases, 64. Or, where even there is a mere common trespass, *if it be continued so long* as to become a nuisance the court will undoubtedly interfere. *Coulson* vs. *White*, 2 Atkyns, 21. And Lord Chancellor Westbury, in the case of *Jackson* vs. *The Duke of Newcastle*, 10 Jurist N. S., 689, says the foundation of the jurisdiction appears to be that kind of injury to property which *renders it in a material degree unsuitable for the purpose to which it is now applied, or which lessens considerably the enjoyment which the owner now has of it.* The court considers that an injury of this nature does not admit of being measured and redressed by damages. And wherever the nuisance causes substantial damages the court will not refuse an injunction, even though the act causing the nuisance may in its results be beneficial to the public. *Broadbent* vs. *The Imperial Gas Company*, 26 Law Journal (Eng.) 276.

There are very many reported cases where injunctions have been granted to restrain nuisances, on the application of individuals injured. An instance of this is found in the case of *Corning* vs. *Lowere*, 6 Johnson's Chancery, Rep. 439, where Chancellor Kent granted an injunction to restrain a party from obstructing a street by building a house thereon, it being not only a public nuisance, but producing a special injury to the plaintiffs by affecting the enjoyment of their property in the vicinity and the value of it. So also, an injunction was granted to prevent a voluntary religious association from being disturbed in their burial ground. *Beatty* v. *Curtz*, 2 Peter's Rep., 566. In the celebrated case of *Soltau* v. *DeHeld*, 2 Simons' Rep. N. S. 133, the trustees of a church were enjoined from causing a chime of bells to be rung in such a manner as to interfere with the enjoyment by the plaintiff of his dwelling-house; and this injunction was granted although other residents of the neighborhood testified that they were not disturbed by the sound of the bells, and the Chancellor admitted that such a sound might produce to some persons a pleasurable sensation rather than an injury. And in the case of *Bostock* v. *The North Staffordshire Railway Company*, 2 Jurist N. S. 248, an injunction was granted to restrain the defendants from issuing advertisements for holding a regatta on Rudyard Lake, or letting out pleasure boats on the same, upon the ground that they would thereby interfere with the privacy of the plaintiff, who resided on the shores of the lake.

These cases have been selected from the mass as being analagous to the one now under discussion, and I think they show conclusively that wherever the injury complained of amounts to a positive disturbance of, or interference with, the comfort and enjoyment of property, so as to render it in a material degree unsuitable for any lawful purpose for which the owner uses it, an injunction will be granted to protect his rights and restrain the wrong-doer.

But there is another principle to be found in the books, and abundantly sustained by authority, upon which the complainants' right in this case is still more clear. It will be found well stated in Adams' Equity at pages 211 and 212, as extracted from the cases there cited. Mr. Adams says:—"Injunctions for the restraint of trespass and nuisance are often issued against railway companies and other bodies of a similar nature, where the act complained of is done without authority in their charter. If they assume to do that which the Legislature has not said they may do, then, in so far as the excess is concerned, they have no authority; and, if their acts be of a nature to warrant an injunction, it will be granted against them." The complainants are certainly in a position to invoke this equitable principle in their behalf. Clearly, if the defendants, having injured them, would be restrained where such injuries resulted from the prosecution of a lawful business, (and this I have shown) they will, *a fortiori*, be restrained where their conduct of an *unlawful* business is producing the injuries complained of here. The case is brought directly within the equity powers of this court under the Act of 1836, to "restrain acts contrary to law and prejudicial to the rights of individuals."

Mr. Justice Baldwin, in the great case of *Bonaparte* vs. *The Camden & Amboy R. R. Co.*, reported in 1 Baldwin, 205, applied this principle to its fullest extent. Mr. Bonaparte had purchased two thousand acres of land in the neighborhood of Burlington, New Jersey, and had erected thereon a mansion, and laid out a park, ornamental gardens and groves, interspersing these with artificial lakes, fish-ponds and other things calculated to make his residence attractive and contribute to healthful recreation and enjoyment. The railroad company, without his permission, entered by their agents upon his property to survey and stake out the line for their road, intending to build this road over a portion of his ground. For these acts they had no authority by their charter. He applied to the court for an injunction to restrain them, and it was held that as the company had no lawful right to do the acts which they had done and threatened to do, they must be restrained by injunction. In the opinion of Judge Baldwin, he says that the purposes to which the plaintiff had devoted his property, were lawful purposes, the interference with which might not be the subject of compensation with money; that his object was not profit, but repose, seclusion, and a resting-place for himself and his family, and that in the enjoyment of such rights, a court of Equity would protect him against all unlawful disturbance.

In our own case of *The Commonwealth* vs. *The Pittsburgh & Connellsville R. R. Co.*, 12 Harris, 159, Judge Lowrie decided that when rail-road companies, or individuals, exceed their statutory powers in dealing with other people's property, no question of damage is raised when an injunction is applied for, but simply one of right. And to the same effect is the case of *The Commonwealth* vs. *Rush*, 2 Harris, 193. This is also the English doctrine, as appears by the case of *The River Dun Navigation Company* vs. *The North Midland Railway Co.*, 1 English Railway Cases, 135, where the Chancellor uses this strong language: "If these companies go beyond the powers which the Legislature has given them, and in a mistaken exercise of those powers, interfere with the property of individuals, *this court is bound to interfere:* that was Lord Eldon's ground in *Agar* vs. *The Regent's Canal Company*, and I see no ground whatever to depart from the rule there laid down and acted upon."

May it please the Court, there is no mistaken exercise of power here! I insist upon it that this company, when they sought the aid of the General Government to afford them the disguise of a mail contract, so that they might run their cars on Sunday under a mere color of law, knew then as they know to-day, that they were acting, not only without a semblance of authority in their charter, but in absolute defiance of our laws. It was a positive and *intended* violation of their charter. What right have they to use the public streets of this city on Sundays? None! They have no right to place a single car there on that day; much less to run nearly three hundred cars from north to south and east to west of our city, with noise and tumult, and all the injurious consequences which flow from their audacious and illegal course. They are guilty of a purpresture of the highways, and are trespassers on the rights of the citizens, who *at least* have the right to pass and repass along these highways without *any* obstruction or disturbance by the defendants.

And can it be said that these complainants are not injured by these illegal acts of the defendants? I maintain that the rights of the citizen are in many respects superior on Sunday to those which he possesses on other days of the week. On a week-day he must submit to disturbances and distractions which arise from the lawful conduct of business and which are necessary incidents to secular life in all its varied relations and conditions. On Sunday he has a right to be relieved from these. On a week-day he would not be protected in those particular uses of his property to which he has a right to devote it on Sunday. That day comes to him, however, freighted with peculiar privileges and guarded by high and solemn sanctions. Those privileges have their root, not only in our statute of 1794 and the previous enactments to which I have referred, but also in the common law of the State brought here by William Penn and his fellow settlers, and of which, by the decision of our courts, Christianity is a part. On that day he has a right to enjoy the Sabbath, as a day of rest and of religious exercise, free of all disturbance from unnecessary and unauthorized worldly employment; he has a right to engage peaceably and without interruption in the worship of Almighty God in his accustomed place of public worship or in the privacy of his own home; and he has a right to the lawful and unbroken peace and quiet of the day, so well denominated by this court, "the peace of the Sabbath."

It surely cannot be asserted, in view of the proofs submitted in this case, that these rights, possessed by the complainants, have not been invaded by this railway company. It is no answer to their testimony, that other persons have not been disturbed in their residences or churches. These persons, it will be noticed, have not stated the facts particularly, as our witnesses have done, so that we can judge whether they were in such a position that they might have been disturbed. This is the kind of testimony offered by the defendant in the case of *Soltau* vs. *DeHeld*, before cited, and the court disregarded it. Our proofs stand entirely uncontradicted, and the result of the testimony is conclusive that the complainants have been materially disturbed by the defendants in that enjoyment of their houses and pews to which they are entitled by law, and that this disturbance produces such an injury to their property as renders it unsuitable for the lawful purposes to which they have applied it, and of course, diminishes its value to them.

I have not forgotten that this act of 1794 is a *penal law*, and that a fine of four dollars is imposed for its violation. We will be told by the counsel of the defendants that the imposition of this fine is our only remedy, because the act of 1806 declares that where a remedy is provided by any act of Assembly, the directions of the act shall be strictly pursued. I shall say a few words upon this point. In the first place, the act of 1806 has been so construed by decisions of this court that it cannot be set up here as a bar to this case. In *Kelly* vs. *The Commonwealth*, 11 S. & R., 345, it was held that the obstruction of a highway is indictable at common law, although the act of April 6th, 1802, imposes a penalty for that particular offence. In the case of *Smith* vs. *Shuler*, 12 S. & R., 242, it was decided that the act of 1705, providing a remedy on a mortgage by writ of *scire facias*, does not prevent the mortgagee from bringing an action of ejectment. And in *Aycinena* vs. *Peries*, 6 W. & S., 257, it was held that the grant of equity powers by statute to the courts does not oust their common law jurisdiction. So in the case of *Commonwealth* vs. *Jeandelle*, already cited, the defendant was held to answer for a breach of the peace caused by his violation of the Sunday law, although the act of 1806 was pleaded in his defence. These authorities show that this act regards only proceedings upon the penal statute itself, not other and concurrent remedies which the law has provided. If we were proceeding here directly upon the act of 1794 and seeking to hold these defendants liable for its infringement, we could do no more than enforce its penalty. But we are not so proceeding; we have availed ourselves of the statute no further than to take the aid which it affords us in showing that the acts of the defendants are contrary to law.

Besides this, we cannot be debarred of equitable relief unless the remedy at law is adequate and complete. That the penalty provided by this act is not such a remedy is apparent. The fine imposed is not at all for the benefit of the party sueing; it goes into the treasury of the Commonwealth, in settlement of the account between her and the transgressor of her law. It is therefore not an adequate remedy. Nor is it a complete one, for it would not prevent the mischief. These defendants will ask us to impose the fine—they are very willing to pay it, for they can well afford to lose four dollars every Sunday on every car they run—and the strange spectacle for a court of justice is here afforded, of a contemner of the law expressing his willingness to pay its penalty from day to day if he be only permitted to continue his violation of it! But this point is fully met by the case referred to by my colleague, of *Cory* vs. *The Yarmouth & Norwich Railway Co.*, 3 English Railway Cases, 537, where the Chancellor decides that in cases where the only remedy given by an act is by recovering penalties *de die in diem*, in a summary way, the court has the power of protecting by injunction, the rights of the person injured by an infraction of the act.

I can see nothing nothing therefore in this objection that affects the title of these parties to the remedy here sought. The undisputed facts of the case bring it fully within the equitable powers of this court; and in view of the principles of law which I have maintained, and which, I think, are abundantly clear, I can have no doubt that the complainants will have promptly granted to them the relief which they have shown to be needful for the protection of their rights.

In regard to the bill filed by Levi Kenton, I shall have only a brief argument to make, because I consider that it will require but little argument to support it. This plaintiff is a *stockholder* of this company—a partner in the concern, though not a partner in their illegal acts.

He asks to restrain them from a continuance of their unlawful conduct, in two particulars; first, in running their cars on Sunday, and secondly, in performing a contract made with the Government for carrying the mails within this city.

As to his right to this kind of relief there can be no difficulty, if the acts complained of are illegal, as regards this company. The defendants contest his right because he purchased his stock after they commenced to run their cars on Sunday and to carry the mails, and because the stock of the company has increased in value by reason of their doing this, from $32 to $42.25 per share. All that need be said about these objections is that they cannot affect his right. This court will not look at his motives, but only his title. Even if it were shown that he had bought the stock for the express purpose of bringing this suit, it would not have a feather's weight in its determination. In my judgment, it would, in such a case as this, be an act of honor instead of demerit, and entitle him to thanks rather than reproach. But it makes no difference how, or for what purpose he became possessed of his stock, or how valuable it may have become by the unlawful conduct of the company. This court will not compel him to accept the profits of an illegal business, but will justify him in interposing to prevent the directors, who are his trustees, from continuing a wrong which, however profitable it may be to stockholders in the way of dividends, endangers the whole stock and the very life of the corporation by imperilling its charter. The English books have many decisions to this effect, and our own authorities are ample. I need only refer to one, where the plaintiff bought the stock for the purpose of bringing the suit, and did it in the interest of a rival company. Even this did not prevent his obtaining an injunction. *Sanford* vs. *The Catawissa, Williamsport & Erie R. R. Co.*, 12 Harris, 378. The only question in these cases is, whether the plaintiff is a stockholder; and that being conceded here, I need go no further to establish his right.

As to the first injunction which he asks—to restrain the company from running their cars on Sunday—I need say no more than to refer to the argument which I have made in the case of Mr. Sparhawk and others. If I have succeeded there in convincing the court that running cars on Sunday is contrary to law generally, and not embraced within the powers of this company, then this plaintiff's right to an injunction is clear.

His second prayer is to have the company restrained from further performance of the mail contract. The proofs show that on J[illegible] 8th, 1864, the Postmaster-General advertised for proposals for the Local Messenger Service for carrying the mails in this city to and from the post-office and the local [illegible] stations. William Walters was the accepted bidder for this service, and a contract was accordingly made with him for four years from July 1st, 1864. This contract required him to make five trips each way daily and *one trip each way on Sunday.* The Union Passenger Railway Company secured an assignment of this contract from Mr. Walters on the 26th of March, 1866, and this assignment was approved by the Post-office Department on March 31st, 1866, and the contract extended for four years from the 1st day of May, 1866. Some alterations were made in the contract, but the Sunday mail service remained the same as before—"one trip each way on Sunday." This is the mail service which this company has been performing for more than four months past, and in the performance of which they have been running 253 trips each way on Sunday! Were ever mails so zealously carried before? Was ever a Government so well served before? I am sure I need only state these facts to justify the assertion which I made that this mail contract was a mere subterfuge. Could this company really conceive that such a disguise as this would serve them in any court of law or equity?

But the question here is, whether they had any power to make this contract. Mr. Kenton says they had not. Now I need not refer to the numerous decisions of this court to show that if they had such power, they must prove it by their charter. They are only a creature of law, having just that life which the Legislature gave them, and no more. They take nothing by implication; and the powers given them, being in derogation of common right, must be construed strictly. They must leave nothing in doubt, nor trust to inference, but must point to the grant of power in their charter. In the expressive words of Chief-Justice Black, in the case of *The Commonwealth* vs. *The Erie & North East R. R. Co.*, 3 Casey, 351, "A doubtful charter does not exist; because whatever is doubtful, is decisively certain against the corporation."

There is, however, no doubt here upon this question. Not only cannot this company show in their charter any power enabling them to make this contract, but that instrument expressly limits their powers so that they cannot lawfully make it. 1st. It is not embraced in the purposes for which they were incorporated. They are by their title, a *passenger railway*, and this does not mean a *railroad*, on which passengers, freight or mails, may be carried, but simply and exclusively a road for the conveyance of passengers. This was decided by this court in the recent case of *The Commonwealth* vs. *The Central Passenger Railway Co.*, which is not yet reported, but the opinion of the court in which I have here in pamphlet form. Secondly. By the fourth section of their charter (Pamphlet Laws of 1864, p. 297) they are *prohibited* from carrying freight and given power only to equip their road for the conveyance of passengers. Thirdly. By the 8th section of the charter, they are expressly made subject to all ordinances of this city regulating the running of passenger railway cars. And the city ordinance of April 1st, 1859, section 1st, clause 5th, is in these words: "No passenger railway shall at any time be used for any other purpose than passenger travel." This ordinance is a part of their charter, and by it they were, in plain words, forbidden to do this very thing which for months past they have been doing.

I said that this case of Mr. Kenton would require but little argument. As to it, I have made rather a statement than an argument, feeling that I ought to be brief, by reason of the length of time which my argument on the other case had already occupied. But can anything be more conclusive than this mere statement? How could argument make it more clear? His right to question this mail contract, and, if illegal, to have it practically annulled by preventing its further performance, is beyond doubt. That it is illegal, so far as this company is concerned, is no less plain; not only from the want of power to make it, but also because there is a positive prohibition against exercising such a power.

I feel that it is unnecessary for me to say more. I leave this case with your Honor with the same confidence, in which I submitted the other, that you will grant the relief prayed for; thanking you at the same time for the patient attention which you have given to the argument of these important questions.

ARGUMENT OF JUDGE PORTER.

May it please your Honor, a question was asked at the close of the remarks of the opposing counsel, which struck me with a good deal of force, and to which I think I am able to respond. This was, whether I could seriously stand up before this court and advocate the views which these parties, the complainants, here present?

May it please your Honor, I can do it seriously. If I ever was serious in my life, sir, it will be in expressing the sentiments which I am about to express to your Honor in this case. For, as Heaven is my judge this day, I do believe that the sanctity of the Sabbath, as we have enjoyed it in this community for nearly two centuries, is just the question before this court.

It is in vain to disguise it, sir. The ingenuity of counsel cannot answer me this question: *Where is this thing to stop?* If these passenger cars are to run, where is to be the limit? What are you to do with the merchant? What are you to do with the butcher? What are you to do with the baker? What are you to do with the Sunday theatres? What are you to do with all those appliances of evil which every one who has visited the European cities has so fully informed us of?

Now, sir, it is necessary in the discussion of a question like this, to bear in mind this simple fact—I am afraid we are in danger of forgetting it—that we are neither more nor less than a *Christian* people. I do not advert to the distinctions between sects. I do not mean to introduce anything of a sectarian character, as to the minute distinctions of theological opinion; but we are here to discuss, to settle, and to decide this question for a Christian people. We are not Mohammedans, and we are not Turks, and we are not Buddhists, and we are not Mormons. We are a Christian people, sir; it could not have been otherwise. No lawyer, no judge, can get rid of that fact which the subject here presents.

This country was settled for a specific purpose, and no other. The German, the Huguenot, the Puritan, the Roman Catholic, the Swede, the Scotchman, every species and kind of emigration which took place to this country for the purpose of settling it, and founding here these Commonwealths, came for the specific object of laying the foundations of Christian commonwealths. And therefore, may it please your Honor, it need not surprise anybody when he finds that it is now a maxim of our jurisprudence, that Christianity is a part of the law of the land.

This horrible mixture, did I hear, of spiritual matters and legal matters? No, sir, not at all a horrid mixture! Christianity is so interlaced, with our whole system of jurisprudence, that we cannot separate one from the other. It need not surprise any one to find that this country was not settled upon pagan principles, nor heathen, nor Mohammedan principles, but upon Christian principles. The first announcement of that kind was made by one of the most remarkable men the State has ever produced, the great Judge James Wilson.

He was a member of the convention that adopted the Constitution of the United States; he was a member of the convention that adopted the Constitution of Pennsylvania; he was one of the first judges selected by General Washington when he made the appointments of Judges of the Supreme Court of the United States. He sat with John Jay, although in my opinion he was greater, ranking with the illustrious Camden. You will find these doctrines announced by him on page 112 of the 3d vol. of his works. It was announced by Chancellor Kent, in that memorable case in 8th Johnson; it was announced by this court in the suit of Updegraff against the Commonwealth. It has become so incorporated into our laws that it cannot be separated. I do not doubt to-day, that if we had not a statute on the subject, there is sufficient in the common law to prevent a man from blaspheming the Christian religion. I have no doubt that if there was a statute on the subject, we could prevent [illegible]st, bigamy, perjury. You can scarcely [illegible] up a book of jurisprudence, in which [illegible] doctrine is not maintained.

[illegible] the case of 6th Barr, page 96, Judge [illegible]ter advocates the same view. Therefore [illegible]t was that the case of Speke and the [illegible]monwealth, that of the Seventh Day [illegible]sts, has been utterly repudiated; that [illegible] State protected Sunday and intended [illegible]otect it as merely a civil institution. [illegible] notorious fact that when that opinion [illegible]ad from the bench, Judge Coulter at [illegible]issented from it. The venerable Judge [illegible]de stepped down and said, that would [illegible]ry good opinion in Turkey, occasioning [illegible] great breach between himself and the [illegible]who delivered the opinion. It was re[illegible]d at once by Judge Lewis; it never has [illegible]ustained, and never can be. Judge [illegible]ard never retracted or recanted his [illegible]s! Not at all, sir. I do not know of [illegible]g which that judge has recanted or [illegible]d.

[illegible] subject has received, perhaps, one of [illegible]t thorough discussions that it could [illegible]ceived. In a case decided in the [illegible] New York—it will be found in the [illegible]n Law Register, page 591; I refer to [illegible] Muller's case—the Christian religion [illegible] acknowledged law of the people, by [illegible]nt of the community, is entitled to [illegible]n, for Christianity is a part of the la[illegible]gland.

[illegible] when the legislature, in a statute, fo[illegible]nday theatres—aye, Sunday theatres[illegible]ry next thing which you will see if [illegible]e your sanction to these doctrines —[illegible]e legislature declared Sunday theatres[illegible]nce, indictments were daily found and [illegible]uted against the lessees, and it was [illegible] be within the power of the legislature [illegible]ct such a law.

I[illegible]nt, the decision of Judge Thompson[illegible]lleague, will be found, in which he [illegible] these cars could not run. But we [illegible]dant statute laws, 28th Edward, III. [illegible]rd to selling wool; 27th Henry VI. [illegible] to fairs and markets on Sunday. Thus [illegible]ute of 4th Edward, 10th chapter, [illegible] shoemakers from selling their wares or merchandize on Sunday; the statute of 1st Elizabeth imposed a penalty for not going to church; the statute of the 1st Charles referred to sports and diversions on that day; and another did not allow butchers to sell their meat on Sunday. Then came the statute of Charles II., which prevented a man from doing any work in the line of his own business. Our forefathers started with the thoughts and principles impressed on their minds which are in these statutes; upon them Penn founded his charter. His very object was stated to be to reduce the savages to the Christian religion; and before he started, he made a body of laws in England. It was provided that those only should vote and exercise the elective franchise who professed their faith in Jesus Christ. When they got to Chester, they made, on the 7th of December, 1682, that act which is called "the great law," or body of laws, and which has been referred to by my colleague, the object of which was announced to be to prevent infidelity and atheism from creeping in.

This is not the way in which a pagan commonwealth would have been founded. The whole object was to found a Christian Commonwealth. In 1705 an act was framed, which is very slightly quoted, and of which very little is known. It is a most remarkable act and could hardly be found unworthy of any Commonwealth. It provided that nobody then or hereafter residing in the province, who should not profess faith in God the Father, and in Jesus Christ his only Son, should enjoy such and such rights. [Here the Act was read.]

You cannot touch this subject that you do not see this distinctive mark impressed upon it—this idea that it was to be a Christian Commonwealth. Imagine a Christian Commonwealth without a Sabbath! Whoever heard of such a thing? It is the very blood of Christian life. Just where the Sabbath is best kept there religion best flourishes. Let any one go to Edinburgh and then to Madrid; let any one go to Switzerland and then to Paris. Everywhere it is the test. Just as the Sabbath is observed, and men refrain from worldly labor on that day, just so is religion pure.

This very same principle was carefully put into all our Constitutions.

Take the Constitution of 1776; it proclaims "the natural and inalienable right to worship God." This change of one word between the Constitutions of 1838 and those of 1776 and 1790, makes our present Constution read "natural and indefeasible." A right that cannot be denied or taken away or abridged. The right to worship God in church and hold up the hands in prayer; to join in the psalms of praise. To go there when the preacher cannot be heard, and the congregation cannot hear the psalms; when the preacher has to stop in the midst of his prayers,—is that the Christian right guaranteed in this provision of our Constitution?

What was the history of the act of 1794? It is well we should look at the foundation of this case. The act of 1786 having been passed, had been put to experiment, and why did they change it? It was because of the progress of events on the other side of the Atlantic, through the French Revolution. That produced these acts. It happened in the month of November, 1793, that the Sabbath was abolished in France, and the tenth day substituted; this is matter of history. According to the state in which navigation was then, it took this news two months to reach here, arriving in January, 1794; and it shocked the world.

What did these venerable men do, such as Benjamin R. Morgan, Wm. Bingham, Anthony Morris and others, all great men of their day in the State of Pennsylvania? In framing that act did they provide in the title of the act in regard to the way in which Sunday should be observed? Not at all, sir. Every one of those previous statutes referred in its title to Sunday, the way in which it should be kept. But this act is termed "An Act for the Prevention of Vice and Immorality." Well did these men know what went on in the human heart, that in the very week in which the Sabbath was abolished in France a notorious prostitute was crowned as the goddess of reason. They saw that no man was safe in his property or life outside of this institution. They adopted this act for the prevention of vice and immorality, to prevent these things here.

May it please your Honor, that act is on trial to day. It has existed for seventy years; it has never been altered because it could not be improved upon. This case is a very simple one. It is easy in one moment to brush aside all the cobwebs thrown over it.

That act says no work or employment shall be done on that day at all. Is not every act divisible into its declaratory part and its vindicatory part?

Why, may it please your Honor, when this company took out its charter they knew of this law upon the statute book. If the Legislature had put that act of 1794 into their charter, they could not have subjected them more completely to that law. Here is a company that produces the statute book of Pennsylvania; on this leaf is their charter, and on this a statute which says you shall not do any work on Sunday of whatever nature.

May it please your Honor, the moment the company drove their first car on Sunday, it was a trespasser from that moment. The streets do not belong to the company. The streets belong to the owners of the adjacent houses up to the middle of the streets. The company has received from the Legislature the right to run over the streets on certain conditions, provided only that they shall not run on Sunday, because it is in violation of the law. When they do that, they are violating the law, therefore it is an illegal act which the Legislature has said you shall not do at all.

Elevate the poor man! A work of charity! The directors of this company to be considered as trustees of a charitable foundation, or something in that way! Why don't they put this thing to the test, and carry the poor man for nothing! What sort of charity is this? No, sir; their charity consists in putting this stock up from $27 to $42. It is the sort of charity they had in view when this company was organized. I am sure the President of the company would almost smile if this question was submitted to him.

Elevate the poor man! Very "serviceable in the case of summer complaints!" There is certainly one form of that disease which the rhetoricans talk about, which does not seem to have been much effected—the diarrhœa verborum.

Again, the horse railroad car is a work of necessity. I admire the way in which Mr. Biddle argues his case and the extreme clearness of his statements. It seems to me it shows the poverty of the case when he claims to do it on the doctrine of necessity. The physician may go to see a sick man, an apothecary may supply him with medicine. If an ox falls into a pit, his owner may take him out; but the idea that a horse car should be started and run because it is a necessity, is certainly a most novel though not very ingenious doctrine.

But this act imposes a penalty. The company says, go then and fine us. Let each car make $20 on Sunday, pay a fine of $4, and pocket $16. That is the sort of charity the company likes. Why should we be content with fining them as the fine does not go into our pockets but to the State. The man whose pew is reduced in value does not get anything for it. In that act the dressing of victuals is permitted; but suppose a man should undertake to establish a resturant opposite Rev. Mr. Barnes' church to feed several hundred people, and the fumes of the cooking should pass into the church, there is no penalty attached. Could they submit to that? The delivering of milk is not punishable; but suppose the man should insist on delivering all the milk of his wagon on my step, there is no penalty attached, yet I could not submit to that. Suppose a man, a drover, says he can travel on Sunday, and then he takes a thousand mules that he has bought into the city and drives them up and down Walnut street all the day, could not that be stopped? Suppose a man establishes a saw-mill with a circular saw next door to me; it is nothing like a nuisance, and as useful to the city is to be encouraged. He conducts that business during the week, and on Sunday he can be fined no doubt four dollars for conducting worldly employment; but that act renders my house untenable. I cannot hear a word inside of my house nor engage in worship. Can I not stop that, though it is not a nuisance? Can a man carry on an establishment by my house and run it on Sunday in such a way that I cannot enjoy my property at all, and shall I then be told I can do nothing but fine him? Take the case of a storage of gunpowder punishable by penalty. A man says he knows such a storehouse is punishable, and that it will cost him one hundred dollars. He knows this and puts one thousand barrels in his house next to mine; cannot I stop that? If he goes to the city treasurer and pays the fine, is my house nevertheless to be destroyed? Take that case twice referred to by Mr. Miller, the case of partridge shooting. It was introduced on Thursday and this morning also, and I must suppose there is something in it; perhaps the season of the year has suggested the introduction of this subject. Under the penalty for shooting partridges, a man will be fined; but suppose he brings ten gunners and insists upon shooting the partridges at my window—must that be allowed? In 3d Barnwell, page 184, is mentioned the case of a man who pursued what he thought the very respectable occupation of shooting-matches for pigeons. He would tie the pigeon by the neck and the hunters would shoot at it. There would be fifty or a hundred hunters gathered together; the sport was restrained in that case. Take the case of a regatta which brought a large crowd to the house of a widow and annoyed her; that was restrained. Why not in the case of a lottery? Because it does not affect the value of the adjoining property; that may be a case which you cannot reach.

By the act of 1806, the remedy must be strictly pursued undoubtedly according to the course of common law; but this system of equity has grown up beside the common law.

There are two bills here. Do you find in either of them the word nuisance? Not a particle of it. I would take great discredit to myself and my colleagues if we had not had our eyes too wide open for that. The word nuisance does not occur in either bill; we did not intend it should. What then is this discussion about the matter of a nuisance for so many hours. Have we for one single moment put this upon the ground of a nuisance? It is very easy for these gentlemen to conjure up grounds of their own and then turn them over. But then where is the head? My friend, Mr. Miller, several times asked for a head—the head in equity of course, as his head is too good to need any other at all. Here it is:—

"The prevention or restraint of the commission or continuance of acts contrary to law, prejudicial to the interests of the community, or prejudicial to the rights of individuals." —*Purdon.*

Therefore the moment I can show you, that here is a thing by law contraband, contrary to law, illegal, I cannot express it better than that act of assembly has done, "contrary to law," and then show you I have a distinct piece of property which by that act against the law of the land is injured, I certainly bring myself within the clause provided by the act of assembly by asking you to restrain it.

May it please your Honor, Judge King wrote twenty years ago, when this subject of equity was in its infancy. He threw out some observations about this treatment of nuisances, declaring you must bring it within this construction; but a great deal of his reasoning would not be held as practical now. A great deal of the arguments which have been before you for several years past have been cases which did not embrace a nuisance at all.

Judge Strong—The word nuisance has a double meaning. In the ordinary sense, it is something which is injurious to the public; but the word nuisance is equally applicable to any wrong which affects a man's real estate, anything contrary to law.

Judge Porter resuming his argument—Yes, if it comes within the popular sense I am willing to take it; but I am not bound to bring it within the legal meaning. Here is the law which says you cannot engage in labor on the Sabbath day; here is a piece of property which you have reduced from $600 to $100, or made it unsaleable at all, then I ask for a remedy. What is the use of all these pleading and arguments? There is such a thing as splitting a hair infinitesimally, but then you must have the hair before you can divide it. From the necessity of the case they have involved the question in a maze which is really of little use. If I am mistaken in supposing that this act of 1794 designed to forbid this labor on the Lord's day, then I am mistaken in my argument; if not, the argument is conclusive.

Now, these gentlemen have a house. Judge Woodward himself referred to that in 10th Harris; but my time is too precious to give you the citation. These gentlemen have a house. They are not accustomed to make these social compromises that these defendants advise. I have not, as a lawyer, advised my clients to make any compromise, socially, politically or morally, with the devil. I have read of the terms old father Adam made with him, and it has satisfied me entirely. These gentlemen have a house, and they say, as Judge Woodward said, they have a right, on the Lord's day, to convene their children, read the Scriptures to them, and expound the Scriptures to them. It seems to me to be reasonable in a Christian community—perhaps not in a Pagan or Turkish one—to have the right to call them together to engage in acts of devotion with them.

They say they have been driven from the rooms in which they have been accustomed to assemble, into other rooms, and thus the value of their property has been diminished. There is just a line here on this subject, from a very venerable gentleman who is known to the whole community, Mr. George W. Mears:—"I own the house in which I live. I believe it has depreciated in value since the cars have been running on Sundays. I would now sell it for less than I would have done before the cars commenced running on that day, in order that I might move to a street where the quiet of the Sabbath-day is not broken by the running of the cars."

A gentleman of the bar, well known to you all, Mr. John Hanna, voluntarily gave us his sworn testimony:—

"I own the house I live in. Since the cars commenced to run on Sunday, I have concluded to sell it; if I were about to purchase a house now, I certainly would not buy one for a residence on a street where the cars run on Sunday."

Here are gentlemen who testify to a depreciation. What matters it if the other side