men here to say the cars do not dis- them. Meet the specific allegations we made here.

their churches, these gentlemen own . A pew is property. You remem- the case of Hennessee and the Western Knox, Boggs & Co., of this city, into difficulties, made a partial as- ment for the benefit of their creditors. der the law, this was declared illegal, be- se a single pew in a church was not in- ed in the assignment. Three hundred sand dollars was at once diverted and through this slight cause. The pew of urch is real estate.

will give you a case you have not had, the Massachusetts Reports, 10th Vol., se 225, Bates & Sparrow, which declares pews are considered as real property, a eat deal more real than much which passes the name. It has been regarded as ong real things and real estate.

Here is a man who has been ten or twenty rs in Mr. Barnes' church; and the pews some of these churches cost more money n would buy five hundred acres of land some parts of the country. He has re there for years, engaged in all the s of religious worship. Is it possible, that a company organized upon the ex- condition that it shall do no worldly s on Sunday, can by placing two bars n in a particular way connected, and e two horses together, create such a that a man cannot hear what the r says, and thus lose the right of his It is his own. He has a right to use ake his children there. But he it one day in the week. Why be reduced from $600 to $100, and e no remedy against it. I do not think Miller comprehended the value of the delivered by his distinguished rela- Judge Sergeant, in this case in Watts Sergeant, who certainly was one of the judges we have ever had on the

in the first place, in that case the injury ed is not the ground of action. He no right in the church, nor even in any . There is no damage to property, for he no pew in the church. The case was dif- nt from that of these gentlemen who own pews. Here is Mr. Sparhawk, who says will be obliged to abandon his pew. Re- mber these gentlemen have the same right there, and the preacher too, as you have on that bench and I here at the bar. It not a thing to be twisted about and quib- about. It is just as substantial as any t of property. He goes there under the stitution of his country, to engage in acts ich are recognized by law as legal, and the ults of this thing will be to oblige him andon his pew.

Like Mr. Barnes' statement—one of the e self-poised, most collected men. It is st impossible, in any part of the vol- nous writings of Mr. Barnes, to find a e exaggerated statement, so careful is he the conveyance of his thoughts, and so in expressing them. He says: I am the ster of this church; the pews on the west side of this church, from the pulpit to door, will be rendered valueless if this e goes on.

Mr. Geist, a gentleman of high character at ter, worships in that church, and tells the same thing. These are not exag- ated statements, not delusive things; they rom men who speak what they know. e is Mr. Reed in that church; he says he ent to part with his pew in the church on unt of this disturbance, but he cannot a purchaser for it. This is his property, ing of value. Tell me I am not injured en my house worth $500 is put in such a dition that I cannot sell it at all.

Take the case of Dr. Beadle: he says the pass the church on Seventh street below "I have felt at times when a car was ing as if I must stop until it passed. I do so only that I know other cars are at short intervals, and if I stopped them I might as well not preach at all." e these are positive rights. Here is McAuley, who says, "I could always if a car passed while I was giving out ne, many of the people could not hear and I would be obliged to halt till the car passed, or use a much louder voice, or liged to repeat the Psalm two or three s.

is a prominent feature of Christian ship. They have the right to thus par- ate. Everybody knows the Psalms and of Christian worship embody a large of theology; Luther said he would make the hymns of a people than laws. They have a right to sing these earbed.

is Rev. John W. Mears' statement, ch he puts the thing very pointedly learly. He is not in charge of any h, but frequently is called upon by his ren to preach. "It was necessary for to make an unusual effort to keep up the of thought, to make my voice audible should be. To be thus compelled, in a ar Sunday service, to pray against or in with outside noises, I consider a griev- annoyance, and one against which I, as shipper of God, and leader of the devo- of others, should be protected in a pro- ly Christian Commonwealth."

re is one witness who says he could not the benediction; Rev. Mr. Hamner e has been obliged several times to stop prayer. A man addressing the great r of spirits, and invoking the Saviour, ed to stop and wait till this contrivance gentlemen have gotten up shall have ed by! Do you call that worshipping according to the dictates of conscience? ere is one of these witnesses, sir, who this outrage to me very painfully. He e was partaking in a Christian church communion, and in the midst of the ution of the elements, he was not able er the words which the preacher uttered. e that take place in any heathen temple? ere any hole or corner of Europe so dark uch any man standing up before the regation for the purpose of administer- ive sacred rites, could not be heard by ongregation, and no legal redress for it? ot to be in this Christian land of ours? said be nowhere else.

our Honor is not disturbed by the cars, use you are at a considerable distance the street, with double windows. A man be disturbed by noise on Sunday beyond he could on a weekday, because the law ides that the day shall be observed more ly.

at do their affidavits say? Most re- table papers, certainly! I was furnished et with the blanks they intended to send left with spaces for the names to be in- ed. One was intended for persons living s city; one for persons who had travelled ed and seen foreign cities; one for our pectable brethren, the Jews, and one for nobody else. They sent these out and got atures saying they hoped this petition ld be accepted.

ase it please your Honor, how have they ted the case with regard to Mr. Barnes' ple? I do not doubt now they could go ugh this community and have these es signed by twenty thousand Jews. ry Jew living here came after this Act of or grew up under it. It is a part of the of the country. If I settled in Rome, I d not ask next day that the statutes should nged. They came here with a knowledge this was a Christian land and people; surely, if their own worship is disturbed, is no reason why we should be disturbed. for those physicians who think it would be cheaper for them to ride in cars on Sunday than to keep their carriage and horses, why probably it will. This is not a question of comfort; it is not a question of majorities.

These parties announce that this Company went to Harrisburg for the purpose of having this question submitted to the vote of the people, and the Legislature said, No! it is too valuable to be tampered with; it shall stand as it is.

I shall say but a word or two about the stockholder's bill; it is plain enough not to be misunderstood. I do not care why he got the stock, or when, or for what purpose, so he got it honestly. The books are full of cases where stock was purchased for specific purposes. The Andrew Scott case was a very dissimilar one. He filed his bill for one purpose, and the chief bill was for a very different purpose. He said he was afraid his stock would be injured; the other company said that was just what they wanted. The English books are full of cases of parties obtaining stock for the very purpose of testing a question. This gentleman owns five shares of stock; and he has a right to say in this court that their action affects his rights. He says you have no right to run on Sunday, and you have no right to carry the mails. That man, I am sure, has a clear right to have this question determined. I shall not quote the authorities upon which the charter of the Company is to be strictly construed. It is in derogation of common right; it is a monopoly. They must not leave their powers to be conjectured; they must point us to the clause in their charter allowing them thus to act. With a word about the contract, I shall have concluded all I have to say here. The charter is to be found on page 297, Acts of 1864.

Now I am here before you with a stockholder, who says, I take my right under this charter, and I am here to have my rights under this charter interpred by the court. That charter is entitled thus: "To incorporate the Union *Passenger* Railway Company." That is, a company for the carriage of passengers. Such an exhibition has never been seen probably in the statute books before as the collection of those streets over which this company is authorized to run. Remember, sir, they take high privileges. The chief expense of railroads comes from grading; but the city takes care of these streets, and it costs them nothing. The city said, put down your rails, the streets will not cost you anything. If there be anything reasonable at all, it is that having taken these without paying a single dollar for them, they should be held to the strict power granted in their charter.

The fourth section of that charter gives them the right to purchase all necessary equipments, such as horses, cars and other vehicles, for the conveyance of *passengers*. Does that include anything else? I was amazed at the doctrine of Mr. Miller on this subject. The Federal Government may contract with an individual who has power to contract; but when the Federal Government undertakes to contract with a corporation, the courts of law, or the Federal Government, are bound to see whether the company has a right to do so. Can it be possible that if the State Legislature creates a corporation to introduce water into the city, the Federal Government can contract with that corporation to introduce gas? It would upset every decision made on this subject, and all our theories, if the Federal Government could come into the State to contract with a corporation to perform acts never allowed by the State. The charter provides that the said railroad shall conform in guage to the other passenger railway companies, and no freight or burden trains, or locomotives shall be permitted to pass over the railway. You see it is a case in which the Legislature in creating the company inserted in its charter a positive prohibition upon the subject of carrying freight.

Is a mail a man; is a mail a passenger? They can carry live stock; they can carry live men. There may be some little baggage that a man may take with him without inquiry; but can it be possible that a passenger railway company, chartered to carry passengers, shall turn itself into a freight company and carry baggage? There was a reason for this prohibition. It was feared when this act was passed that there might be a connection between New York and the South, by which freight might be carried through Philadelphia without stopping at all; and, therefore, the Legislature desiring to protect Philadelphia, put in its provisions simply this: You may carry passengers but not freight. You shall not make freight connections between the New York lines and the Baltimore and Washington lines.

That is not all. By the enactment of the Legislature, it was declared that whenever any of the city passenger railways shall be laid and used, by laying rails and carrying passengers, then the said railway shall be subject to the ordinances created by the City Councils. You take this charter upon these conditions, that every one of these ordinances shall govern you precisely as if put into the charter.

The ordinance referred to is on page 169, dated July 7th, 1857. It is very plain. I do not know how anything could be plainer. "Fifth. No railway shall, at any time, be used for any other purpose than passenger travel."

How can they then carry the mail? If they can, after that, under the decision in Packer's case, and the Connersville case, then all the law that we have been accustomed to revere on this subject is utterly wiped out.

May it please your Honor, suppose they had the right to carry the mails. You see what the limitation here is: five trips each way daily, and one trip each way on Sunday; that is the contract. The Postmaster General fearing something might take place on this subject, made his order of April 27, 1866. It is an order to Postmaster Walborn of Philadelphia, directing him that the Post Office Department in contracting with the Union Passenger Railway Company of Philadelphia, for the performance of mail service in that city, did not intend to make any increase of the mail service, in that city, beyond that previously in force with Mr. Walters, except it be an extension of the routes on which the service is performed.

There you have the fact clearly shown by the contract that there was to be one service. May it please your Honor, what have we seen here? One service! The post office at Philadelphia open a little while in the morning, and a little while in the afternoon. And this charitable institution, this institution created for the purpose of elevating the poor man, and curing certain summer diseases, runs 253 cars on Sunday, for the purpose of carrying out that contract. What shall I call it? I don't want to use any strong terms here; I fear I have used some too strong already. If I had not high respect for some of the gentlemen connected with this company, I would be tempted to call this thing all a sham! They felt they had not a right to run on Sunday. My friend, Mr. Biddle, talked of the action on one side being honest and bold. He did not admire Mr. Kenton, but he did Mr. Sparhawk. He thought it was better to do things boldly and not slyly. If the Union Passenger Railway Company had said boldly at the outset, we intend to run our cars from early morning till late at night, and we send all you gentlemen fair notice, then I could have refrained from these complaints. But when they commenced at 8 or 9 o'clock at night, creeping slowly up to 6 o'clock, then to four, then running in the morning, and so educating the community into it, this is not doing the thing very boldly. I will not say it is doing it slyly. They knew they had no power under the law to do this thing, they knew the statute of 1794, they had taken these privileges under it. Their stock had gone up from $27, and was rising. They knew the history of the Second and Third Street roads, $20 paid in and worth $80 in the market; the Tenth and Eleventh Street, $20 paid and now bringing $64. Then their stock appears to have been a great deal lower. It was very necessary, no doubt, they thought, that their stock should be elevated in the market. They read this act of 1794; they knew they could not run on Sunday, so they chased up Mr. Walters and got an assignment of his contract, for carrying the mail one trip on Sunday. Having got possession of that, whenever met by some inquiry into their rights, they have sheltered themselves behind this arrangement with the Postmaster General. In carrying out this arrangement with that exuberance of charity and good will generally to their stockholders, which no doubt they feel, in the place of carrying it once on Sunday, they carry it 253 times!

Sir, need I say another word?

DECISION OF JUDGE STRONG.

Some of the complainants in the first of these bills are members of different churches, and pewholders in church buildings, situated on the line of the defendants' passenger railway in the city of Philadelphia. Others are residents in, and owners of dwellings-houses, also situated on the line of the said railway. They complain that the defendants, a corporation chartered under the laws of this Commonwealth, have engaged in the business of running cars along and over their railway, with horse-power and carrying passengers for hire, on the first day of the week, commonly called Sunday, in violation of the laws of the Commonwealth; and that they intend to continue the said business of running the cars on the next Sunday and every Sunday hereafter. These acts of the defendants are charged in the bill to be not only unlawful. but also prejudicial to the complainants, *because* they are thereby deprived of their right to enjoy the Sabbath as a day of rest and religious exercise, free from all disturbance by unnecessary and unauthorized worldly employment; *because* they have been, are, and will be thereby prevented from engaging peaceably and without interruption in the worship of Almighty God, in their accustomed places of worship, or in their own residences on the Sabbath day; *because* the lawful peace and quiet of the said day is thereby disturbed and broken; and *because* their rights of property in their said churches, or places of public worship, and in their private residences are, and, will continue to be infringed upon, and their churches and residences deteriorated in value. They therefore pray for an injunction, to restrain the defendants from continuing to run their cars hereafter over their railway on Sundays. And they now submit affidavits and proof, and move for a special injunction to continue until final hearing.

The complainant in the other bill is a stockholder in the Union Passenger Railway Company. His bill charges a similar violation of law by the defendants, and its threatened continuance. It charges, in addition, that the defendants have contracted with the United States Government, or with some of the executive departments or officers thereof to carry the mails for the United States in and through the city of Philadelphia, on and over the streets or some of them, and that in pursuance of said contract, they are carrying the said mails. The bill further charges that they have no lawful authority to enter into or carry out such a contract, and that by reason of such unlawful acts, the charter of the company is imperiled, and the complainant is in danger of losing the value of his stock, and being otherwise injured. He therefore asks an injunction similar to that prayed for by the complainants in the first bill, and also an injunction against any action under any contract entered into by the defendants to carry the mail. In this case also there is a motion for a preliminary injunction.

In support of these motions a great number of affidavits have been submitted, and a very large number have likewise been presented on behalf of the defendants. Much that the affiants have sworn to has no bearing upon the real questions involved in the motions. But it is certainly established that the complainants in the first bill are pewholders and worshippers in different churches along the line of the defendants' railway, or residents and owners of dwelling-houses situated on said line, and that the defendants are engaged in running their cars over and along the said railway on the first day of the week, called Sunday, and that they propose to continue so running their cars hereafter on Sunday. So far the facts are clear. They are not even disputed.

The facts averred in the second bill are also fully made out by the proofs, and they are not contradicted.

In considering whether injunctions ought to be granted, the first question to be met is whether the acts of the defendants complained of and proved, are contrary to law. In regard to this I have no difficulty. The act of running cars over a passenger railway on the first day of the week, commonly called Sunday, and running them, as it was shown the defendants have done, and as they propose hereafter to do, is the performance on that day of what is their ordinary employment or business. It is the same business as that in which they are engaged on all other days, conducted in the same manner, namely, for hire, and for the same object, which is gain. In view of the whole course of our statutory enactments, and of the decisions of this court, I do not see how it can be doubted that it is a palpable violation of law.

Christianity part of the Common Law.

Christianity is a part of the common law of this State. In saying this, I utter no new doctrine. It was part of the common law of England long before this State was settled. There is a multitude of decisions to this effect to be found in the books, and it has been decided in England that it was an indictable offence at common law to write or speak of Christianity contemptuously or maliciously. The old common law of England is a part of the common law of this State. Our fathers brought it with them when they settled in the wilderness and founded this new Commonwealth. And there is abundant evidence that the purpose of William Penn and those who came under his auspices, was to found a Christian State. While the amplest provisions were made to secure liberty of conscience, and exemption from molestation for religious persuasion or practice in matters of faith and worship, there was the most unmistakable recognition of Christianity as a part of the law, both in "The laws agreed upon in England," on the 6th of May, 1682, declared to be forever fundamental in the government of the province, and in the "Charter of Privileges" granted by William Penn to the inhabitants of Pennsylvania, and declared to be unalterable by any law or ordinance, without the consent of the Governor and six seventhes of the Assembly met. Equally did the "Great Law," enacted at Chester, on the 7th of December, 1682, proceed upon the basis that Christianity was a part of the fundamental law of the land. I do not propose to go over the argument. No one has ever yet been able to raise a respectable doubt that this part of the common law of England belongs inseparably to the institutions of this State. And even if there could have been doubt, the decisions of this Court have set the matter to rest. In *Updegraff* vs. *The Commonwealth*, 11 S. and R., 394, it was solemnly decided that Christianity is a part of our common law. In that decision all the Judges of this Court concurred. They were eminent Judges, Tilghman, Gibson and Duncan, men whose opinions to this day command universal respect, and they fortified their judgment by an unanswerable argument.

But if Christianity is a part of the common law, it carries with it a civil obligation to abstain on the Lord's day from all worldly labor and business except works of necessity and mercy. Christianity without a Sabbath would be no Christianity. Hence even in England, cessation of labor and business on Sunday, was early recognized by the common law as obligatory, to a certain extent. It is immaterial now to what extent. But William Penn and the early settlers of this Commonwealth have left us no equivocal testimony of the extent to which they regarded the observance of the Sabbath as obligatory. The laws agreed upon in England, to which I have referred, ordained that every first day of the week, called the Lord's day, people should abstain from their common daily labor. And the "Great Law" of December 7th, 1682, in its first enactment, repeated substantially the injunction.

These laws, in my opinon, were declaratory of what the common law was, as introduced into this State, and the subsequent statutes enacted in 1700, 1705, 1760, 1786 and in 1794 were all in aid of the common laws. They all enjoined cessation from worldly business on the first day of the week. Their avowed purpose was to prevent vice and immorality, and as it was sometimes asserted, to protect the inhabitants of the province and State in the undisturbed worship of God, according to the dictates of their own consciences.

The cases I have before me, however, do not demand maintenance of the position that the acts of the defendants, of which the bills complain, and in violation of the common law. The statute of 1794 is still in force. It imposes a penalty upon any person who shall do or perform any worldly employment, or business whatsoever on the Lord's Day, commonly called Sunday, works of necessity and charity only excepted. There is, however, a proviso taking out of the operation of the act certain descriptions of business, or work, no one of which is the work in which the defendants are engaged. I need not spend time to prove that when a statute imposes a penalty for doing an act, it impliedly prohibits the act, makes it illegal. If, therefore, performing worldly business on Sunday were not against common law, this Act of Assembly makes it unlawful in all but the excepted cases. And the work in which the defendants are engaged, which they propose to continue, is not embraced in any of the exceptions.

Plea of Necessity Answered.

A large part of the argument before me in opposition to those motions was directed to show, if possible, that running street cars on passenger railways in this city, on Sunday, is a work of necessity, and therefore not in violation of the common law, and not prohibited by the act of 1794. The argument was based upon numerous affidavits affirming that in the opinion of the affiants, running cars thus is necessary to enable persons residing at a distance from churches, as also the aged and infirm, to go to and return from the places where they are accustomed to worship; that it is necessary to accommodate physicians in making professional visits; that it is necessary to afford facilities for family and social visiting and that it is also necessary for the health and comfort of the poor, enabling them to obtain recreation and a change of air, by cheapening the means of conveyance to the rural districts. Of all these it may be said that, at most they are conveniences for others and not necessities of the defendants, within the meaning of the Acts of Assmbly. It is not for me, called as I am to administer the law as it is, rather than as the defendants may think it ought to be, to decide that what is but affording a facility amounts to a necessity. The Legislature has not exempted from the prohibition acts which may conduce to the convenience, or contribute to supply the necessities of individuals, or even large portions of the people. It must be presumed they considered what inconvenience would follow a prohibition of worldly labor on the Lord's Day. In view of them as well as the evils flowing from the absence of a prohibition of such labor, they enacted the statute of 1794. Their controling object was to protect the community against vice and immorality. This they attempted to do by declaring illegal all worldly labor and business, except works of necessity and charity, but they did not overlook public and individual convenience. In the proviso of the act, they declared how far worldly labor might be done, not necessary to the agent, but contributing to the necessities of others. The enumeration in the proviso of things allowed to be done, shows what was intended by excepting works of nenessity from the prohibitory clause. If it was not meant by the act to forbid work which might be a convenience or even a necessity in some sense to others than the laborer, the proviso is entirely superfluous. It is plain, however, that when they excepted works of necessity they meant works of necessity to him who does them, and not to others. If this is not so, the act is without force. There is very little, if any, worldly business that does not subserve the convenience and even the necessities of some part of the community. Food, clothes, shelter and furniture are undoubted necessities. But may the agriculturist justify his ordinary worldly business on Sunday by the plea that he is thereby furnishing food for the hungry? May the cotton mills, woolen mills, and clothing estabtishments of the country be be driven, as usual, and without cessation on the Lord's day, because they are thus contributing to provide clothing for those who need it? Is the business of the carpenter or cabinet maker to move on through the seven days of the week, uninterruptedly and according to law, because others may need houses or furniture? May they chemist keep his laboratory in full operation on Sunday, because medicines are necessary? All these questions, and a multitude of others of similar character must be answered in the affirmative, if running railway cars on Sunday, on city passenger railways is a work of necessity within the meaning of the exception in the act of 1794. It may be doubted whether keeping theatres and places of public amusement open on Sundays might not be justified by the same line of argument. Many might be found, doubtless, who would affirm on oath, that theatrical representations are conducive to mental and bodily health, and that such recreation as they afford is a necessity. Such a construction of the statute would make it but an empty sound. It would be losing sight entirely of the objects sought to be secured, the observance of a day of rest for the community, thereby enabling every one to worship God according to the dictates of his conscience, without distraction, and without disturbance, and thus giving a check to vice and immorality. A construction that leads to such an absurdity must be erroneous. There is no other possible interpretation, which gives to the act any operation, but that which holds the works of necessity spoken of to such as are necessary to the actor. When the thing to be determined is whether worldly business done by any man, and not described in the proviso, is exempt from the prohibition because a work of necessity, the question must always be—is is necessary to him who does it. The defendants do not claim that running their cars for hire on Sunday is a charity, nor even that it is necessary for them. All they assert is that it it a convenience, or a necessity for others. I think the act does not allow them to shelter themselves under others.

Moreover, the question is not an open one. It has been settled by the solemn decision of this court. *Johnson* vs. *The Commonwealth*, 9 Harris, 102, determined that running an omnibus in a city, daily and every day, is worldly employment, and not a work of necessity or charity, within the meaning of the Act of 1794, and therefore unlawful on Sunday. This case is directly in point; and, though decided by a divided court, it is the law of the Commonwealth, from which I am not at liberty to depart, even if I doubted the correctness of the decision, which I do not. The opinion was delivered by the present Chief Justice of this court, and in it he fully met and answered the argument, now reproduced, that running a public conveyance on Sunday is a work of necessity. Judges Lowrie and Knox concurred with him. No one of these judges has ever departed from the ground taken in that case. And in *Commonwealth* vs. *Jeandell*, 2 Grant, 506, my brother, Thompson, another judge of this court, announced, in substance, the same doctrine. He declared that driving a public conveyance for hire, is doing worldly employment within the provisions of the Act of 1794 beyond doubt. His whole opinion is an assertion that running cars on city passenger railways on Sundays, is contrary to law. It is then, beyond controversy, that the conduct of these defendants, which the complainants seek to restrain, is a palpable violation of the laws of the Commonwealth. And I cannot doubt that it has been so considered by the defendants themselves. Their conduct in seeking protection under a contract to carry the mails, before they began to run cars on Sunday, shows that such was their opinion. I have then before me, a corporation, a creature of law, to which the Commonwealth has granted very large privileges, at the expense of the public, palpably and persistently defying the laws of the State which gave it being. To use the language of the Act of June 16th, 1836, its acts are contrary to law and prejudicial to the interests of the community.

How Courts of Equity have Interfered.

I come next to the question whether these complainants have shown themselves entitled to ask for the intervention of this court to restrain this illegal action of the defendants. It must be admitted that it is essential to such a right, that they should show that they are sustaining a particular injury. And I think it is incumbent upon them to show that the illegal acts of the defendants interfere injuriously with the rights of property. I agree that equity will not enforce a penalty, or enjoin against the commission of a crime, when it is merely a crime and not also an injury to private rights of property. But an act may be a public offence and also a private wrong. Of this there are many examples. A public nuisance is one. And when private individuals suffer an injury quite distinct from that of the public in general, in consequence of a public nuisance, they are entitled to an injunction and relief in equity, which may thus compel the wrong doer to take active measures against allowing the injury to continue; 8 Sim. 193, 9 Paige 575. I am not called upon now to define minutely every class of cases in which equity will interfere. The Act of 1836 gives to this court power to "restrain the commission or continuance of acts contrary to law and prejudicial to the interests of the community, or the rights of individuals." For the present I assume that the rights of individuals spoken of are rights of property. Such, I think, is the meaning of the Act. What rights of property, then, if any, have the complainants with which the illegal conduct of the defendants interferes injuriously? They own and occupy dwelling houses along the line of the defendants' railway. They own pews in churches situate also on the line of the railway. As owners of dwelling-houses, they have a right to protection against all unlawful noise and disturbance of domestic quiet. Noise is any annoyance which may be complained of, and of which courts will take notice. The celebrated case of an injunction against ringing bells, 2 Sim. N. R., 139, is an example. My brother Thompson, granted an injunction against a tinsmith at the suit of a householder disturbed by the noise of his business. It is plain that the enjoyment of real property may be seriously damaged by noise alone. Constant firing of cannon or beating of drums before a dwelling-house would render it untenantable. Now what is the nature of the enjoyment which the law secures to every owner of a dwelling-house in the Commonwealth on Sunday? I am not inquiring whence his rights come, whether from the common law, or the Act of 1794. Their origin is immaterial. It is very plain that a man has a right to a different enjoyment of his house on Sunday from that which he can claim on any other day of the week. The very purpose of the Sabbath laws, as declared in the earlier statutes, and as shown in *Commonwealth* vs. *Johnston*, and in *Commonwealth* vs. *Nesbit*, 10 Casey, 405, was that people may devote the day to rest, and to the worship of God. Every unlawful thing that is distracting, that disturbs such rest, is an interference with this purpose. A man has a right to use his house on Sunday for his own devotions, and for the religious instruction of his family, undisturbed by anything that is illegal on that day. This is a legitimate use, a right of property belonging to him as a property owner. He can no more be deprived of it without authority of law, than he can of any other use to which he may devote his house. Nor does it matter that it is a right which others may not prize. In the estimation of many, it is an invaluable right, a deprivation of which would greatly diminish the worth of their property to them. Let those call it fanciful who will, it is still true that equity will protect a party in the enjoyment of his property in whatever manner he pleases, if he does not by such enjoyment invade the rights of others. *Bonaparte* vs. *The Camden & Amboy Railroad Company*, 1 Baldwin, 230. That case holds that even if the object of the owner be not profit, but repose, seclusion, and a resting-place for himself and family, a court of equity will protect him in *such* enjoyment. In *Jackson* vs. *The Duke of Newcastle*, 10 Jur. N. R, 689, it was held that equity has jurisdiction to prevent an injury that renders a property unsuitable for the purpose to which it is applied, or which lessens considerably the enjoyment which the owner has of it. And in *Bostock* vs. *The North Staffordshire Railway Company*, 2 Jur. N. S., 248, an injunction was granted to prevent a regatta on a lake, whereby crowds would have been drawn to the neighborhood of the complainant's property, disturbing its privacy. The language of the Vice Chancellor is significant. Said he, if it be objectionable, if he conceive it to be injurious to him, in interfering with his comfort, or even as distasteful, he (the complainant) has a right to confine the enjoyment of the defendant's right, within the essential terms of the contract by which it was obtained. I may not feel prepared to go quite this length, but these cases show that the law recognizes as a right of property a right to repose in one's dwelling, and freedom from external disturbance.

Rights of Property Invaded.

Especially are pew-holders entitled to protection in the enjoyment of their pews, as pews are designed to be enjoyed. Pews in churches are real property recognized as such by the law. They are the subject of sale, and they often bring prices equal to the value of many small farms. An action may be maintained for disturbance of their enjoyment. But the whole value of a pew consists in the facilities it affords for joining in public worshp, and for receiving the instruction given in church. To render it unfit, in any way, for the purpose for which such property is designed or used, is its destruction; and it may amount as fully to an irreparable private wrong, as in any unlawful act against which a chancellor enjoins.

Such being the rights of property of the complainants, Sparhawk and others, the next question is whether the unlawful acts of the defendants interfere with these rights. On this subject the proofs leave no doubt. One of the complainants has sworn that the running of the cars past his house on Sunday so disturbs the quiet of his house as to compel him to keep the front windows closed; and, when reading aloud to his family, to abandon the front rooms. He considers that such an invasion of his enjoyment that it depreciates the value of his property. All the other complainants, who charge unlawful interference with the lawful enjoyment of their dwelling-houses, assert, on oath, substantially the same grievances. They are driven from the front rooms of their houses; their meditations and their Sabbath rest are broken up; and the lawful uses to which they desire to devote their property are made impossible.

Equally palpable is the invasion of the rights of the other complainants, who are pewholders in churches. The evidence shows clearly that they are disturbed in that enjoyment of their pews, to which they are entitled, and without which the pews are valueless. Their attention is distracted; they can hardly hear the preacher. They lose some of his words. In one instance a whole prayer was lost. The solemnities of a communion service are interrupted; and worship generally is very seriously hindered. The noise of running the cars, the clatter of horses' hoofs in starting, the sound of the signal bell, and the hallooing of those who wish to stop the cars for passage seriously annoy the occupants of the pews; and lessen, if they do not destroy, that enjoyment of their property which the law accords to them. And the wrong of which they complain is a continuing one. The cars have run for weeks on Sundays and it is proposed to continue such running hereafter. To decide that this is not a case where the defendants are acting contrary to law, and prejudicially to the rights of individuals is more than I am able to do. Nor is this invasion of the complainants' rights, in any manner contradicted. It is no traverse of the averment of a pew owner that he is disturbed in the lawful enjoyment of his pew, to assert, and to prove that others are not disturbed in the enjoyment of theirs. Their pews may not be similarly situated. They themselves may not wish to pay as close attention to the church services as the complainants do. Their attention is no measure of the attention which the complainants have a right undisturbedly to give. The question before me is whether the *complainants* are disturbed. While it is true that no man can be compelled to any form or degree of worship, it is equally true that no man can be disturbed in that worship which he may desire to render to his Sovereign God.

Others not Disturbed.

Nor are any of the numerous affidavits submitted by the defendants in conflict with the proofs that those of the complainants who are owners of houses along the line of the defendants' railway are disturbed in the lawful enjoyment of their property. The affiants are not disturbed in *their* dwelling-houses. The uses to which they may wish to devote their property may not be the same. They may not wish to devote the Sabbath to meditation, and to the religious instruction of their families. But the complainants do, and therefore they are disturbed. I need not say that what may be no annoyance to one man may be an unlawful disturbance to another. In this land of religious freedom, a man may, if he pleases, regard the Sabbath as sacred, the Lord's day, as it is called in the Act of Assembly. Another may not. One may use his house as a place for meditation, quiet, and repose; a place for family instruction and devotion. Another may devote his property to no such uses. They are, however, lawful uses. The first may not interfere with any lawful use to which the other may apply his property. They may not interrupt his lawful use of his own. It is very obvious that to one desirous of devoting his house to religious uses on the Sabbath, what would be no annoyance on a week day would be a very serious one on Sunday. An outcry at the dead hour of night, or near a sick chamber, is a very different thing from a similar noise at any other time or place. So a business or a noise which would be unnoticed on a week day, compels attention, and positively disturbs on Sunday. It was to this that my brother Thompson alluded when he spoke of the "peace of the Sabbath" in Jeandell's case, a right of the public involving a corresponding duty of individuals, larger on Sunday than on any other day. The public right has a corresponding private right in the citizen.

Objections against an Injunction.

Without then referring in detail to all the affidavits submitted, though I have read and considered them all, I entertain no doubt that the action of the defendants is not only contrary to law, but that it is a substantial and continuing invasion of the rights of property belonging to the complainants, which, unless arrested, must render such rights comparatively valueless. Why, then, should I not interpose an injunction? Because, first, say the defendants, their act is a crime, and equity never enjoins against the commission of a crime. The objection is plausible rather than substantial. It is true that equity does not generally enjoin against a crime as a crime, but the books are full of cases in which an injunction has been decreed against acts injurious to individuals, though they may have also amounted to a crime against the public. I have referred to some of these cases. Others are so numerous that it would be an affectation of learning to cite them.

Again it is objected that the act of 1794 prescribes the penalty to which the defendants are subject and that under the act of 1806, the complainants can resort to no other remedy. The objection makes the act of 1794 substantially a license law. It was repudiated by Judge Thompson in Jeandell's case, and it is a perversion of the act of 1806. It confounds the public offence with the private injury. The act of 1794 provides no remedy for the private wrongs, and the bills do not seek to punish the public offences. Even if the running of cars on Sunday, in the prosecution of ordinary worldly business, is not illegal at common law, which I am unwilling to admit, the act of 1794 undertakes no more than to provide a penalty for the public offence. It leaves private sufferers to seek redress in the ordinary modes accorded by judicial tribunals. It would, I think, startle the community to be told that when an act of Assembly prohibits storing powder in quantities, under a penalty recoverable only by the Commonwealth, a man whose property has been blown up by powder illegally stored, has no redress against the wrong doer. Such is not the law.

It is further objected that an injunction ought not to issue until there has been a trial at law. I know that, in applications to a court of equity to restrain a nuisance, if there be serious doubt in regard to the title of the complainant to the property injured, or doubt whether any nuisance exists, or whether the complainant is specially injured by it, a chancellor will refuse to act until the doubts have been settled by a trial at law. Such a trial is for his information. But what doubt is there in this case? None in regard to the facts. The title of the complainants to their pews and dwelling-houses is not denied. The extent of their rights as property owners is a matter of law. It cannot be submitted to a jury. The running of cars on Sunday by defendants is admitted. That this is illegal is a determination of law, and that there is a special injury to the complainants, consequent upon this breach of law, is proved, and not contradicted. What then, is left to be submitted to a jury? What their finding must be is a foregone conclusion. How, then, could my conscience be informed or guided by any trial at law? The objection is therefore inapplicable to any such cases as these now before me.

(*Concluded on Page* 336.)