

318/1932

IN THE
SUPERIOR COURT
OF BALTIMORE CITY.

CHARLES M. NESS, et al.

vs.

ROBERT B. ENNIS, et al.

REPLICATION, EXHIBITS
and DEMURRER.

Mr. Clerk:

Please file, &c.,

W. M. Hulby
attn for Petitioners.

JH 8th March 1932

Copy mailed to
Attorney General.

CHARLES M. NESS,	:	IN
JOSHUA LEVERING,	:	
REVEREND LEONARD B. SMITH,	:	
CHARLES H. GUNDERSDORFF,	:	THE
REVEREND DeWITT M. BENHAM,	:	
MILTON W. GATCH, and	:	
REVEREND WILLIAM W. DAVIS,	:	
constituting a Committee of the	:	SUPERIOR COURT
Lord's Day Alliance, a body corporate,	:	
and as individuals and taxpayers of the	:	
City of Baltimore and State of Maryland.	:	OF
	:	
vs.	:	BALTIMORE CITY.
	:	
ROBERT B. ENNIS,	:	
BERNARD J. FLYNN, and	:	
ALEXANDER McK. MONTELL,	:	
constituting the	:	
Board of Supervisors of Election	:	
of Baltimore City.	:	

-o-o-o-

TO THE HONORABLE, THE JUDGE OF SAID COURT:

(1) The Petitioners file this their replication to the first paragraph of the answer of the Respondents, and for replication to said first paragraph say, - that the petitioners, constituting a Committee of the Lord's Day Alliance, a body corporate, were and are authorized to apply to this Honorable Court for the writ of mandamus sought in this proceeding, and further say they as a Committee of the Lord's Day Alliance, are proper parties in this proceeding.

That for replication to the third paragraph of the answer of the Respondents, these petitioners say that the Respondents are with knowledge as to the manner in which the Committee of the Lord's Day Alliance, a body corporate, was and is appointed, the Respondents having obtained said knowledge in two previous mandamus cases against predecessors of the present members, the said members then and now constituting the Board of Supervisors of Elections of Baltimore City, instituted by predecessors

of these Petitioners on the same or similar Committee of The Lord's Day Alliance; and further for replication to said third paragraph of the said answer these Petitioners say that the Respondents know the authority vested in the Executive Committee of The Lord's Day Alliance to appoint a Committee to institute these proceedings, and that the Respondents have knowledge of the manner and authority by which the said Executive Committee was elected or appointed, the said Respondents having obtained said knowledge in said previous suits; that further for replication these Petitioners say that The Lord's Day Alliance, is a body corporate, organized under the laws of the State of Maryland, filed in the office of the State Tax Commission of Maryland on June 29, 1911, and on June 30, 1911, in the office of the Clerk of the Superior Court of Baltimore City and of record in said office in Charter Liber No. 55, folio 295, etc., a certified copy of which Charter being filed herewith as part hereof marked "Petitioners' Exhibit W"; that further for replication to said third paragraph, these Petitioners say that the governing body of the said corporation is a Board of Twelve Managers or Trustees chosen at annual meeting, and in Article III, title "Officers", section 3 of the Constitution and By-Laws of the Lord's Day Alliance adopted October 26, 1911, and still in force and effect an Executive Committee is provided for and the powers of said Executive Committee are prescribed and conferred in the following words:

"Article III - OFFICERS"

"Sec. 3 - The Executive Committee shall consist of fifteen members to be elected at the Annual Meeting, including the President, Recording Secretary and Treasurer and all Vice Presidents as ex-officio members and shall at all times have full power to act for this Alliance";

and further for replication to the third paragraph of said answer these petitioners say that at a meeting of the said Executive Committee held on May 28, 1931, a resolution was passed authorizing the President of The Lord's Day Alliance to appoint a Committee with the President and General-Secretary, ex-officio members to re-

present The Lord's Day Alliance in all matters affecting the Lord's Day then pending before the City Council, and when in the judgment of the said Committee, to employ Counsel, subject to the approval of the Executive Committee; that said Committee was appointed pursuant to and by virtue of said Resolution; that at the annual meeting of the Alliance held on December 18, 1931, the appointment of your Petitioners as said Committee with said powers was ratified and confirmed and said Committee re-appointed and re-authorized and re-empowered, and that at a meeting of the Executive Committee held on the 22nd day of February 1932, the said Committee was again authorized and instructed and directed to institute these proceedings and to employ counsel as in said Resolution provided, a copy of which Resolution signed by Joshua Levering, President of The Lord's Day Alliance and Chairman of said Executive Committee, and by the Reverend William W. Davis, Secretary of the said Executive Committee, filed herewith as part hereof and marked "Petitioners' Exhibit X"; that for further replication to the said third paragraph of said answer these petitioners say that the said Committee organized by choosing Charles M. Ness, as Chairman and the Reverend William W. Davis, as Secretary; that for further replication to said third paragraph of said answer these petitioners say that The Lord's Day Alliance, is a body corporate, organized under the laws of the State of Maryland, for the purposes and with the objects in its Charter prescribed and is vested by the Laws of Maryland, with corporate powers and privileges, to be exercised for the furtherance and attainment of said purposes and objects, which are to secure a better observance of the Lord's Day as a day of rest and worship and to secure and maintain such laws as will best enable it to accomplish that object; and further that it is subject to all the laws, obligations, governmental changes and exactions imposed on similar classed corporations of the State, all of which duties,

liabilities and obligations it meets, performs and discharges.

That further for replication to the fourth paragraph of said answer these Petitioners say that each and every of the Petitioners is a member of The Lord's Day Alliance and that each and every of the Petitioners is a member of the Executive Committee and of the Special Committee as in the Petition and hereinabove stated.

That for replication to the seventh paragraph of said answer the Petitioners say that the holding of said illegal election will on May 2, 1932 or any other day will be a waste of taxpayers' money and further that the holding of said election on May 2, 1932, instead of at the general election in November will occasion a needless expense on the taxpayers, and further that the holding of said special election in connection with the primary election will not result in any ultimate economy but will cause uncertainty, expense, contests and litigation.

The Petitioners in the above entitled cause join issue upon the issues of law tendered by the demurrer of the Respondents in the second paragraph of the answer filed by the Respondents.

The Petitioners demur to the first paragraph of said answer and for ground and demurrer say, that the said first paragraph is bad in substance and insufficient in law.

The Petitioners demur to the second paragraph of said answer and for ground of demurrer say that the said second paragraph is bad in substance and insufficient in law.

The Petitioners demur to the third paragraph of said answer and for ground of demurrer say that the said third paragraph is bad in substance and insufficient in law.

The Petitioners demur to the fourth paragraph of said answer and for ground of demurrer say that the said fourth paragraph is bad in substance and insufficient in law.

The Petitioners demur to the seventh paragraph of said answer and for ground of demurrer say that the said seventh paragraph is bad in substance and insufficient in law.

The Petitioners demur to the fifth paragraph of said answer and for ground of demurrer say that the seventh paragraph is bad in substance and insufficient in law.

The Petitioners demur to the fifth paragraph of said answer and for ground of demurrer say that the same is bad in substance and insufficient in law.

The Petitioners demur to the sixth paragraph of said answer and for ground of demurrer say that the same is bad in substance and insufficient in law.

William W. Davis
Attorney for Petitioners.

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on the ^{5th} day of March, 1932, before me the subscriber, a Notary Public, of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared REVEREND WILLIAM W. DAVIS, one of the Petitioners in the above cause on behalf of himself and of his co-petitioners, as individuals, taxpayers and as members of said Special Committee of the Lord's Day Alliance made oath in due form of law for himself and on behalf of his co-petitioners and fellow committee members that the matters and facts in the foregoing replication and demurrers are true to the best of his knowledge and belief, and that the foregoing demurrer is not filed by him or by his co-petitioners or fellow committeemen for delay.

WITNESS my hand and Notarial Seal.

John McCullough
Notary Public.

W. M. Maloy

SUPERIOR COURT

of BALTIMORE CITY

ROOM 310

STEPHEN C. LITTLE
Clerk

CERTIFIED COPY

Charter

FROM

The Lord's Day Alliance

of Maryland Incorporated

TO

Liber S C L No. 55 Fol. 295 &c

Amount \$ 4.00 Exd. *OMTJ*

Paid

*Petitioner Exhibit W
Part of Petitioner
W. M. Maloy
att'y for Petitioner*

Fold
Here

Fold
Here

Mr. Smith

The Lords Day Alliance) Know all men by these presents that we
of Maryland Incorporated) Summerfield Baldwin George R Gaither David H
Carroll John B Ramsay Joshua Levering W H Morriss all of Baltimore
City in the State of Maryland being citizens of the United States
and a majority of us being citizens of the State of Maryland do hereby
certify that we do under and by virtue of the General Laws of this
State authorizing the formation of corporations hereby form a
corporation under the name of The Lords Day Alliance of Maryland
Incorporated

We do further certify that said corporation so called
is a corporation for the purpose of preventing the desecration of the
Lords Day commonly known as Sunday and for promoting a better obser-
vance of the day as a day of rest and worship and that the term of
said corporation is perpetual and that the said corporation is formed
upon the articles conditions and provisions herein expressed and
subject in all particulars to the limitations relating to corporations
which are contained in the General Laws of this State

We do further certify that the operations of the said
corporation are to be carried on in the State of Maryland aforesaid
and that the principal office of said corporation shall be located
in Baltimore City aforesaid

We do further certify that there shall be no capital
stock of the said corporation

We do further certify that said corporation will be
managed by a Board of twelve (12) Trustees and that David H Carroll
Joshua Levering Henry S Dulaney George R Gaither Douglas M Wylie
W O Atwood Leonidas H Nice John T Stone Stevenson A Williams Joshua
W Hering M D Alvin N Bastable and John C Thomas are the names of the
Trustees who will manage the concerns of the said corporation for
the first year

In witness whereof we have hereto set our hands and
seals this 26th day of June in the year nineteen hundred and eleven

Test

Frances T Bannon

George R Gaither (SEAL)

David H Carroll (SEAL)

John B Ramsay (SEAL)

Joshua Levering (SEAL)

W H Morriss (SEAL)

Summerfield Baldwin (SEAL)

STATE OF MARYLAND BALTIMORE CITY TO WIT

I hereby certify that on this 26th day of June in the year nineteen hundred and eleven before me the subscriber a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared Summerfield Baldwin George R Gaither David H Carroll W H Morriss John B Ramsay & Joshua Levering and did severally acknowledge the foregoing certificate to be their act and Deed

AS WITNESS my hand and Notarial Seal

(Frances T Bannon Notary Public)

Frances T Bannon

(Baltimore Md)

Notary Public

I Henry D Harlan one of the Judges of the Supreme Bench of Baltimore City do hereby certify that the foregoing certificate has been submitted to me for my examination and I do further certify that the said certificate is executed in conformity with the provisions of the law authorizing the formation of said corporation

Henry D Harlan

Filed for record in office of State Tax Com June 29" 1911 at 9 0'clock A M same day recorded in Liber B S No 4 fol 29 one of the Charter Records of the State Tax Com Office and examined

Buchanan Schley

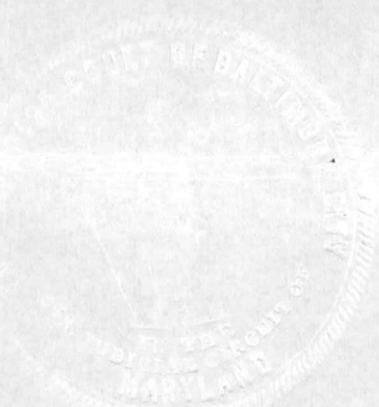
State Tax Commissioner

Recd for record June 30" 1911 at 9 0'clock A M same day recorded & exd per Stephen C Little Clk

I HEREBY CERTIFY that the foregoing is a true copy taken from Liber S C L No 55 folio 295 &c one of the Charter Records of Baltimore City

IN TESTIMONY WHEREOF I hereto set my hand and affix the Seal of the Superior Court of Baltimore City on this 5th day of March A D 1932

Stephen C. Little
Clerk of the Superior Court of
Baltimore City



*Part of reproduction
Belmont's exhibit w. Mr. Smoly
ally for Belmont*

Copy of a Resolution passed at a Meeting of the
Executive Committee of The Lord's Day
Alliance, a body corporate, or-
ganized under the Laws of
the State of Maryland.

This is to certify that at a meeting of the Execu-
tive Committee of The Lord's Day Alliance, notice of which
meeting had been duly given, as required by the by-laws of
said Alliance, the following resolution was offered, duly se-
conded and unanimously adopted:

WHEREAS this Executive Committee was instructed, ^{is}
authorized and empowered, by a resolution passed by ^{the Court, by-laws}
The Lord's Day Alliance, to appoint a committee and
to instruct, empower and authorize said Committee, as
a Committee of the Alliance, and if they see fit so
to do, joining themselves and other persons as indi-
viduals and taxpayers, to institute proceedings to
contest Chap. 287 of the Acts of 1931, Ordinance No.
33-303 of the Mayor and City Council of Baltimore, and
to prevent the submission to the voters of Baltimore
City, at an election to be held on May 2, 1932, or at
any other time, of the question whether or not there
should be a change in the Sabbath Day Observance
statutes or ordinances.

NOW THEREFORE BE IT RESOLVED that the Executive
Committee being so empowered, ^{and} authorized and instructed,
does hereby appoint *Charles M. New, Dr. Leonard B. Smith*

*Charles A. Hammond, Dr. Arthur M. Benjamin,
Milton W. Galt, Joshua Lovering and Dr
H. H. Davis*

to constitute and be a Committee of The Lord's Day
Alliance, and said Committee or a majority of them,
be and they are hereby instructed, authorized and
empowered, as such Committee, and if they deem it fit
and proper in conjunction with themselves or any of
them as individuals and taxpayers, and if they should
so decide, with other persons as individuals and tax-
payers, to institute or cause to be instituted and
prosecuted, proceedings to contest the constitution-
ality, legality and validity of Chapter 287 of the
Acts of 1931, of Ordinance No. 303 of the Mayor and
City Council of Baltimore (1931-1932), and to prevent
and prohibit the holding of an election and the sub-
mission thereof of the question whether or not there
shall be a change in the Acts and Ordinances on Sab-
bath Observance, on May 2, 1932, or at any other time.

THIS IS TO CERTIFY that the above is a true copy of

the Resolution passed at a meeting of the Executive Committee of The Lord's Day Alliance, duly warned and held as above stated.

W. A. Davis
Secretary

Joshua Leavelle
Chairman of the Executive
Committee

Petitioners' Exhibit X
Part of Resolution
W. M. Dooly
atty for Petitioners

Peterson Exhibit A
Party Registration
W. M. Maly
attest for Peterson

318/1932
IN THE SUPERIOR COURT OF BALTIMORE
CITY.

.....
CHARLES M. NESS,
JOSHUA LEVERING,
REVEREND LEONARD B. SMITH,
CHARLES R. GUNDERSDORFF,
REVEREND DEWITT M. BENHAM,
MILTON W. GATCH, and
REVEREND WILLIAM W. DAVIS,
Constituting a Committee of
the Lord's Day Alliance, a
body corporate, and as indi-
viduals and taxpayers of the
City of Baltimore and State of
Maryland,

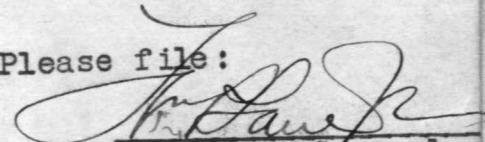
vs.

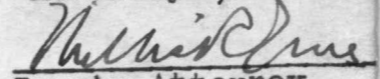
ROBERT B. ENNIS, BERNARD J.
FLYNN, and ALEXANDER McK.
MONPELL, constituting the
Board of Supervisors of Elec-
tion of Baltimore City.

.....
A N S W E R
.....

Mr. Clerk:

Please file:


Attorney General


Deputy Attorney
General, Attorneys
for Board of Sup-
ervisors of Electio

WM. PRESTON LANE, JR.

ATTORNEY GENERAL

1901 BALTIMORE TRUST BUILDING

BALTIMORE

MARYLAND

FD 4 Feb 1932

CHARLES M. NESS, : IN THE
 JOSHUA EEVERING, :
 REVEREND LEONARD B. SMITH, :
 CHARLES R. GUNDERSDORFF, :
 REVEREND DeWITT M. BENHAM, : SUPERIOR COURT
 MILTON W. GATCH, and :
 REVEREND WILLIAM W. DAVIS, :
 Constituting a Committee of :
 the Lord's Day Alliance, a body : OF
 corporate, and as individuals and :
 taxpayers of the City of Baltimore :
 and State of Maryland. :
 : BALTIMORE CITY

vs. :

ROBERT B. ENNIS, :
 BERNARD J. FLYNN, and :
 ALEXANDER McK. MONTELL, :
 Constituting the Board of :
 Supervisors of Election :
 of Baltimore City. :

.

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The answer of Robert B. Ennis, Bernard J. Flynn and Alexander McK. Montell, constituting the Board of Supervisors of Election of Baltimore City, to the petition and order to show cause heretofore exhibited against them in this proceeding, respectfully shows:

1st. That the petitioners, constituting a Committee of the Lord's Day Alliance, a body corporate, and appearing on its behalf, are not authorized to apply to this Honorable Court for the writ of mandamus sought in this proceeding, and said petitioners, as an alleged Committee of the Lord's Day Alliance, are not proper parties in this proceeding.

2nd. That the petitioners have not stated in the petition for mandamus any facts which entitle them to the relief prayed and the said petition should therefore be dismissed.

3rd. Answering the first paragraph of said petition these respondents show that they are without knowledge as to the manner in which the alleged Committee of the Lord's Day Alliance, a body corporate, was appointed, and they therefore demand strict proof as to the manner in which said alleged committee was appointed, and also of the alleged authority of the executive committee of the said Lord's Day Alliance to appoint any committee to institute this proceeding, and also of the manner and authority by which the said executive committee was elected or appointed.

Your respondents admit that the Lord's Day Alliance is a body corporate of the State of Maryland, but they are advised that the said body corporate does not pay any taxes of any kind to the City of Baltimore or the State of Maryland, and that the said body corporate has no authority whatever to apply for the writ of mandamus or to authorize any committee in its behalf to apply for such relief in this proceeding.

Your respondents admit the passage of Chapter 287 of the Acts of Assembly of 1931, and also the passage and approval of Ordinance No. 130, of the session of 1931 and 1932, by the Mayor and City Council of Baltimore, and that the allegations as to the objects and purposes of said Act and Ordinance are substantially correct.

Further answering said paragraph, your respondents show that they have no knowledge that the petitioners in their individual capacities are members of the Lord's Day Alliance, and of the executive committee thereof, and your respondents demand strict proof of these allegations.

Your respondents admit that the petitioners in their individual capacities are residents of the City of Baltimore, and that they are taxpayers of the said City and

of the State of Maryland. They admit, also, that the said petitioners in their individual capacities are Christians and communicants of a Christian church, and that they are interested in the observance of Sunday as an institution of religion and as a day to be devoted to religious worship, but your respondents show that the religious faith and personal views of the said petitioners in their individual capacities with respect to these matters, entitle them to no rights to maintain this action not possessed by other citizens and taxpayers, and do not constitute such an interest in the subject matter of this proceeding as to entitle them to the relief prayed.

Further answering said paragraph, your respondents admit that they constitute the Board of Supervisors of Elections of Baltimore City, and that their powers and duties are prescribed by the laws of the State of Maryland and the Mayor and City Council of Baltimore to the extent that the said Mayor and City Council has been authorized by the Constitution and laws of this State to confer powers and impose duties upon your respondents.

4. Answering paragraph two of said petition, your respondents admit the passage and approval of Chapter 287 of the Acts of 1931, and also the passage and approval by the Mayor and City Council of Baltimore, of Ordinance No. 130, session of 1931 and 1932, and that the copies of said Act and Ordinance filed with said petition as "Petitioners' Exhibits Nos. 2 and 3" are correct.

Your respondents are advised that it is unnecessary for them to answer the remaining references contained in said paragraph.

5. Answering paragraph three, and each and every

BATIONS

sub-section of said paragraph, your respondents, while admitting the passage of Chapter 287 of the Acts of 1931, and Ordinance No. 130 of the Mayor and City Council of Baltimore, session of 1931 and 1932, deny each and every conclusion of the petitioners to the effect that the said Act, or any part thereof, or the said Ordinance, or any part thereof, is unconstitutional, illegal, invalid, null and void, and show that the said Act and the said Ordinance are valid, binding and authoritative legislative enactments.

Answering the allegations of the petition to the effect that said ordinance is a destructive assault upon the Christian religion, your respondents aver that this case presents no question whatever of a religious character and that such allegations are improper, irrelevant, and are not pertinent to the issue. ~~issue.~~ Your respondents, however, emphatically deny that said ordinance is directed against the Christian religion, and show that it is solely designed to perform a proper civic function, namely, to determine what articles of merchandise may be sold, in the interest of public convenience and necessity, and what forms of recreation may be indulged in, to the end that the people of Baltimore may more fully enjoy and observe Sunday, as a day of rest and recreation, in accordance with the dictates of their individual consciences.

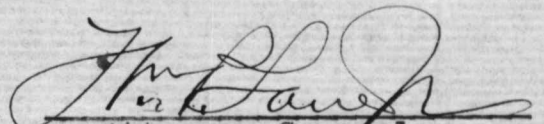
6. Answering paragraph four of said petition, your respondents deny the allegations and conclusions therein contained.

7. Answering paragraph 5 of said petition, your respondents admit that they intend to comply with the provisions of the said Ordinance of the Mayor and City Council

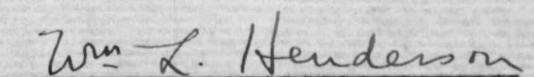
of Baltimore, and that the holding of the special election on May 2nd, will entail a slight additional expense, but show that the holding of said election on a day fixed by law for a primary or general election, instead of some other day, will result in a very large saving to the taxpayers. Your respondents deny each and every other allegation and conclusion of said paragraph.

And now having fully answered said petition and order to show cause, these respondents pray that they may be dismissed with their proper costs.

And as in duty bound, etc.


Attorney General


Deputy Attorney General


Assistant Attorney General
Attorneys for Board of
Supervisors of Elections
of Baltimore City.

STATE OF MARYLAND

CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY That on this *third* day of March, 1932, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Robert B. Ennis, Bernard J. Flynn, and Alexander McK. Montell, constituting the Board of Supervisors of Election of Baltimore City, and made oath in due form of law that the matters and facts set forth in the above answer are true to the best of their knowledge information and belief.

Witness my hand and Notarial Seal.

Hattie J. Linn
Notary Public.

318/1932

IN THE
SUPERIOR COURT
OF BALTIMORE CITY.

CHARLES M. NESS, et al.,
Constituting a Committee of
the Lord's Day Alliance, etc.

vs.

ROBERT B. ENNIS, et al.
constituting the Board of
Supervisors of Election of
Baltimore City.

PETITION FOR MANDAMUS
and PETITIONERS' EXHIBITS
NUMBERS 1, 2 and 3.

Mr. Clerk:

Please file, &c.,
Petition & Exhibits 1-2-3
Part of Petition.

W. M. Maloy
attor for Petition

2875

MALLOY, BRADY AND TOST,
ATTORNEYS AT LAW,
FIDELITY BLDG. BALTIMORE.

2-21-9-16

FD 29 Feb 1932
2-3

Copy of the within Petition and Order of Court signed
and Willie C. Jones Deputy Attorney General Solicitor for
Robert B. Ennis Bernard J. Flynn and Alexander W. C.
Montell constituting the Board of Supervisors of Elections
of Baltimore City on the 19th day of February 1932
in the presence of Charles Friedman.

Joseph C. Flynn
Sheriff
Feb 20. 32

Dem to
Mrs. Ennis



Service of Copy
admitted this 19th
day of Feb 1932
William C. Jones
deputy att General
att for Defendants.

CHARLES M. NESS,	:	IN
JOSHUA LEVERING,	:	
REVEREND LEONARD B. SMITH,	:	
CHARLES H. GUNDERSDORFF,	:	THE
REVEREND DeWITT M. BENHAM,	:	
MILTON W. GATCH, and	:	
REVEREND WILLIAM W. DAVIS,	:	
constituting a Committee of the	:	
Lord's Day Alliance, a body corporate,	:	SUPERIOR COURT
and as individuals and taxpayers of the	:	
City of Baltimore and State of Maryland,	:	
	:	
vs.	:	OF
	:	
ROBERT B. ENNIS,	:	
BERNARD J. FLYNN, and	:	
ALEXANDER McK. MONTELL,	:	BALTIMORE CITY
constituting the	:	
Board of Supervisors of Election	:	
of Baltimore City.	:	
	:	

-0-:-0-

PETITION FOR MANDAMUS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of Charles M. Ness, Joshua Levering, Reverend Leonard B. Smith, Charles H. Gundersdorff, Reverend DeWitt M. Benham, Milton W. Gatch, and Reverend William W. Davis, constituting a Committee of the Lord's Day Alliance, a body corporate, and as individuals and taxpayers of the City of Baltimore and State of Maryland, respectfully shows unto your Honor:

I.

That your petitioners are and constitute a Committee duly appointed by the Executive Committee of the Lord's Day Alliance, a body corporate, duly incorporated under the laws of the State of Maryland, to secure a better observance of the Lord's Day or the Sabbath Day, commonly called Sunday, as a day of rest and worship and to secure and maintain such laws as will best enable

it to accomplish that object. That the said Executive Committee was duly authorized and empowered to appoint your petitioners as a Committee and your petitioners were so duly appointed by said Executive Committee, and instructed, authorized and empowered, accordingly, for the purpose of instituting proceedings in Court to contest the constitutionality, legality or validity of the alleged Act of the General Assembly of Maryland, passed at its January Session of 1931, and known as Chapter 287 of the Acts of 1931, and of the alleged Ordinance of the Mayor and City Council of Baltimore, approved on the 15th day of February, 1932, and known as Ordinance No. 130 of the Session 1931-1932; said Chapter 287 of the Acts of 1931, purporting to authorize the Mayor and City Council of Baltimore to prohibit, permit or regulate the holding, showing or playing of amusements, entertainments or games for recreation or profit and the sale at retail of merchandise within Baltimore City, purporting to authorize the Mayor and City Council of Baltimore to prescribe the conditions and regulations under which amusements, entertainments or games may be shown, held or played, or merchandise sold, purporting to provide penalties for violations, and said Act known as Chapter 287 providing that no Ordinance passed in the exercise of the alleged grant of power shall take effect until it has been approved by a majority of the qualified voters of the City of Baltimore voting thereon; and purporting further to provide that Sections 483, 484 and 485 of Article 27 of the Annotated Code of Maryland, title "Crimes and Punishments", subtitle "Sabbath-Breaking", shall be repealed in so far as said Sections prohibit amusements, entertainments or games, and the sale at retail of merchandise in the City of Baltimore on Sunday, and purporting further to provide for the time when and the conditions under which such repeal shall take effect; and said Ordinance No. 130 purporting to add three new sections to Article 40 of the Baltimore City Code (1927 Edition), title "Sabbath", said new

sections to be known as sections 4, 5 and 6, and to follow immediately after Section 3 of said Article, the three new sections purporting to regulate the holding, showing or playing of amusements, entertainments or games for recreation or profit, and the sale at retail of merchandise within Baltimore City on Sunday, said alleged Ordinance No. 130 purporting further to provide penalties for the violation thereof, and purporting further to submit said Ordinance to the legally qualified voters of said City for adoption or rejection; that said Act and said Ordinance are hereinafter set forth and are herein complained of; and that for and on behalf of said Lord's Day Alliance and under and by virtue of the directions and powers so given them, as aforesaid, your petitioners, as said Committee, institute these proceedings.

That your petitioners in their individual capacities and characters, respectively, are members of said Lord's Day Alliance and of the said Executive Committee thereof; that each of them is a resident of the City of Baltimore; each is a Christian in his religious faith and a member and communicant of a Christian Church and interested as a matter of religious faith, conviction and civic duty in the preservation and maintenance of the Christian religion and in the maintenance and observance of the Lord's Day or Sabbath, commonly called Sunday, as a sacred institution of said religion and as a day to be devoted to religious worship and to rest from secular employments, and that as Christians and citizens of the City of Baltimore and State of Maryland, as aforesaid, they are interested in the maintenance and enforcement of the laws of the State of Maryland providing for the maintenance of said Lord's Day or Sabbath, as a day set apart for religious observance and rest, as aforesaid, and that they are entitled to have said laws of the State of Maryland maintained, enforced and effectuated.

That your petitioners, furthermore, are taxpayers of the State of Maryland and the City of Baltimore, in which City they own and pay taxes upon real and personal property; that a receipted 1931 tax bill of Charles M. Ness, one of the petitioners, filed herewith as part hereof, and marked "Plaintiffs' Exhibit Number 1"; and that as such taxpayers they are entitled to immunity and exemption from all unauthorized and illegal expenditures upon the part of public officials, including the Defendant, which may result in an increase of the burden of taxation upon your petitioners.

That Robert B. Ennis, Bernard J. Flynn and Alexander McK. Montell, constitute the Board of Supervisors of Election of Baltimore City, are as said Board of Supervisors of Election of Baltimore City, the Defendant herein and hereto; that the Defendant Board's powers and duties are provided for and prescribed by the laws of the State of Maryland and more particularly by Article 33 of the Public General Laws of Maryland, title, "Election".

II.

That heretofore the General Assembly of Maryland at its Session in the year 1931, passed and enacted an alleged Statute known as Chapter 287 of the Acts of 1931, approved on the 17th day of April, 1931, reference to which alleged statute as printed in the Acts of 1931 is made for the purpose of incorporating the same herein; a copy of said Act is filed herewith as part hereof, and also for convenience; marked "Petitioners' Exhibit No. 2".

That subsequently the Mayor and City Council of Baltimore passed and adopted an alleged Ordinance known as No. 130, Session of 1931-1932, approved on February 15, 1932, a certified copy of which ordinance marked "Petitioners' Exhibit No. 3" is filed herewith and made a part hereof as fully as if completely copied herein.

That reference is here made to sections 483, 484 and 485 of Article 27 of Bagby's Annotated Code of Maryland (Edition of 1924) and particularly section 484 (Art. 27, Volume published in 1914) which is section 437 of Article 27 (Vol. 3 Supplement to Code of 1911) as repealed and re-enacted by Chapter 700 of the Acts of 1920, and also sections 483 and 485 of the Code of 1924, which were section 436 and 438 of Article 27 in the Code of 1911 (Vol. 3 published in 1914 contains Article 27) as attempted to be repealed and re-enacted by the invalid and ineffective Act known as Chapter 522 of the Acts of 1920.

That reference is here made to sections 1, 2 and 3 of Article 40, Title "Sabbath" of the Baltimore City Code of 1927, the same being sections 1, 2 and 4 respectively of the Ordinances of the City of Baltimore as contained in Article 43 of the Baltimore City Code of 1893, the section numbered three in said Article 43 of the City Code of 1893, having been repealed by Ordinance No. 463, approved March 1, 1919.

III.

(a) Your petitioners are advised and respectfully show that the alleged Ordinance No. 130, approved on February 15, 1932, is unconstitutional, illegal, invalid, null and void because (1) the Mayor and City Council of Baltimore at the time of the passage and adoption of said alleged Ordinance did not have, nor at any time since has had, constitutional, legislative or charter, power and authority, express, implied or inherent, to ordain that a special election should be held in the City of Baltimore on the first Monday of May, 1932, being May 2, 1932, in that the said day was the day fixed by general statute for the holding by the major political parties of Presidential and other primary elections in Baltimore City and elsewhere in the State of Maryland, nor to order that the Board of Supervisors of Election of Baltimore City

be thereby authorized and directed to have separate ballots printed to be used in the said special election on May 2, 1932; (2) the Board of Supervisors of Election, at the time of the passage and adoption of said alleged Ordinance did not have, nor at any time since has had, constitutional, legislative or charter, power and authority, express, implied or inherent, to hold, cause or permit to be held, a special election in the City of Baltimore on May 2, 1932, on the same day and at the same polling places with the Presidential and other primary elections held under the direction and authority, and in pursuance to the provisions of the general statutes contained in Article 33, Title "Elections", sub-title "Primary Elections" of the Maryland Code of Public General Laws, which provisions order and regulate primary elections in the City of Baltimore and elsewhere in the State of Maryland; (3) the Mayor and City Council of Baltimore, at the time of the passage of said alleged Ordinance, did not have, under the alleged Act, known as Chapter 287 of the Acts of 1931, power or authority to enact and ordain said Ordinance No. 130 and particularly Section 2 of said Ordinance; that said Ordinance is unconstitutional, illegal, invalid, null and void.

(b) Your petitioners are advised and respectfully show that Chapter 287 of the Acts of the General Assembly of Maryland passed at the Session of 1931, and particularly section 3 of said Chapter 287 of the Acts of 1931, purport to repeal sections 483, 484 and 485 of Article 27 of the Annotated Code of Maryland (Bagby's Edition of 1924 with supplementary acts) title "Crimes and Punishments", sub-title "Sabbath-Breaking", in so far as said sections prohibit amusements, entertainments or games, and the sale at retail of merchandise in the City of Baltimore on Sunday, and said Chapter 287 provides that the said repeal shall not take effect until an Ordinance passed in the exercise of the power granted under the provisions of said Act known as said Chapter 287, has been approved by

the voters of Baltimore City as provided by section 2 of said Act; that said sections 483, 484 and 485 of Article 27 of the Code are Public general laws of the State of Maryland and the repeal thereof is by said Act made effective upon the vote of a portion of the electorate of the State; that all of the sections of Chapter 287 and particularly section 3 thereof, are unconstitutional, illegal, invalid, null and void.

(c) Your petitioners are advised and respectfully show that under and pursuant to the power and privilege in the provisions of Article XI A "Local Legislation", of the Constitution of Maryland, the present Charter of the City of Baltimore was adopted; and further that by said Article XI "City of Baltimore" of the Constitution of Maryland, the powers granted to the City of Baltimore as set forth in section 6 of Article 4 of the Public Local Laws of Maryland, may be extended, modified, amended or repealed by the General Assembly; that Chapter 287 of the Acts of 1931 does not purport to be and is not an extension, modification or amendment of the express powers heretofore granted to the City of Baltimore, as set forth in Section 6 of Article 4 of the Public Local Laws of Maryland, does not purport to be and is not a change in sections 1 to 6 of Article XI of the Constitution of Maryland, does not purport to be and is not a change in the provisions of the Charter of the Mayor and City Council of Baltimore; that under the provisions of Articles XI and XI A of the Constitution, that an amendment to, extension, modification or repeal of the Charter powers of the Mayor and City Council of Baltimore, can be made only by change in the provisions of section 6 of Article 4 Public Local Laws of Maryland, now constituting section 6 of the Charter of the Mayor and City Council of Baltimore, framed and adopted by virtue of and under the provisions of Article XI A of the Constitution of Maryland.

(d) That said alleged Act known as Chapter 287 of the Acts of 1931 is a special law passed for a case for which provision has been made by an existing general law, and is in contravention of section 33 of Article III of the Constitution of Maryland.

(e) That said alleged Act known as Chapter 287 of the Acts of 1931 is an unlawful and unconstitutional delegation by the General Assembly of Maryland of the power and duty vested in and imposed upon it by the Constitution of Maryland to enact and make the laws of the State.

(f) That said alleged Act known as Chapter 287 of the Acts of 1931, is violative and in contravention of Article XV entitled "The Referendum" of the Constitution of Maryland.

(g) That said alleged Act known as Chapter 287 of the Acts of 1931, because of its classifications without distinguishing and differentiating distinctions and differences, is in contravention and in violation of the equal protection of the laws and due process of law clauses of the 14th Amendment to the Constitution of the United States and of Article 23 of the Declaration of Rights of the Constitution of Maryland.

(h) That said alleged Ordinance No. 130 is in contravention and violative of the equal protection of the laws and due process of law clauses of the 14th Amendment to the Constitution of the United States, and of Article 23 and 19 of the Declaration of Rights of the Constitution of Maryland.

(i) That the alleged Act known as Chapter 287 of the Acts of 1931 is in contravention and in violation of the provisions of Section 29 of Article III of the Constitution of Maryland requiring that every law enacted by the General Assembly shall embrace but one subject and that shall be described in its title, that no law or section of law shall be revived or amended by reference to its title or section only, nor shall any law be construed by reason of its title to grant powers or confer rights

which are not expressly contained in the body of the Act; and it shall be the duty of the General Assembly in amending any article or section of the Code of Laws of this State, to enact the same as the said ^{article} or section would read when amended.

(j) That said alleged Ordinance No. 130 is in contravention and in violation of section 221 of the Baltimore City Charter, (page 228 of Charter 1927 Edition) requiring that every ordinance shall embrace but one subject which shall be described in its title, and no ordinance shall be revived, amended or re-enacted by mere reference to its title, but the same shall be set forth at length as in the original ordinance.

(k) That the Ordinance No. 130 is arbitrary, unreasonable, illegal and unconstitutional in that it designates May 2, 1932 as the date for holding a special election, which day is by general law the date for holding Presidential and other primary elections, and the provisions and requirements of the general law make the holding of said election illegal and unconstitutional and violative of the rights, privileges and immunities of your petitioners and other voters, residents, taxpayers and citizens of the City of Baltimore and State of Maryland.

(l) That Ordinance No. 130 is inconsistent with and repugnant to the general policy of the State as embodied in the Sabbath Day Statutes.

(m) That the provisions of Section 7 Art. XI of the Constitution, that decisions declaring the powers possessed by the Mayor and City Council of Baltimore by virtue of said Section 7 Art. XI, that a special bond election held by a County prior to the Local Legislation Amendment and by a County that has not adopted a Local Charter, and which election was held under specific legislative authority and conducted without prior dispute or contest of the validity of said legislation or said election, are not controlling precedents or persuasive authorities and are neither pertinent nor relevant herein.

(n) That said Ordinance is a destructive assault upon the Christian religion, which is a part of the common law of Maryland and the foundation of its jurisprudence and polity; that the maintenance and observance of the said Lord's Day will be rendered impossible by the provisions of said alleged Ordinance.

IV.

Your petitioners are further advised and respectfully show that the defendant, the Board of Supervisors of Election of Baltimore City, is utterly without authority or power from any source to print said alleged Ordinance or the question of approving or disapproving or adopting or rejecting the same upon separate ballots to be used at a special election to be held in the City of Baltimore on the 2nd day of May, 1932, or at any other time, or to present said question in any manner to the voters of Baltimore City at a special election or at any election inasmuch as the General Assembly of Maryland has never in a constitutional, legal and valid manner authorized the defendant so to do nor does said alleged Ordinance so authorize them nor is there any constitutional and valid law or Ordinance whatsoever so authorizing them or legally empowering them so to do; and, furthermore, because said alleged Act, Chapter 287, and said alleged Ordinance No. 130 are in all respects manifestly and palpably imperfect, insufficient and defective and embrace no provisions whatsoever for the conduct of any such election, said alleged Act and said alleged Ordinance, both being so uncertain, imperfect, inadequate, insufficient, and defective in its and their terms and provisions as to be incapable and impossible of being carried out, performed and executed.

V.

Your petitioners further show that notwithstanding the matters and facts hereinabove set forth and particularly the unconstitutionality, illegality and invalidity of said alleged Act and of said Ordinance and the utter absence of any power in the Mayor and City Council of Baltimore to designate May 2, 1932, the day fixed by the general statutes of Maryland as the day for the holding of primary elections by political parties, as the day for holding a special election in Baltimore City, and notwithstanding the utter absence of power in the Mayor and City Council of Baltimore to direct or authorize the Board of Supervisors of Election of Baltimore City to have prepared separate ballots submitting the Ordinance to the voters of Baltimore City at a special election on said Primary Election Day, and notwithstanding the utter absence of power and authority in said Board of Supervisors of Election of Baltimore City to have printed said separate ballots to be used at said special election on said Primary Election Day or to arrange for, furnish ballots, ballot-boxes, election judges and clerks and to hold and conduct said special election on said Primary Election Day, the Defendant, nevertheless, wrongfully and illegally is about and intends to print the same upon said official ballots and to submit said alleged Ordinance and the question of approving or disapproving or adopting or rejecting the same to the said voters of Baltimore City at said special election on the day upon which will be held the Primary Election in said City of Baltimore, all in violation of the laws of this State and of its, the defendant's, powers and duties thereunder; that the course of the defendant about to be pursued, as aforesaid, will necessitate and entail a very large additional expense resulting in an increase in the rate of both State and City taxation and will illegally increase the burden of

taxation upon your petitioners and other taxpayers of said City and irreparably damage and injure them; that, moreover, if as a result of said pretended and illegal election the canvassers thereof should find and return a majority of votes in favor of the approval or adoption of said alleged Ordinance, your petitioners would be deeply injured in and through the violation of the laws of the State providing for the observance of the Lord's Day, commonly called Sunday, as a day of worship and rest, as aforesaid, and through the violation of said laws and their virtual nullification, which would result from the adoption and effectuation of said alleged Ordinance, your petitioners would suffer irreparable injury and damage and the public civil policy of the State of Maryland including the City of Baltimore as above described would be also thwarted and nullified and the community and public generally hurt and damaged, whilst your petitioners both as a Committee representing the Lord's Day Alliance, as aforesaid, and in their individual characters and capacities would be deprived of their rights as Christian citizens of said City and State, aforesaid, to have the State laws maintained and enforced and the public policies of Maryland, defined as aforesaid, sustained, safeguarded and preserved.

That as a matter of right and justice and to preserve and maintain the rights of these petitioners in their several capacities, aforesaid, and of the great number of citizens of Baltimore City and Maryland in the same plight and situation with them, it is proper and necessary to prevent and restrain the said illegal course and conduct upon the part of the defendant and the said violation of the law by the defendant and that in order to prevent and restrain said illegal course and conduct and to protect your petitioners from the wrongs and injuries which would result from the acts and conduct about to be done and carried out by the defendant, as aforesaid, it is proper and necessary for this

Honorable Court to intervene in the premises by its writ of mandamus directed to the defendant preventing and restraining them from printing, causing or permitting to be printed, separate ballots to be used at, and from holding, causing or permitting to be held a special election in the City of Baltimore on May 2, 1932, or at any other time, submitting Ordinance No. 130 of the Mayor and City Council of Baltimore, passed at the Session of 1931-1932, to the voters of the City of Baltimore for adoption or rejection, and further by said writ of mandamus to direct, order and require the said Supervisors of Elections of Baltimore City, the defendants, not to print, cause or permit to be printed, separate ballots to be used at, and not to hold, cause or permit to be held a special election in the City of Baltimore on May 2, 1932, or at any other time, submitting Ordinance No. 130 of the Mayor and City Council of Baltimore, passed at the Session of 1931-1932, to the voters of the City of Baltimore, for adoption or rejection.

WHEREFORE, your petitioners pray this Honorable Court to issue its writ of mandamus directed to the defendant, the Board of Supervisors of Elections of Baltimore City, and each of the members of said Board, having its office in the Court House of Baltimore City, preventing and restraining it and them from printing, causing or permitting to be printed, separate ballots to be used at, and from holding, causing or permitting to be held a special election in the City of Baltimore on May 2, 1932, or at any other time submitting Ordinance No. 130 of the Mayor and City Council of Baltimore, passed at the Session of 1931-1932, to the voters of the City of Baltimore for adoption or rejection, and further by said writ of mandamus to direct, order and require the said Board of Supervisors of Elections of Baltimore City, the defendant, not to print, cause or permit to be printed separate ballots to be used at, and not to hold, cause or permit to be held, a special election in the City of

Baltimore on May 2, 1932, or at any other time, submitting Ordinance No. 130 of the Mayor and City Council of Baltimore passed at the Session 1931-1932, to the voters of the City of Baltimore, for adoption or rejection, and ordering such other and further relief as may be proper in the premises.

Chas. M. Ness chairman
Joshua Levering
W. W. Davis
Leonard B. Smith
Charles H. Gundersdorff

William Andrew Malby
Attorney for Petitioners.

STATE OF MARYLAND, CITY OF BALTIMORE, SCT:

I HEREBY CERTIFY that on this 26th day of February, ~~1932~~, in the year nineteen hundred and thirty-two, before me, the subscriber, a Notary Public, in and for the State and City aforesaid, personally WILLIAM W. DAVIS, LEONARD B. SMITH and CHARLES B. GUNDERSDORFF appeared CHARLES M. NESS, ~~and~~ JOSHUA LEVERING, and each made oath for, and on his own behalf as a member of, said Committee and individually and as a taxpayer of the City of Baltimore, and of the State of Maryland, and for and on behalf of his co-petitioners in the above petition for a writ of mandamus that the matters and facts stated in said petition are true to the best of his knowledge and belief.

WITNESS my hand and Notarial Seal.

John McCullough
Notary Public

Upon the foregoing Petition and Affidavit, it is this 24 day of February 1932, ORDERED by the Superior Court of Baltimore City that the mandamus prayed for in said Petition be issued and granted forthwith unless cause to the contrary be shown by the defendant, the Board of Supervisors of Elections of Baltimore City, on or before the 7th day of March, 1932, provided, however, that a copy of said Petition and of this Order be served upon the defendant or its counsel on or before the 29th day of ^{Feb}~~March~~, 1932.

Eugene O'Donne

BUREAU OF RECEIPTS

Municipal Office Building
Baltimore, Md.

CERTIFICATE

No 13300

Handwritten notes:
W. J. ...
...

Date 2-27-32

Chas M & Geo. P. Ness

Water

According to the records of this Bureau, the account for

Real Estate for the year 1931

Water 3400
State 6255
City 61299
Paving _____
Total \$ 70954

on property 116 Hanover St

identified as W 4 S 10 B 669 L 9

Dis. _____
Int.-Pen. _____
Total \$ 70954

was credited on 7-29-31

Examined by [Signature]

Verified by [Signature]

BUREAU OF RECEIPTS

Supervisor of Billing or Chief Lien Division

[Signature]
Collector, Deputy Manager

BUREAU OF RECEIPTS

Municipal Office Building
Baltimore, Md.

CERTIFICATE

Nº 13290

Date 2-26-32

*PAID
W. J. Foley
Superintendent
of Public Works*

Chas M. Ness

According to the records of this Bureau, the account for

Real for the year 1931

on property 2213 Chilham Trd.

identified as W 27 S 17 B 33 L 16

was credited on 7-29-31

Examined by W. Foley

Verified by J. A. Langhlan

Supervisor of Billing or Chief Lien Division

Water

State 361.5

City 297.38

Paving

Total \$

Dis.

Int.-Pen.

Total \$ 393.51

BUREAU OF RECEIPTS

Head Dept

Collector, Deputy Manager

BUREAU OF RECEIPTS

Municipal Office Building
Baltimore, Md.

CERTIFICATE

Nº 13292

Date 2-26-37

Chas. M. Ness

*Patrol
Division
own
to
patrol*

According to the records of this Bureau, the account for

Auto for the year *1931*

of property *Chilham Rd. Mt. Washington*

identified as W S B L

was credited on 7-29-31

Examined by *W. Foley*

Verified by *J. H. Vaughter Vol 1538-39*
Supervisor of Billing or Chief Lien Division

Water

State 1.13

City 9.926

Paving

Total \$

Dis.

Int.-Pen.

Total \$ 10.39

BUREAU OF RECEIPTS

Neal Grant
Collector, Deputy Manager

CHAPTER 287.

AN ACT to grant the Mayor and City Council of Baltimore Home Rule as to certain matters, by authorizing the Mayor and City Council of Baltimore to prohibit, permit or regulate the holding, showing or playing of amusements, entertainments or games for recreation or profit, and the sale at retail of merchandise within Baltimore City on Sunday; and to authorize and empower the Mayor and City Council of Baltimore to prescribe the conditions and regulations under which amusements, entertainments or games may be shown, held or played, or merchandise sold; and to provide for penalties for violations; and to provide that no ordinance passed in the exercise of the grant of power shall take effect until it has been approved by a majority of the qualified voters of the City of Baltimore voting thereon, and to provide that Section 483, 484 and 485 of Article 27 of the Annotated Code of Maryland, title "Crimes and Punishments," sub-title "Sabbath Breaking," shall be repealed in so far as said sections prohibit amusements, entertainments or games, and the sale at retail of merchandise in the City of Baltimore on Sunday; and to provide for the time when and the conditions under which such repeal shall take effect.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That notwithstanding any provision of any Public General or Public Local Law, the Mayor and City Council of Baltimore, in furtherance of the principle of Home Rule and for the purpose of promoting a reasonable and proper observance of Sunday, shall have full power and authority to prohibit, permit or regulate from time to time by ordinance or ordinances, amusements, entertainments or games to be held, shown or played for recreation or profit, and the sale at retail of any article or articles of merchandise within Baltimore City on the Lord's Day, commonly called Sunday; and shall have full power and authority to prescribe the conditions or regulations under which said amusements, entertainments or games may be shown, held or played or said article or articles of merchandise may be sold; and shall have

full power and authority to provide penalties for the violation of any such ordinance, condition or regulation.

Section 2. AND BE IT FURTHER ENACTED, That no ordinance passed in the exercise of the grant of power contained in the preceding Section 1 of this Act shall take effect until it has first been submitted to the qualified voters of the City of Baltimore at either a general or special election, State or municipal, and has been approved by a majority of the voters voting thereon. And the Mayor and City Council of Baltimore is hereby authorized and empowered to determine the time, place and manner for the submission of any such ordinance to the qualified voters, and for the voting thereon and for ascertaining the results; and is hereby authorized and empowered, for such purpose to use the registration list, books, ballot boxes and other election paraphernalia and agencies of the Board of Supervisors of Elections of Baltimore City. In the case of a special election the general election law of the State, wherever applicable, shall likewise apply.

Section 3. AND BE IT FURTHER ENACTED, That Sections 483, 484 and 485 of Article 27 of the Annotated Code of Maryland (Bagby's Edition of 1924), title "Crimes and Punishments," sub-title "Sabbath Breaking," shall not apply to the City of Baltimore, and shall be repealed in so far as such sections prohibit amusements, entertainments or games and the sale at retail of merchandise in the City of Baltimore on Sunday; provided, however, that the said repeal shall not take effect until an ordinance passed in the exercise of the power granted under the provisions of Section 1 of this Act has been approved by the voters of Baltimore City, as provided by Section 2 of this Act.

Section 4. AND BE IT FURTHER ENACTED, That all laws or parts of laws, whether Public General or Public Local Laws, inconsistent with the provisions of this Act be and they are hereby repealed to the extent of such inconsistency.

Section 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1931.

Approved April 17, 1931.

Paul J. Pelloni
W. M. Landry
Alfred Pelloni

An Ordinance to add three new sections to Article 40 of the Baltimore City Code (1927 Edition), title "Sabbath" said new Sections to be known as Sections 4, 5 and 6, and to follow immediately after Section 3 of said Article, regulating the holding, showing or playing of amusements, entertainments or games for recreation or profit, and the sale at retail of merchandise within Baltimore City on Sunday; Providing penalties for the violation thereof and submitting said ordinance to the legally qualified voters of said City for adoption or rejection.

Whereas, Chapter 287 of the Acts of 1931 has conferred the power and authority upon the Mayor and City Council of Baltimore to pass an ordinance regulating the holding or playing of amusements, entertainments or games for recreation or profit, and the sale at retail of merchandise within the said City on Sunday; therefore, in the pursuance of the authority and power conferred by said Chapter 287 of the Acts of 1931.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That three new sections be and they are hereby added to Article 40 of the Baltimore City Code (1927 Edition), title "Sabbath", said new sections to be known as Sections 4, 5 and 6, to follow immediately after Section 3 of said Article, and to read as follows:

4. It shall be unlawful for any person to play baseball or any other game or games whatsoever or to hold or engage in any entertainment or amusement on the Sabbath Day, commonly called Sunday, within the limits of Baltimore City, except as hereinafter authorized. It shall be lawful to play on Sunday the games of baseball, golf, football, tennis, croquet, basketball, lacrosse, quoits, soccer and hockey; to swim, roller skate, ice-skate; to hold or engage in field, track or swimming meets or contests or any other athletic games whatsoever, except boxing or wrestling, for recreation or profit, after the hour of 2 P.M. on Sunday; provided such amusements entertainments or games, except boxing or wrestling, may be held, shown or played at any time on Sunday for recreation and not for profit; and provided further that such amusements, entertainments or games, whether for recreation or profit, shall not be held, shown or played within 200 feet of any permanent place of worship except in armories. It shall be lawful to fish or crab on Sunday for recreation only, and not for profit through sales of fish or crabs. It shall be unlawful to hold at any time on Sunday any contest between animals, such as horse-racing or dog-racing, or any contest between machines, such as motorcycles and motor vehicles of all kinds.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction shall be subject to a fine of not less than Five Dollars (\$5.00) and not more than Fifty Dollars (\$50.00) for each offense.

5. No person in the City of Baltimore shall sell, dispose of, barter, or deal in, or give away any articles of merchandise on Sunday, except retailers, who may sell and deliver on said day any tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, butter, eggs, bread, fruits and all articles of cooked meats and food stuffs prepared for consumption, gasoline, automobile accessories and parts, oils and grease, artificial and natural flowers. In addition to the articles hereinbefore mentioned, drug stores may sell on Sundays toilet goods, hospital supplies, thermometers, camera films, surgical instruments and appliances, rubber goods, drugs, medicines, patent medicines and all other such articles as are customarily used for the relief of pain or prescribed by physicians; provided further, however, that it shall be lawful for any one to sell and deliver newspapers and periodicals on Sunday.

Any person violating any one of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined a sum not less than Twenty Dollars (\$20.00) nor more than Fifty Dollars (\$50.00), for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00); and in case of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be fined a sum not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00).

6. It shall not be lawful to keep open or use any dancing saloon, opera house, ten-pin alley, barber saloon or ball alley within the City of Baltimore on the Sabbath Day, commonly called Sunday; provided, however, that it shall be lawful to exhibit motion pictures, to give theatrical performances or musical concerts, and to open or use bowling alleys after 2 O'clock P.M. on Sunday in said City, with or without a charge or admission fee.

Any person or persons, or body politic or corporate, who shall violate any provision of the Section, or cause or knowingly permit the same to be violated by a person or persons in his, her or its employ, shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined a sum not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00), in the discretion of the court, for the first offense; and if convicted a second time for a violation of this section, the person or persons, or body politic or corporate shall be fined a sum not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00); and, if a natural person, shall be imprisoned not less than ten nor more than thirty days in the discretion of the Court; and in the case of any conviction or convictions under this section subsequent to the second, such person or persons, or body politic or corporate shall be fined on each occasion a sum at least double that imposed upon him, her, them or it on the last preceding conviction, but in no case more than Five Hundred Dollars; and if a natural person shall be imprisoned not less than thirty nor more than sixty days in the discretion of the Court.

Section 2. And be it further ordained, That a Special Election shall be held in the City of Baltimore on the first Monday in May 1932, being May 2nd, 1932, and being the day fixed by law for the holding of primary elections in the State of Maryland, at which Special Election this Ordinance shall be submitted to the registered and qualified voters of the City of Baltimore, for adoption or rejection.

The Board of Supervisors of Elections of Baltimore City is hereby authorized and directed to have separate ballots printed to be used in the said Special Election, on which ballots shall appear, in clear and plain type, the whole of this Ordinance, after which shall be printed on separate lines, with a square or box to the right, and opposite the words "For the Ordinance", and a corresponding square to the right, and opposite the words "Against the Ordinance", so as to give each voter a clear opportunity to designate by a cross mark in the proper square or box, his or her vote for or against the said Ordinance, and the said ballots shall be printed upon paper of a different color from the other ballots in use at the primary election. The said ballots after being voted, shall be returned to the Judges of Election and retained in a separate ballot box until the close of the polls, and they shall be counted, canvassed, returned and certified as in other cases. The Board of Supervisors of Elections of Baltimore City shall give notice of the Special Election at which this Ordinance is to be submitted by the publication of said Ordinance in full in one or more daily newspapers published in Baltimore City, the said notice to be given not less than two, nor more than ten days before the date of said Special Election, but if for any reason said notice shall not be given in the manner herein prescribed, such failure shall not invalidate this Ordinance or prevent its taking effect, if approved. The Board of Supervisors of Elections of Baltimore City shall make all necessary arrangements for the Special Election provided for by this Ordinance, and the constitution and Laws of this State relating to elections, and the provisions of the Corrupt Practices Act shall apply in all particulars whenever applicable, except as otherwise provided by this Ordinance.

If it shall appear from the returns of said Special Election that a majority of the voters voting thereon have voted for the Ordinance, then said Ordinance shall be deemed to have been approved, and shall thereupon become in full force and effect; but if a majority of said voters shall vote against said Ordinance, then said Ordinance shall be null and void and of no effect whatsoever.

Section 3. And be it further ordained, That if any word, phrase, clause, provision or section of this ordinance shall be held invalid by any court of competent jurisdiction, such invalidity shall not affect the remainder of the Ordinance.

Approved, February 15, 1932,
Howard W. Jackson,
Mayor

* * * *

Baltimore, Md., February 25, 1932.

I HEREBY CERTIFY, That the foregoing is a full and true copy of Ordinance No. 130 of the Mayor and City Council of Baltimore, of which it purports to be a copy as taken from the original ordinance belonging to and deposited in the office of the City Register.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Deputy Register, and affixed the seal of the Mayor and City Council of Baltimore, this 25th day of February 1932.



DEPUTY REGISTER

*Part of petition
W. M. ...
attn for Petitioner*

File with record

FILED MAR 19 1932

Superior Court Of Baltimore City

(Argued and Decided March 12, 1932.)

JOSHUA LEVERING, REVEREND WILLIAM W. DAVIS,
ET AL., TAXPAYERS AND AS AN AUTHORIZED COMMITTEE
OF THE LORD'S DAY ALLIANCE,

VS.

ROBERT B. ENNIS, ET AL., CONSTITUTING THE BOARD OF
SUPERVISORS OF ELECTIONS OF BALTIMORE CITY.

William M. Maloy for petitioners.

William Preston Lane, Jr., Attorney-General of Maryland; Willis R. Jones, Deputy Attorney-General; William L. Henderson, Assistant-Attorney-General; Robert E. Lee Marshall, City Solicitor (as amicus curiæ), on invitation of the Court; *Allen A. Davis, Assistant City Solicitor*, and *Jerome Sloman*, attorney and member of City Council and chairman of committee (amicus curiæ), on invitation of the Court, for respondents.

SUNDAY LAWS.

Petition of Taxpayers and Lord's Day Alliance for Mandamus to Restrain Vote at May 2nd Primary Election and the Printing of Ordinance on the Ballot.

Question at Issue: Is Ordinance No. 130 of Mayor and City Council, Under Enabling Act of 1931, Ch. 287, Constitutional, and Validly Passed, Under Home Rule Amendment, as to the Legislative Mechanics?

Subject-Matter: Sunday Blue Laws, and Permitted Sunday Movies and Baseball, Etc., After 2 P. M. Sundays.

I.

Under contention that it violates fundamental "public mores" the natural law, in that Christianity is part of the Common Law of England, and part of the Common Law of Maryland, and part of Charles I Charter to Lord Baltimore. Held: That while the spirit of Christianity affects the scope of our laws in their enactment, that as a legal proposition, **Christianity is not part of the Common Law of England** (decisions of eminent Lord Chief Justices and members of the House of Lords, to the contrary notwithstanding). No mention of it in Magna Charta of John or of Henry III (1216); not mentioned in Glanville's writing (died in 1190); not mentioned in Bracton's de Legibus (died in 1268); not mentioned in Fleta (died 1290). Merely so adjudicated by pious Christian Lord Chief Justices in England.

Some of such cases analyzed and answered.

Also held, not part of the Common Law of Maryland.

Argument that Art. 36 of Maryland Bill of Rights, prescribes as qualification for witness, belief in Deity, and in present or future state of rewards and punishments. Held: Not to have its origin in Christianity, but also to be found in the laws of Brahma, in the ancient Hindu Code of the Laws of Menu (probably transcribed as early as 1580 B. C., and if so, older than the Books of Moses). Extracts therefrom cited in support thereof. Cicero on the natural law, quoted.

II.

The Legislative Mechanics, Act 1931, Ch. 287, held to be a local law and not a general statute; therefore, may be subject to referendum under Fell case, 42 Md. 85; whereas, a general law under Brawner case, in 141 Md., and Levering case, in 137 Md., can not have referendum tacked on to it.

Argument as to illegal classification and unjust discrimination; held, not to be within the exercise of judicial discretion, but a matter of Legislative discretion, under Hyman case, in 98 Md.

Demurrer of petitioners to answer of Election Supervisors, overruled, and that the Ordinance may be voted on at the Primary Election May 2nd, by the people of Baltimore.

EUGENE O'DUNNE, J. (orally, immediately on conclusion of three-day argument)—

Gentlemen :

It is now after 3 o'clock on Saturday afternoon, which is the third day of the argument, and I realize that the interest of all parties in this litigation is primarily to get the case decided here, some way, in order that they may immediately get it to the Court of Appeals, where it is definitely understood that it is ultimately going. Because of provisions in the law, requiring decision a certain number of days before the election, it is my understanding that there has to be a final decision on it, by the Court of Appeals itself, within less than 30 days from today. If it were not for that fact, the case is so full of history, law, science, philosophy, religion, technicality of various kinds, legislative mechanics, constitutional law, classifications, and almost every character of question that can well present itself in a law case—I say it would be a fascinating temptation to a Court to take it under advisement, and revel in the wealth of adjudications which have been called to the attention of the Court, presenting a wide range of legal, historic, religious and philosophic questions that have occupied a large part of the argument on both sides. But, time, opportunity and the exigencies of this particular case, forbid. This Court regards itself, as I told the Attorney-General a little while ago, as a sort of a "boulevard stop" on the way to Annapolis, where the law requires you to change gear, possibly change drivers, and continue your route, but that is where you are headed, and the only real technical importance of any decision *this* Court might make, is, in the very remote possibility, always inherent in litigation (but I think not an actual possibility here), of a four to four decision in the Court of Appeals, under which system the deci-

sion of the lower tribunal becomes binding.

Now that is, to my mind, the chief importance of the present approach to it by the lower tribunal. However, it seems to me that it is always the function of a *nisi prius* Court to give to an important public question, and to eminent counsel who have laboriously, industriously and brilliantly presented the results of their indefatigable research in this case, to give to them not only all the time possible that they require for presentation of their points, but to listen to them with complete attention, and attempt to absorb all that the individual, finite mind can absorb at the time of argument, and follow it up with industrious checking of the authorities, as far as time, and adjournment of session permit, and then bring to bear upon it the best thought that limited opportunity for examination will permit. That I have done.

I think, with the exception of three or four cases that have been cited, to which I have not had access (by reason of some personal inability to get to the Bar Library at night), I have read all the cases *all* the counsel have cited, on both sides, either between sessions, or after sessions, or at night, with a very few exceptions, and, in addition to them, I have read a great many cases that have not been cited, and which have more or less of an immediate bearing on some phase of the argument. If I may be permitted to, I desire to express the appreciation of the Court to the counsel on both sides for the very extensive examination they have made of the cases. Senator Maloy is alone on his side, with an array of counsel representing the Attorney-General's office, three-strong, the City Solicitor's office two-strong, and Mr. Sloman, from the City Council, who is here by invitation, as *amicus curiæ*. I marvel at the re-

search which the petitioners' counsel has made, and as I see the industry that the preparation of a case of this kind requires, I congratulate myself on having retired from the practice of law, however liberal the compensations of industry may be.

Now, briefly, and in a rough way, the argument, as a whole, on both sides, might be roughly divided into two branches, a very rough division, however, when dealing with the religious aspect of the law, which embraces a wide field of history, religion, philosophy, natural law, common law of England, and of America, Lord Baltimore's Charter, and so forth. All of this was discussed by Senator Maloy, to some extent in his opening address, but it was brought flatly before the Court under Paragraph 3, Sub-section n, of his petition, in which the allegation is made, if I can quote the language from memory, "that the proposed Ordinance is an assault upon the Christian religion, which is a part of the common law of the State of Maryland, and upon which its policy is founded." That is not the exact language, but it is substantially the thought—the last line is not correct, I forget the precise expression. The other branch of the case, under the rough division that I have called attention to, is what might be called the "legislative mechanics" that have been adopted in the art of legislation, in attempting to present, in legal form, a piece of legislation, to meet what the legislative mind considered a public exigency, and to try to do it circumscribed as it is with a great many hazards in the course, the result of previous encounters with decisions of the Court of Appeals, as to this, that and the other thing. The legislative desire was to get to a given end, and not be foiled in the run, by any of the technicalities of legislative mechanics. So that, the second branch of the argument, really presents a question as to whether they have, or have not, successfully done that.

Now, a word as to each of those matters, with a little detail in explanation. Let's take the argument—and I take it in the order in which it is addressed to me, and therefore, maybe, I can handle it better if I can treat it—in the order in which it has been presented.

I.

Take the religious aspect of it. That was not so greatly dwelled on by the Senator for the petitioner in his open-

ing argument, but he was fortified by the flat allegations in his petition, so that it can not be said it was not stressed in the case. The challenge was thrown to the defense on the pleadings. Of course, this stands before me now on a demurrer to an answer of the Attorney-General's office. On the defense side of this case, the Attorney-General's office is represented by three counsel, Mr. Lane, in person, the Deputy Attorney-General, Mr. Jones, and Assistant Attorney-General, Mr. Henderson. In the division of their argument, as I grasp it, the mechanics of the legislative work was left to Mr. Jones to present, the constitutionality of the alleged false, vicious classification of the law, was left to Mr. Henderson, and the Attorney-General accepted the burden of the defense of the proposition on the ground of Christianity, etc. The largest part of the argument of the Attorney-General, made in person, was devoted to the discussion of this first division of the argument. He went back into history, and spoke about the Christian religion in the time of Constantine the Great, in, I think, 325, he said, when Constantine put Christians on a par with the rest of the Roman citizenship, at the time of the convocation by him of the Nicean Council, in 325. I think five years afterwards, he even picked up the capital of Rome and moved it to Constantinople. Discussion has been had by City Solicitor Robert E. Lee Marshall, in the first part of his argument on the religious aspect of it. Assistant City Solicitor Davis spoke on both ends of it, both the mechanics of the situation and the religious aspect of the law.

Now, I don't know just exactly what Senator Maloy had in view when he spoke in the first part of his address about this statute and ordinance being contrary to the Christian religion. In his discussion of the fundamentals of the law, he said that there was a sort of twilight zone between what Legislatures could do, and what was public justice, which was a sort of atmospheric condition, of which people felt the pressure, but that you couldn't measure the force of, but it was *there*, and it was styled by some authorities, as natural law, and by others, "public mores." I merely mention the wide range the argument itself has taken, as an excuse for slight reference to the fact in the fragmentary notes I have made during the trial, which might otherwise seem foreign to the subject,

except for the fact that the argument here has *stressed* these very questions.

It is undoubtedly true that in English history, a number of the English Lords have decided, or asserted, that Christianity is part of the Common Law of England. They were pious, God-fearing Christians, of the established church, which was established and dis-established, and another one established in its place, from time to time, depending upon which party got in power. Each exercised it with that religious zeal which Mr. Marshall characterized as a "sword in one hand and a firebrand in the other," in order to impress the divinity of Christ upon the questioning population. A lot of those English Lords and Chief Justices of England (if I may with becoming respect so refer to such characters) have slopped over in their judicial expressions, and dispensed *religion* along with their conception of the law, unconsciously, because they were imbued with the faith, and unable to squelch it, or conceal it, or put it aside, so that a great many of the English decisions are a homeopathic dose of *religion*, and an allopathic dose of *law*.

Whether the Christian religion is part of the common law of England, or whether it is part of the common law of Maryland, approached from a standpoint of a judicial inquiry, really becomes a legal question to ascertain whether it is so, or not.

Now, if Christianity, as a legal proposition, was part of the common law of England, as distinguished from merely being administered by a lot of Christian gentlemen who believed in that faith, and who dispensed it, as Christian gentlemen will discharge public duties, I say as a *legal* inquiry, if it came into the body politic of the common law of England, *as a fact*, and as a *legal* fact, it came in after the introduction of Christianity into England, and before the passage of Magna Charta. In other words, between the seventh century and the first Magna Charta, which we will call that of John, at the Battle of Runnymede—the meadows of running water, or whatever they were; or, if it was not in that Magna Charta, it was in, or should have been in, the succeeding one, of Henry the III, of the Forest, in 1216.

Now, in neither one of the Charters, is there any reference to Christianity. Is it fair to assume, as a legal proposition, that when the English barons

were demanding all their rights and wresting them from John and from Henry, that they would not have put into the sacred charters, which they considered the bulwark of English liberty, *the most sacred right* which they recognized, and would not they have put in there a reservation that the principles of Christianity must not be violated? But there is not a reference to it in either Charter. Therefore, it is a fair assumption that it was *not* part of the common law of England, in spite of all that the Lord Chief Justices and the Lords of Parliament later stated to the contrary. Isn't it also a remarkable fact that if it was a part of the common law of England, and recognized as such, that Glanville, who was one of the great writers just before the passage of Magna Charta, who lived just a little before that date, makes no reference to it in his writings, and he died, I think, in 1190, or thereabouts. The next great law writer of the time who followed him was Bracton, whose great book was *De Legibus* (I happen to have a copy of the original edition, which I cannot now read, because it is all in Latin), and was written in about, I don't know exactly when it was written, but it must have been written before 1268, because he died at that time. Bracton makes no mention of it. That was considerably after Magna Charta, and after all the writings of Glanville—and Glanville had been for twenty years a Chief Justiciary of England, and Bracton was himself a Roman ecclesiastic—wouldn't he, of all men, have put in his own book, which comes down to us today, although not printed, of course, for some considerable time after it was written, because the art of printing had not been established at that time, some reference to *Christianity being part of the common law of England*? There is no reference in Bracton to that fact.

The next great work we have in English literature, the history of English law, is *Fleta*, written after Bracton (most of it cribbed from Bracton, who cribbed much of his from Glanville, and Glanville cribbed from the Roman works without giving credit for it, and they palmed it off on an unsuspecting English public as original. If in those days they had copyright protection, as they have now, they would all have been subject to equity injunctions against plagiarism). *Fleta* was probably a lawyer, at least he was a great scholar, imprisoned at the pleas-

ure of the king. They don't know who wrote Fleta, except that it was written by a scholar, because the book itself shows that. It was called Fleta because it was written in Fleet Prison. I can't imagine a man in solitary confinement—except maybe Jack Hart—who would not have some religious outpourings in writing a book. He must have been in prison a long while, to have written this large book, called Fleta, later than Bracton's time, and you would think all the religion in his soul would have seeped out and been written in the book; and yet, there is not a reference in Fleta to the Christian religion being a part of the common law of England.

There is a book five hundred years later, by Finch, who undertakes to say that he finds in his translation of the early Year Books, antedating Glanville and Fleta and Bracton, language which he takes as the basis of his statement that Christianity is part of the common law. That is a matter of translation, but wouldn't it be remarkable, if such fact was so stated in the early Year Books, that Glanville, the scholar and Chief Justiciary for twenty years, and Fleta, the scholar, and Bracton, the scholar, that none of them knew it, and none of them attached to it the importance this later scholar, Finch, did?

In the appendix to 2 Va. (Common Courts), there is a discussion by Thomas Jefferson, in which he takes up this very statement, and challenges the proposition that Christianity was ever a part of the common law of England, and sets forth, in a very much more scientific and classical form, the exact argument I have thus far presented, as to the early writers in England, mentioning, I believe, all I have mentioned, and a number of others, as justification for the challenge that Christianity was never, as a legal proposition, part of the common law of England. For what ever interest it may be, in the appendix to 2 Del. (Chandler case), written in 1837, by somebody, there is a reply article to Thomas Jefferson's article appended to 2 Va. Reports, that takes the opposite position, and criticizes Jefferson's facts, his style, his philosophy, his politics, and I think most everything pertaining to him.

Hale, who was also a great common law writer, asserted the proposition that Christianity is part of the common law, but he asserts it in a modified form. He says the "established prin-

ciples of Christianity, or revealed religion"—the revealed religion, that is the way he puts it—is part of the common law of England. Whether he is talking rhetoric, or whether he is talking of *legal* proposition, are two different things. If we say "established principles of revealed religion" are part of the common law of this country, and use it in a rhetorical or literary or poetical sense, I say yes, and we might say the same thing about the Laws of Moses, and about the Hindu law, and about the leading principles of a great many of the ancient writers.

Judge Offutt, in his recent address to the Probation Department of the Supreme Bench, spoke of the expenditure of some eighteen billions of dollars in the suppression of crime in this country. That is at least some evidence of the non-conformist character of the Christians of this country.

The great case that is cited most often because it was recently decided, in 1917, by the House of Lords, is *Bowman vs. Secular Society*. I think it is reported in 1917 D of the English Annotated cases. There is an opinion there, four members of the House of Lords sit in an appeal from the highest appellate Court in England, and the question of whether they can appeal to the House of Lords is determined, rather a majority of the House of Lords sitting in the case, decides whether the case was correctly decided by the Supreme Court, which was the Court of Appeals, or not. The Court of Appeals had decided that a particular trust was valid. A certain clause of it was apparently for a non-religious, and as they interpreted it, an irreligious and unchristian end. I don't know whether it was free-thinking, or something pretty close to it, but somebody had left a lot of money for a trust for that purpose, to a corporation, to be used for that purpose. I don't think it was the publication of the American Mercury, but something on that order, but that will answer as an illustration. The Court of Appeals, by its decision, declared that it was a valid exercise of testamentary disposition. It came up before the House of Lords, and Lord Finlay, who wrote the first opinion, in a very lengthy opinion, decided that it was invalid because it was antagonistic to the Christian religion, and that England could not tolerate through its Courts the sanctioning of a bequest that went to undermining the Christian re-

ligion. The other three Lords decided just the opposite. Now, in Lord Finlay's opinion, he decides categorically and flat-footedly, that Christianity is, part of the common law of England, as a legal proposition. The other three Lords decide that is not so and never was. Therefore, the lower Court, which was the highest Court, had correctly decided the case, and it didn't get appealed to the House of Lords, because they were three to one against sending it up on the grounds that it was correctly decided. Now, in the opinion of Lord Finlay, he said that Christianity is part of the common law of England, and particularly so, in regard to the law of marriage, and he says that the Bible is a divinely inspired document. He undertakes to adjudicate that, as a legal proposition, and refers to the law of marriage, as established in England, as based on the Bible. Now, I wonder what he has to say if he takes the New Testament as his text, as support for the English law of marriage—I think it was one of you gentlemen quoted St. Paul—Mr. Davis, I think it was. He had most of St. Paul in his *heart* and the rest of him, in his pocket. I wonder what he would say about St. Paul to the Corinthians, who some place says this, "Who giveth his virgin in marriage doth well, but he who giveth her *not*, doth *better*." Now, if the scriptures of the New Testament are part of the common law of England, how are you going to justify marriage? Then there is something in Matthew, I think, which says, "Whosoever shall put away his wife and marry another, committeth adultery against her, and whom God hath joined together, let no man put asunder" and various other scriptural texts. It may be said about some of those, that they have been repealed by statutory law. Perhaps so.

If I understood part of Senator Maloy's argument, if the scriptures are laws—part of the common and *natural* law, you cannot repeal them that way, they are part of the common law, part of the public mores, part of the natural law, so-called, and above the edicts of prætors, as Cicero says.

The case most often cited—and I don't want to prolong this too much, but because of some historic interest in it, I want to refer to this case, and also I suppose after I have listened to you gentlemen three days, you will indulge with me a little time—is *De Costa vs. Paz*. I don't know where it is reported, but it is so well known, any one can easily locate it. The opin-

ion is by Lord Harwicke. It has a sort of a humorous aspect, to my mind, which shows how innocently a great Christian English Chief Judge can unconsciously turn out legal hypocrisy and that, to my mind, is the startling feature of it. There was a trust left by a Jew to a Jewish institution, *Yeshiva* or something like that, for the reading at this meeting house—of the Jewish law, and for the extension of the Jewish religion. Now, those were the terms of the trust and it was left to this Jewish corporate body, and it was a large sized sum of money—any sum of money is a large sized one now. The validity of the trust came up before the highest Court in England for construction, because it was not for the propagation of the Christian religion, but was for the teaching of the Jewish law and the extension of the Jewish faith, and the reading of the Jewish law to the Jewish members of London. The solemn Court of England declared, that they couldn't sustain that trust, because it was contrary to the Christian religion, "which was part of the common law of England." Now, here is where the legal humor of the thing strikes anybody who has any sense of it—and every human being has a certain amount or his soul is lost if lacking it, or at least should be. They said, We have in England what is known as the *Cy Pres Doctrine*, which means—and any business men here will appreciate this—if you haven't got in stock the thing the fellow wants, give him the nearest thing you have to it. That is what it means, that if the particular object isn't susceptible of consummation, they devote the fund to the thing that is the nearest approach to the intent of the testator. These solemn-wigged judges sat up and said, This good Jew who died, and had 'all this money was a "charitable man," and he wanted to leave this money to charity and religion; the *Cy Pres Doctrine* is to give it to the nearest thing that is legally comparable to the object of his bounty, and they said, "We can't give it to a Jewish Rabbi to be used for reading the Jewish law to the Jewish population of London, and spreading the Jewish faith, but the nearest thing to that is a Protestant minister, who extends the Christian religion, and they took the money away from the Jewish corporation and handed it to a Protestant minister to preach in perpetuity and extend the Christian religion, and thereby perhaps convert the Jews.

The next case I have on my notes is Lawrence vs. Smith. This was a bill to restrain a publisher who was publishing the lectures of somebody. I don't know whether it was Clarence Darrow or Ingersoll, but somebody of that type. These Christian, wigged judges of England were shocked by the undermining effect of these lectures, the undermining of Christianity, and on the formal application before the Court, they asked to have the book produced, and the judge read the book and he says this: "Looking at the general tenor of the work and at many of the particular parts of it, and recalling that immortality of the soul is one of the doctrines of the scriptures, considering also that the laws do not give protection to those who contradict the scriptures, and entertaining a doubt (and I think he says, 'rational doubt'), whether this book does not violate the law, I cannot, therefore, entertain an application for injunction, to prevent some pirate who stole these lectures from publishing them." He said he couldn't permit Court action, by use of the sacred process of English law, against the thief who had stolen these lectures, because the lectures were against the immortality of the soul, and that was contrary to the Christian religion, and therefore, he wouldn't grant the injunction for the author's protection of his literary property in them.

Where do you suppose Henry Mencken would be today on his recent book called "A TREATISE ON THE GODS," if he were in a Court of that kind with that book which challenges the authenticity of the scriptures, as a whole—I mean challenges the proposition that all of the scriptures are all authentic, all inspired, or testimony of that kind, and it questions the existence of a God, the existence of a hereafter, the authenticity of the scriptures, and characteristic of that writer, the existence of anything and everybody. I suppose, under the real Christian spirit of those English Lords, they would probably ordain that the only fit thing for him would be to burn him at the stake, out here at Battle Monument, and I have no doubt good pious Christians could be found to apply the torch as a Christian act, pleasing in the sight of God.

Then there was the case of Murray vs. Benbow, decided in 1822, which involved an indictment, I think, against a pirate publisher of Lord Byron's work.

It was an application to restrain the defendant from publishing a complete set of Lord Byron's works because it contained a poem called Cain. That was a little short three-act poem dramatizing the book of Genesis, and there are some things in Byron's Cain, put in the mouth of Cain, that are sacrilegious, according to our conception of the Deity, that are blasphemous and question the hereafter, and so forth. On the other hand, whether that is the mechanics of poetry, of which I know nothing, he puts this language in the mouth of Cain, and one of the other six characters of the play, vigorously, completely and vehemently answers the allegation. Now, that went up before the English Court on whether they could lend the sanctity of their machinery to enjoining such pirate publication, and they said, No, they would not restrain the piratical edition; this was a pirated edition somebody attempted to publish without authority of Lord Byron. They said that they would not restrain it, because, they said, the poem itself was sacrilegious, it tended to undermine the Deity, and it was not entitled to the protection of English law as undermining Christianity.

The next most important case of the same kind I find in 1819, and is King vs. Carlile—not the historian but he was a mere publisher of job house books that were brought to him for publication. He published Thomas Payne's Age of Reason, for which he got indicted for libel, because it was subversive of the Christian religion and then got indicted for publishing Palmer's Principles of Nature, and he came up before Lord Abbott, who was Chief Judge, and Lord Abbott says: "I state the law of the land. I state that the Christian religion is part of the common law of England—and a most important part of it—that part upon which all its institutions are founded, and to which they all defer. I speak of the Christian religion generally." He said to Carlile, You have to make your own defense, according to the law of the land, and this publisher then said, I say the law has nothing to do with it, and Chief Judge Abbott says, I say the law has something to do with it, and the law says that no man shall deny that the scriptures, both the Old and the New Testaments are of divine authority. Now, there is a flat adjudication by Lord Chief Justice Abbott in 1819 that both the Old and New Testaments are of divine author-

ity. The question was not before him at all, and that is what I call decisions that slip over. Then Lord Abbott turned to the jury and said, The law of England, gentlemen, is the law of liberty, the law of freedom, indeed, it is founded on the religion of Christ. It is from the Christian religion that all has been drawn and derived, and he went on and talked to them and then wound up in a way we can't do in this country—except United States Federal Judges do it indirectly, some of them, I should say—he went on and told the jury, I am of the opinion that the matter in question is libel. You have the right, however, to pass upon the facts. They went out, of course, and convicted Carille, the publisher, of libel, libel of the Christian religion in both cases, one for publishing the works of Thomas Payne, and the other for publishing Palmer's Principles of Nature, and then the Lord Chief Justice sentenced him. It is also interesting to note here that he asked the defendant before sentence if he had anything to say in mitigation of sentence, and if so, he would hear him. I understand that has become almost criminal in this Christian community, that a Judge in a Criminal Court must not do that. Anyhow, this old Judge did that, and the defendant wanted to take the stand, and he did take the stand, and gave testimony as to why he didn't think he ought to be punished, inasmuch as clients brought him the literature and he published it. Here is how far it got him. Lord Abbott listened to him and then sentenced him for the publication of Thomas Payne's work to a fine of five thousand pounds, and at that time, five thousand pounds was \$25,000, and he added two years in the common jail on top of that, and he fined him for publishing the other set of books, Palmer's Principles of Nature, five hundred pounds, which was \$2,500, and added another year in jail, and then took the precaution to write in that the said second sentence should be consecutive, to begin on the expiration of the first, and then to sew it up in a true Christian spirit, he also imposed a bond of one thousand pounds on him that after he got out of jail and paid the fine, that he keep the peace of England and not undermine the Christian religion, and further directed that he stay in jail until all his fine was paid, and until he gave the thousand pounds bond for correctly observing the peace after his release.

In 1841, there was the case of Queen vs. Moxon, who published the complete works of Percy Bysshe Shelly, including the poem, Queen Mab, which was written in his youth, at the age of 18, That fact did not prevent the publisher from being sentenced. This was considered as undermining the Christian religion as part of the law of England. It is to the credit of Chief Judge Blackburn, who came along later, that he repudiated the conviction of this publisher by the Jury.

"Christianity," as part of the common law of England, had become highly specialized, in 1685, as evidenced in the trial for murder of a German Count Konigsmark, as indicated by the Lord Chief Justice in drawing the jury.

(L. C. J. to defendant): "Examine them as they come to the book. If there be any of the Roman Catholic Religion, do not let any such be sworn."

(Mr. Sheriff Pilkington) "There is none such among them, I daresay."

(L. C. J.) "Let him have the panel, if it will do him any good. He is a stranger. Satisfy him if we can."

In March, 1930, issue of the Yale Law Journal, is a learned and comprehensive article by B. H. Hartogensis, of the Baltimore Bar, on the Sunday and Sabbath, as reflected in history and legal decision, which is worthy of perusal by scholars interested in the subject.

Senator Maloy referred in argument to Christianity as established in the Charter of Charles I to Lord Baltimore. Examining it I find this language:

"Treading in the steps of his father, being animated with a laudable and pious zeal for extending the Christian Religion, AND ALSO THE TERRITORIES OF OUR EMPIRE," etc., the Charter was granted.

In the last line, we have that element of which Judge Burke speaks in the Heller case, 124 Md., that "Greed" is at the bottom of all these movements.

Just a word about this natural law, against which it is said we cannot go on the question of Sunday observance, if by public mores in Senator Maloy's argument he means, the natural law. The natural law is a body of principles which reason itself teaches, and which is binding on all men. Way back in the Institutes of Justinian, it was proclaimed that justice is the constant and permanent determination to give each man his due, and that it is founded in the na-

tural law, and it is in that sense possibly that Genesis used the expression, Behold Adam is now one of us, knowing now good from evil. It is probably the same natural law that Jefferson spoke of in the Declaration of Independence, when he said, Men are endowed by their Creator with certain inalienable rights, amongst which were life, liberty and the pursuit of happiness, and that some of those rights find wide amplification in Christianity no one will deny.

That these principles are found only in Christianity would be a bigoted and narrow assertion, neither do they come to us through the medium of the Ten Commandments or the Mosaic Code, which are the expression of them, but not the source of their creation. Even at the time of Cain and Abel, men knew murder was unlawful, although the Ten Commandments were not promulgated for countless ages after. Caesar in his *DeLegibus* speaks of the same law, the same law Senator Maloy has spoken of as being contrary to public mores when he, Cicero, stated there are two kinds of law, one humble and simple, and he says you may call it rustic, and the other indeed exalted, worthy of the cultivation of the greatest minds, universal, and not to be found in the edicts of praetors, but in the study of the deep philosophy and when once found and understood, standing forth as the potent source of every human right and the justifying basis of every human law. Now, it is much of that natural law, to which Cicero and Jefferson have referred, which is the foundation of all law, what some call the *jus gentium* of the world, that has found recognition, not only in Christianity, but has also found recognition of the Mosaic law, in the writings of Confucius, who lived, I believe 500 B. C., or thereabouts. They have found recognition in the writings of moral philosophers of every age, the same law is found in the sacred books of India, and in the Hindu law, the Hindu code of the ancient books of Manu. I won't take time to read it, but I have the book of Manu's Code, and you will be surprised to examine Manu, and to find the basis of our Practice Act there. He says a man who owes money, who doesn't deny it, that the creditor under oath should show his proof and enter judgment against him and then be *fined*. You find the basis of the laws of evidence here, and strange to say, or what might seem strange to some of our friends downstairs to say, a criminal

should always be asked before sentence what he has to say, and then he also adds if he lies about it, it is perjury, and he goes to the place provided for that false swearing. That is all before we had the Christian state and all that good law has been changed since Christianity—I don't mean that literally.

Senator Maloy closed his argument at three today, reviewing the history of the successive constitutional provisions, as set forth in Judge Niles' book, closing with a reference to Art. 36 of the present "*Declaration of Rights*" which, while prescribing religious liberty, also fixes, as grounds of eligibility to become a lawful witness, a belief in the Deity and in the doctrine of heaven and hell, or punishment or reward, either in this world or the next. I understand this argument to be advanced as evidence of certain Christian beliefs being part of the organic, or constitutional, law of Maryland.

Most Christian religions accept the doctrine of eternal rewards and punishments, vaguely called Heaven and Hell doctrine. This belief by no means *originates* in Christianity. It was part of the ancient Hindu Code of the laws of Menu. Veiled references to it being found in many places, but nowhere I think more clearly set forth than in Sec. 111 of Ch. 8 of the laws of Brahma. As I happen to have the London edition of the Jones translation of the Hindu code of the laws of Menu (or Manu) in my home library, I brought it down today and will read only two extracts from it.

Take, first, Sec. 111: "Let no man of sense, take an oath in vain, that is, not in a Court of justice, on a trifling occasion, for the man, who takes an oath in vain, shall be *punished in this life and in the next.*"

Sec. 75: "But a witness who knowingly says anything before an assembly of good men, different from what he has seen or heard, shall fall headlong, *after death*, into a region of horror, and be debarred from *Heaven.*"

(Perhaps, I ought to refer these to the State's Attorney and the Criminal Court, where flagrant perjury before two Grand Juries and the Court itself, was recently not considered material, or of public interest.)

Just how ancient these laws of Menu or Manu are, scholars do not agree. In the opinion of Pandits, Brahma taught his laws to Menu in a hundred thousands verses, arranged under twenty-four heads, in a thousand chapters.

Nared abridged them, for the use of mankind, into twelve thousand verses. Sumati further abridged them to four thousand verses, and, as the system was to commit them to memory and hand them down from generation to generation, there was great incentive to abridgement. The greatest age fixed for the transcription of them is said to be about 1580 B. C., and, if correct, somewhat older than the five books of Moses. They may in fact not be more than a few centuries before Christianity was first established. This doctrine of both temporal and future rewards and punishments runs through from cover to cover.

Now, gentlemen, so much for the first proposition. Ill may it become me, in view of the Lord Chancellors of England having decided to the contrary, but in my humble way, I am simply doing my *nisi prius* duty as I see it, and my decision is, as far as the first proposition is concerned, that Christianity is not part of the common law of Maryland as a *legal* proposition; that it is not part of the common law of England, and that it is not the function of any Court in this country, where church and State are separated, to undertake to infuse into the law those religious principles in which an individual may believe, and try to use the medium of law as a vehicle to further Christianity, or to further his conceptions of Christianity, and to get them incorporated into the body politic. That is no function of government. We are not a Christian nation, in the legal sense, at all.

We may think we are a law-abiding, comparatively peaceful community, with religious principles underlying the various character of membership that constitutes our composite whole. If we were looked at from the outside, we might be said to be not a Godless, non-Christian country, such as Soviet Russia is today, where instead of the principles of brotherly love, the principle is to hate your brother instead of love him. Looked at in that sense, from the descriptive and historic point of view, we might say we are a Christian country, as distinguished from some of the other varieties. But to declare that Christianity as such is *part of the law of the land*, as a *legal* proposition, I cannot do. This I deny. The great danger in this country is, and will be, the too intimate commingling of religious views of any sect with Government, because if you once tolerate that, you will simply have a repetition

of English history, where when one party is in power, it is the established faith, and when they get thrown out, and their enemies come in, *theirs* is the established faith, and there is nothing so zealous as converts, and they think it is pleasing to God to go and persecute those who disagree with them.

Edmund Burke once said, "Men have no right to what is not reasonable, and to what is not for their benefit."

Payne's reply to Burke was:

"The circumstances of the world are continually changing, and the opinions of men change also; and as government is for the *living*, and not for the dead, it is the living only that has any right in it.

"That which may be thought right and found convenient in one age, may be thought wrong, and found *inconvenient* in another. In such case, who is to decide, the living or the dead?"

I have taken more time on that part of the discussion that I had any thought or intention of doing.

II.

On the second branch of the subject, which is really the law question, the mechanics of the legalistic attempt, I can't repeat the eighteen objections that Senator Maloy had against the form of the law. I think I might approach it, though, with this general observation, to which I don't think any Court ought to be wholly oblivious, that in late years there has been continuous agitation and re-agitation of the Sunday question, emanating particularly from the large cosmopolitan City of Baltimore in our community, which as stated in argument, composes about half the population of the State. There has been a constant chafing in Baltimore, of some elements in Baltimore, to be relieved of what they consider too strict legal requirements for the observance of the Sabbath, and they very naturally say it is judicial hypocrisy, it is governmental cant, to say that they are doing it for our salvation on *economic* grounds, for the conservation of human energy, for the conservation of human life, for the building of an heroic race, they require us to rest one day in the week in order that we may expend our energy efficiently, and so on. Probably at all times in the world's history, that argument has less call on us than now, with the millions of people throughout the country who are resting seven days

a week, instead of one, and because they can't do otherwise, they can't find work to do.

We can't close our eyes to the fact that nearly the whole time (speaking rhetorically) of the last Legislature, was taken up by the constant agitation before it of this Sunday problem emanating from the Baltimore delegation, and there was log-rolling, and every kind of conceivable manipulation regarding this question, so that the public time, the public money, and greatest of all, the public talent of both bodies of the Legislature, was diverted from devoting its energies to other matters, because of the Sunday question. Finally, it had to meet it, did meet it, and whether it was a compromise or what it was, I don't know, excepting so far as the product of its labor is reflected in Bill 287. They finally handed out as the Statesmanship of Maryland to Baltimore City, this bill in which they told them to do whatever they attempted to say in that bill regarding Sunday observance in *Baltimore City*, and they attempted to leave it to the municipality under the Home Rule Amendment, and subject to a referendum within the corporate limits of that city, to determine, as a local question for itself, what kind of a Sunday observance they wanted. The only law that they had upon which to predicate it was on economic legal argument. (See Senator Melvin's reasons, Senate proceedings, p. 921.)

Of course, I haven't much patience, except as a judge, with putting it on economic grounds, because, to my mind, that is not intellectual honesty, yet, that is the only ground on which it can come before the *Court*, that is the only ground that it can be considered on, and the difficulty is divorcing human nature from intellectual conception. You can't entirely divorce the observance of Sunday from whatever religious or non-religious point of view the individual may entertain, and still keep one hundred per cent. the idea that it is purely an economic question. That is the same judicial or legal cant that we go through, with which we satisfy ourselves when we tell the jury "that is stricken out" 'of the record, gentlemen of the jury, when you retire to your jury room, you must remember that you must not remember the things you can't help remembering. Now, they say that cures the record if you tell them that. Honor is saved, Law is gratified and everybody is satisfied. The same thing applies in the

Criminal Court: You must not draw any inference prejudicial to the prisoner, if he does not take the stand, and the first thing the jury says is, Why didn't he, if he is innocent, why didn't he? That is human nature.

But we are not concerned with human nature, strange as it may seem. We are concerned with the law and that is why you can't help getting some humor out of the law, because, to a large extent there is a good deal of joke about it, and a good deal of joker in it.

The only question here is, did the Legislature, in the exercise of its functions as the responsible custodian of the law-making power of the Free State, exercise its functions with technically accurate or legally sufficient mechanics. You have a Home Rule Amendment, under which Baltimore has a charter, you have Section 6 of Article 4, as one method by which the Legislature may add to or subtract from its corporate powers, its legislative powers. You have a general Sunday law, State-wide in character, applicable, therefore, also to Baltimore City, and Baltimore City is petitioning the Legislature for an opportunity to change, in its own territorial limits, subject to the will of its people, not yet ascertained, its form of *Sunday legal recreation*, and nobody knows what the result of a ballot will be, if, and when taken, on the question of Sunday observance, whether the majority of the communities are in favor of a closed Sunday, as applied to movies and baseball, or whether they are not. All the Legislature said to the citizens of Baltimore, or to the municipality, was, We will finally give you your rights, as we now view them, to determine that question for yourselves. We don't want you to determine them for you in our counties. We will take care of that ourselves, but you may have any kind of Sunday that your people will stand for by majority vote. We will attempt to give you blanket authority to do that, but we are not willing to write the law for you, we are not willing to interpret what the will of the people of Baltimore City is, we are not willing to have your spokesman interpret it themselves; we will let you pass an ordinance picking out the kind of ordinance you think will square with your local public opinion, and then you take a vote on it, and see whether you have guessed right or not.

We are confronted on that with legal machinery and legal decisions. 137 Md. and the Brawner case, in 141 Md. say,

if the law is a *general* law, State-wide, or a general public law, you cannot take a referendum on it. As against that, you have the Fell case, in 42 Md., which says, If, however, the matter is purely a local law, such as the Local Option Laws, you may have a referendum on it. The legal philosophy supporting the decision, the unanimous decision in 141 Md., which was the Soldier's Bonus case, if I have the right theory of the opinion by Judge Offutt, subscribed to by every judge on the Bench, except Judge Stockbridge, who was sick, and they didn't want to leave him out, so they got him to sign on the dotted line that he had read the briefs, and also subscribed to it—the theory is that the Legislature cannot shirk its public responsibility to which the people, in constitutional convention, committed the authority, and therefore, the responsibility and duty of passing legislation, and they cannot, on the question of soldier's bonus, shirk it, and say, Well, we don't like to vote the public money for that, and are afraid to do otherwise, so we will pass the question and send it to the people and let them take the responsibility, and we, Legislatuemen, can go back to our constituents and say we didn't refuse you. The Court of Appeals says you can't do that, and where *duty* is fixed, it must *assume* its responsibilities, and it is an abdication of our form of government to remand it to the people and throw it open to referendum. Either resign your job, or take care of it. You have authority, and it is abdication of legislative function of government, to submit it to popular referendum, therefore, illegal and unconstitutional and violating the trinity of powers, which is part of our system.

They said in the Fell case, 42 Md. 85, if, however, the question is local option, and it is local, then it is not legislative abdication. That is all right. It is not for me to have any opinion on the thing. I can't any more understand the difference, *in principle*, here that it is not abdication as to a local question, that it is abdication of Government, if it is a State-wide law. I say I cannot any more understand the difference, (and it is not necessary that I should) than I can the mystery of the Holy Trinity.

I have to take it on faith, and therefore, I accept without inquiring, if not the divinely inspired, at least, the legally authoritative decision from Annapolis, that it is the law of the land,

that if the bill is State-wide, no referendum can be attached, it constitutes abdication of Government, but if the bill is *local*, the referendum can, with perfect propriety, be attached, and does not constitute abdication of Government, and therefore, such being the law, the only question remaining here is, Is this a local law, or is it a public general law?

Petitioner says under 137 Md., and the Brawner case, 141 Md., that if it is a public law, it is void. Mr. Marshall, speaking as *amicus curiae*, says he doesn't challenge that proposition at all, and the Attorney-General's office says it agrees with the proposition, and that if it is a general law, the law fails, but that if it is a local law, it comes under the Fell case in 42 Md. 85. Therefore, it is simply a question of looking at it in the light of constitutional canons of construction, that the presumption is in favor of its legality, the presumption of legislative acts is always in favor of its legality, and they say it even goes that far that you must be convinced, beyond a reasonable doubt, before you can strike it out.

It is not necessary to argue that, however. On the other hand, if you are clearly satisfied it is void, no Court worthy of the name should shirk the duty of striking it down, regardless of the popularity or unpopularity of the decision. There is nothing more abominable than a popular judge, or a judge who seeks popularity in anything he does. It has never been my good fortune to do anything popular. If you think a man is only ninety-five per cent. guilty, you ought to say so, even if the whole country howls, and the depositors keep writing you scandalous letters every day in the year.

What is this law, as you look at it? It is to my mind, to use an analogy, which may not come up to the dignity of the Court of Appeals, it is like the keeper who comes to the owner of a horse, and says: "I have your race horse in the stable and he wants exercise, he wants to go out in the paddock. He doesn't want to run out in the fields or the valley, but just in the paddock. You have him padlocked under legislative enactment, and all I want to do is take the padlock off and take him out in the paddock, he won't jump over the fence, he won't bother you uptown, or the people up in the mansion house, he won't bother anybody, only the people in the paddock."

Then the owner says, "All right, you unlock the padlock, take down the bars, and let him run out in the paddock, look it over, and be satisfied everything is all right and satisfactory to those working there."

That is all they did. They passed the law that said, Let your keeper of the municipality, through his law department, prepare an edict with which you are satisfied—and you people always have your ears to the ground—one you are satisfied squares with the public sentiment of your community, or take a guess at it, but be sure you guess right, and submit it to your people for a popular vote, and if they approve it, then it is all right, the padlock is unlocked.

Therefore, this repealing clause, as it seems to me, in this Act No. 287, is nothing more than a *local* law that says the general Sunday law in this local situation, and as applied to this locality, is hereby repealed to take effect when you pass an ordinance which meets with the popular approval of a majority of the persons who participate in an election, at any election you call, special or general, at such time as you see fit; you are paying the expenses of it, anyhow, and when approved by a majority of your people then it is hereby repealed to take effect at that time. Now, that is all that this is, to my mind. I think it would be unjust for me to take any other view, and undertake to strike down a piece of legislation because there may be a great many possible objections, and some inconvenience, that might happen in the execution of the election on the Primary date. I don't suppose you could have it any time without some inconvenience of some kind. Whether the inconvenience of having it May 2, would be less than the inconvenience of a special election I cannot say. You might have to have an entirely new set of polling places, because you couldn't make arrangements with the same merchants, stores, etc., whoever they are. Oh, I can conceive of a great many possible inconveniences, besides the expense of it, and besides those mentioned here.

Senator Maloy very frankly admits, and he is always frank about every legal proposition, that it would not disfranchise anybody, as a matter of law. I first understood his argument to say that it would, and that impressed me favorably, but now he admits it

wouldn't disfranchise anybody. The independents wouldn't be disfranchised, they could go to the polling places and say, We are members of no party, on the face of the books, we are "independent," but we are here to vote the Blue Ballot Law, and they get one ballot, whereas, members of a political party get two, and they all go in and vote. So I see no difficulty about it.

Therefore, the sum and substance of this rambling discussion on my second division of this law is, I hold Chapter 287 of the Acts of 1931, as far as its repealing provisions go, and all its other provisions, to be a distinctly local law. Therefore, subject to having a referendum tacked on it, under the decision of the Fell case, in 42 Md., and as far as the discriminatory character of the ordinance itself is concerned, you are dealing with a peculiar problem here. Looking at it from one angle, unless you put *everything* in it, there is bound to be something left out. You either have to have no Sunday Law, or a wide-open Sunday. Of course, it discriminates, there is a glaring discrimination, on paper, between a billiard-room and ten-pin alley, very often, both maintained by the same proprietor. I don't see any way out of that, except, that unless you discriminate against a great many people, you have to have a wide-open Sunday, everything admissible, everything excluded from activity is discrimination. That is a legislative matter, Hyman case, 98 Md.

Now, I don't think any of you, on either side wants, a wide-open Sunday in the sense that stores and everything else would be open, because that would be virtually an abolition of it, and then we would have to go back to the California Statute, and say a man must, on economic grounds, cease work one day a week, and he could pick his own day, and I suppose these fellows who have been unemployed for two years, would be exempt for life.

So, gentlemen, as the Bill stands before me now, the demurer to the answer is overruled, and that is as far as I go.

(Note: Supplemental pleadings were at once perfected, on which the Court passed an order, dismissing the petition for Mandamus, and appeal to the Court of Appeals of Maryland was at once filed).

IN THE
SUPERIOR COURT
OF BALTIMORE CITY

CHARLES M. NESS,
et al., etc.

vs.

ROBERT B. ENNIS,
et al., etc.

ORDER OF COURT

Mr. Clerk: 3/17/32
Please file, etc.

W. H. Harby
atty for Petitioners

3/17/32

CHARLES M. NESS, et al., etc.	:	IN THE
	:	
VS.	:	SUPERIOR COURT
	:	
ROBERT B. ENNIS, et al., etc.	:	OF BALTIMORE CITY
	:	

-o--o-

ORDER OF COURT

The demurrers in the above entitled cause having come on to be heard and all the various proceedings in said cause having been heard and considered, and counsel for the respective parties and the City Solicitor and his Assistant, who, upon invitation and request of the Court, appeared and participated in the case as amici curial, having been heard, it is this 17 day of March, 1932, by the Superior Court of Baltimore City ADJUDGED and ORDERED that the demurrer filed by the Respondents to the Petition be and it is hereby sustained and that the demurrers filed by the Petitioners to the answer be and they are hereby overruled, and that the mandamus and relief prayed for in the petition be and they are hereby refused and that the said petition be and it is hereby dismissed, with costs to the Respondents. *for reason orally assigned & directed to be transcribed and filed.*

Eugene O'Dunne

Feb 16th Apr. 1932

COURT OF APPEALS OF MARYLAND

No. 35 April Term 19 32.

Charles M. Ness, et al., Committee
and as Individuals and Taxpayers
of the City of Baltimore and State
of Maryland.

Vs.

Robert B. Ennis, et al., consti-
tuting the Board of Supervisors
of Elections of Baltimore City.

Appeal from the Superior Court of
Baltimore City.
Filed March 21st, 1932.
April 12, 1932 Order affirmed with
costs.

Per curiam

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$	
Brief	\$	101.00
Appearance Fee	\$	10.00
Clerk's Costs	\$	<u>1.30</u>
		\$112.30

Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$	94.00
Appearance Fee	\$	10.00
Clerk's Costs	\$	<u>1.45</u>
		<u>\$105.45</u>
		\$217.75

STATE OF MARYLAND, Sct:

I, James A. Young, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal
of the Court of Appeals, this Fifteenth-----
day of April----- A. D., 19 32.

James A. Young Clerk
of the Court of Appeals of Maryland.

IN THE
SUPERIOR COURT
OF BALTIMORE CITY.

CHARLES M. NESS,
et al., etc.,

vs.

ROBERT B. ENNIS,
et al., etc.

ORDER OF APPEAL.

Mr. Clerk:

Please file, &c.,

William Andrew Brady

Atty Gen Petitioner
Appellant

3/14/32

MALLOY, BRADY AND YOST,
ATTORNEYS AT LAW,
FIDELITY BLDG. BALTIMORE.

JP 14 Mch 14 32

CHARLES M. NESS,
et al., etc.

Vs.

ROBERT B. ENNIS,
et al., etc.

IN THE

SUPERIOR COURT

OF BALTIMORE CITY.

-o-O-o-

MR. CLERK:

Please enter an appeal to the Court of Appeals,
by and on behalf of the Petitioners, from the Order of the
Court of March 12th, 1932, sustaining the demurrer of the
Respondents to the petition, overruling the demurrers of the
Petitioners to the answer, refusing the mandamus and dismissing
the petition with costs to the Respondents.

William Andrew Brady
Attorney for the Petitioners
the Plaintiffs (Appellants)

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 14th day of March,
1932, before me, the subscriber, a Notary Public of the State
of Maryland, in and for the City of Baltimore, aforesaid,
personally appeared WILLIAM W. DAVIS and CHARLES M. NESS, two
of the Petitioners as members of said Special Committee and
individually and as taxpayers made oath in due form of law
for themselves and on behalf of their co-petitioners and fellow
Committeemen that the foregoing appeal is not taken by them
or by their co-petitioners and fellow committeemen for delay.

AS WITNESS my hand and Notarial Seal.

John McCullough
Notary Public

STATE OF MARYLAND

CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY That on this *third* day of March, 1932, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared Robert B. Ennis, Bernard J. Flynn, and Alexander McK. Montell, constituting the Board of Supervisors of Election of Baltimore City, and made oath in due form of law that the matters and facts set forth in the above answer are true to the best of their knowledge information and belief.

Witness my hand and Notarial Seal.

Hattie F. Furman
Notary Public.

GREEN SPRING
BOND

NESS, et al., etc. : IN THE
vs. : SUPERIOR COURT
ENNIS, et al., etc. : OF BALTIMORE CITY

-o-:-o-

MR. CLERK:

Please make up the Record in the above case
and insert therein:

1. Petition, Exhibits and Order
2. Answer
3. Replication and Exhibits
4. Testimony
5. Docket Entries
6. Order of Court
7. Order for Appeal

As we are asking for an immediate hearing, we
will appreciate it if you will have the transcript made at once,
and transmit it promptly to the Court of Appeals.

I am sending you for your convenience, copy of
Nos. 1, 2, 3, 5, 6 and 7, which, of course, have to be prepared.
You may omit, unless the Respondents insist that they be
included, the tax receipts filed with the bill. It may be that
the Attorney-General's office will consent to the charter and
resolution being omitted and a stipulation as to the contents
inserted. Make up the Record as usual and I will see Mr. Jones
about the stipulation.

Yours very truly,

GREEN SPRING
BOND

W. M. Harby

DOCKET ENTRIES

The Petitioners filed their petition for mandamus. (Copy served on Respondents)

The Respondents filed their demurrer and answer.

The Petitioners filed replications to the first, third, fourth and seventh paragraphs of the answer, joined issue on the demurrer in the second paragraph of the answer, and filed demurrers to the first, ~~second~~, third, fourth, fifth, sixth and seventh paragraphs of the answer.

The Respondents joined issue on the replications of the Petitioners to the first, ~~second~~, third, fourth and seventh paragraphs of the answer.

In open Court the Plaintiffs and Respondents waived a jury trial and elected a trial by the Court.

Testimony was taken and evidence offered and both the Petitioners and the Respondents submitted the issues of fact, without argument.

The Court sitting as a jury found:

1. That the Petitioners, constituting a Committee of the Lord's Day Alliance, were and are authorized to apply for the writ of mandamus herein.

2. That the Petitioners as said Committee were and are proper parties in this proceeding.

3. That the Executive Committee of the Lord's Day Alliance were and are authorized to appoint the Committee and did appoint, authorize and empower said Committee to institute these proceedings.

4. That the Petitioners were and are members of the Lord's Day Alliance, were and are members of the Executive Committee of the Lord's Day Alliance, and were and are members of the said Special Committee.

The Respondents filed their special exceptions which were granted and noted.

The Petitioners then prayed leave and were granted permission to file an additional demurrer to the entire answer, and the case was then heard on the demurrers of the Petitioners to the answer of the Respondents and the demurrer of the Respondent to the Petition.

Counsel for the Petitioners, for the Respondents, and the City-Solicitor of Baltimore as amicus curiae by invitation and request of the Court, were heard. The papers and exhibits were read and considered by the Court.

Docket Entry of March 12, 1932: ~~Demurrer of the Respondents to the Petition sustained (exception taken by the Petitioners and noted in the Record), the demurrers of the Petitioners to the answer overruled (exception taken by the Petitioners and noted in the Record), mandamus refused and petition dismissed; judgment for Respondents for costs.~~

*For a statement by
Mr. Jones and others for
the purpose to elect for company
up the record.*

CHARLES M. NESS, et al	)	IN THE
)	
Constituting a Committee of	)	SUPERIOR COURT OF
)	
The LORD'S DAY ALLIANCE, etc.	)	BALTIMORE
)	
	)	PART III
)	
vs	)	Before
)	
ROBERT B. ENNIS, et al, Con-	)	O'DUNNE, J.
)	
stituting the BOARD OF SUPER-	)	Non-Jury.
)	
VISORS OF ELECTIONS OF)	
)	
BALTIMORE CITY)	

March 10, 1932

C. E. King
307 Court House
Baltimore.

CHARLES M. WESS, et al,	)	IN THE
Constituting a Committee of	)	SUPERIOR COURT OF
THE LORD'S DAY ALLIANCE, etc.,	)	BALTIMORE
	)	PART III
vs	)	Before
ROBERT B. ENNIS, et al., CON-	)	O'DUNNE, J.
STITUTING THE BOARD OF SUPER-	)	Non-Jury.
VISORS OF ELECTIONS OF)	
BALTIMORE CITY.)	

March 10, 1932.

APPEARANCES:

WILLIAM MILNES MALOY, Esq., Counsel for the Applicant.

WILLIAM PRESTON LANE, JR., Esq., Attorney General of the State of Maryland;

WILLIS R. JONES, Esq., Deputy Attorney General;
William L. Henderson Asst. " "
 R. A. LEE MARSHALL, Esq., City Solicitor of the

CHARLES M. NESS, et al)
)
CONSTITUTING A COMMITTEE OF) SUPERIOR COURT OF
)
THE LORD'S DAY ALLIANCE, etc.) BALTIMORE
)
) PART III.
vs)
) Before
)
ROBERT B. ENNIS, et al., CON-) O'DUNNE, J.
)
STITUTING THE BOARD OF SUPER-) Non-Jury.
)
VISORS OF ELECTIONS OF)
)
BALTIMORE CITY.)

March 10, 1932.

C. E. King
307 Court House
Baltimore, Md.

CHARLES M. NESS, et al,)	IN THE
Constituting a Committee of)	SUPERIOR COURT OF
THE LORD'S DAY ALLIANCE, etc.,)	BALTIMORE
)	PART III
vs)	Before
)	O'DUNNE, J.
ROBERT B. ENNIS, et al., CON-)	Non-Jury.
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March 10, 1932.

APPEARANCES:

WILLIAM MILNES MALOY, Esq., Counsel for the
Applicant.

WILLIAM PRESTON LANE, JR., Esq., Attorney General
of the State of Maryland;

WILLIS R. JONES, Esq., Deputy Attorney General;

R. E. LEE MARSHALL, Esq., City Solicitor of the

Mayor and City Council of Baltimore City;
ALLEN A. DAVIS, Esq., Assistant City Solicitor.

John P. Bills J.E.

THE COURT: Let it be noted in the record that we are ready to proceed with the only case we have on to-day's docket in Superior Court Part 3, which is the application of the Lord's Day Alliance against the Board of Supervisors of Elections of Baltimore City for a mandamus to restrain the printing of Ordinance No. 130, on the ballot at the May special election, etc.

Second, let it be noted that the City of Baltimore as such, not being a party to the proceedings on the face of the record, but it being a subject matter which is of special concern to the City itself, with the approval of the Attorney General and Senator Maloy, has invited Mr. R. E. Lee Marshall, the City Solicitor, which of course includes the members of his

staff, Mr. Davis, etc., to participate in the argument and in the trial of the case in any way he sees fit, as invited counsel under the old custom called amicus curiae, which being translated means "friend of the Court", by which a party who does not formally appear representing client in interest on the face of the proceedings, participates in the trial.

A third note: I want to say it has never been my policy in any case, especially of any importance, to ever place any time limit upon counsel, particularly where there are distinguished counsel such as are assembled here. It is to be understood therefore, at the trial of the case, in whatever form it proceeds, the argument on all law issues shall be held subject to the pleasure of counsel on all sides. The order of arrangement of address they might elect among themselves, but irrespective of any arrangement that is agreed upon, let it also be understood at no stage of the argument will we preclude any counsel in the case from further addressing the Court, irrespective of whether he has

already done so once or more times. A question of importance of this kind involving law should not be precluded on the theory of saving time, which was only made for slaves anyhow, and as long as counsel have anything which would help in enlightening the Court which they desire to communicate to the Court, this Court is here to hear them.

Gentlemen, you may proceed.

MR. JONES: I think we better get the pleadings in shape. Senator Maloy has filed a replication and a demurrer in which he has demurred to each paragraph. He has also filed a replication to certain paragraphs of the defendant's answer. It seems to me he ought to do one of the two things, ought to reply or demur.

THE COURT: He has done both.

MR. JONES: We are perfectly willing to join issue as to the replication of each particular paragraph of the answer.

THE COURT: Let the record show on all ques-

tions of what is known in pleading as replication, that the Attorney General's office joins issue. On all questions of demurrer to the Attorney General's answer, the issue is joined on law.

As I scan the pleadings with the benefit of the synopsis which Senator Maloy was kind enough to have made for me the other day, it assumes certain questions of fact, to which you have the right to be heard by jury trial, and certain questions of law to which you have the right of Court decision. I don't know whether you want to try the questions of fact first--

GENERAL LANE: We will waive the trial by jury.

THE COURT: The Attorney General states they waive the right of jury trial on questions of fact. Senator Maloy, representing the petitioners, concurs in the same suggestion and desires to waive jury trial, so that on issues of fact the Court will sit as a jury; on issues of law, it will sit as a Court.

MR. MALOY: We offer in evidence the Charter of the Lord's Day Alliance, and call your Honor's attention to the purpose and object of that. We offer in evidence, and I will prove it by a witness in a few moments, the resolution of the Executive Committee of the Lord's Day Alliance, authorizing---

MR. JONES: We would like to have proof of that before it is offered.

MR. MALOY: All right.

Thereupon:

WILLIAM W. DAVIS, a witness of lawful age, produced on behalf of the Applicants, having been first duly sworn according to law, testified as follows;

DIRECT EXAMINATION:

BY MR. MALOY:

Q Your name is what?

A William W. Davis.

Q What position do you hold-- what office do you hold with the Lord's Day Alliance?

A Secretary of the Lord's Day Alliance.

Q The Charter filed here, do you know in what year it was incorporated, the Lord's Day Alliance?

A 1911, sir.

Q You are the custodian of the minute book of the Lord Day Alliance, a corporation?

A Yes, sir.

Q Have you that book with you?

A I have.

Q Will you please refer to the by-laws of that organization?

A Yes.

Q I want you to refer to the particular section that relates to the Executive Committee of the Alliance?

A I have it here, sir.

Q Will you read it?

A It's section 3 of Article 3: "The Executive Committee shall consist of 15 members to be elected at the annual meeting, including the President, Recording Secretary, Treasurer and all vice presidents as ex-officio members, and shall at all times have full power to act for this Alliance."

Q Have you such an Executive Committee now?

A We have.

Q Will you say when that Committee was appointed?

A You mean the last time?

Q At the last annual meeting, yes?

A In December, 1931.

Q 1931?

A Yes, sir.

MR. JONES: Is that Executive Committee something separate and apart from the Trustees of the Alliance?

MR. MALOY: Yes. He connects up with them somewhere.

MR. JONES: The Charter says, We further certify said corporation will be managed by a Board of 12 trustees, and that the parties named, 12 of them, are the names of the trustees who will manage the affairs of the said corporation for the first year. As far as I understand, there has been no amendment of the charter. It looks to me like the affairs are to be managed by a Board of Trustees and not the Executive Committee.

MR. MALOY: Every Corporation can have an executive committee if it wants.

THE WITNESS: It says 15 here, 12 trustees as you call them, are members of the Executive Committee, and the President, Secretary and Treasurer make

the fifteen.

Q Do you have an Executive Committee according to your by-laws?

A Yes.

Q You do keep up the election of the 12 trustees, as you call them---

A Yes, through the years.

Q Now then, the names of your Executive Committee, elected at the last meeting, last annual meeting of the Alliance in December?

MR. JONES: By whom are they elected?

MR. MALOY: By the Alliance. Did you have a meeting of the Alliance in 1931?

A Yes, sir.

Q What day?

A The annual meeting of the Lord's Day Alliance on December 18, 1931, at the Drinkhouse Memorial Room, 516 N. Charles St., Baltimore.

Q Where was it held?

A 516 N. Charles Street, Drinkhouse Memorial Room. It

was named after a very prominent Methodist Protestant preacher, and is the regular meeting place of the Lord's Day Alliance. It has no reference whatever to the 18th Amendment. December 18, 12 o'clock noon.

Q Now, the names of the Executive Committee?

A It's quite a group. Joshua Levering, President; Leonard Burbank, C. H. Gundersdorff, Francis A. Davis; S. Edwin Price; Harry R. West; George S. Yost; J. Adam Manger; Earl E. Taylor; F. B. Coggins; Daniel McCleary; W. N. McFaul; E. Brittan. That's twelve. The Executive Committee is larger than that because all the vice presidents are ex-officio members of the Executive Committee.

Q As to the appointment of this special committee, they were originally appointed prior to that meeting, were they not?

A Yes.

Q When and how?

A They were appointed Thursday, May 28th, 1931, in the same room, Drinkhouse Memorial Room, at a meeting

of the Executive Committee, 12 o'clock noon. This is the resolution: Be it resolved that the President be authorized and requested to name a committee of five, with the President and General Secretary as ex-officio members, with full power to represent the Lord's Day Alliance in all matters affecting the Lord's Day Alliance now pending before the City Council, and when in the judgment of this Committee the employment of counsel is necessary, it shall be it's duty to secure counsel subject to the approval by the Executive Committee of the Lord's Day Alliance.

Q Now, at your annual meeting, was there any action taken with respect to this Executive Committee?

A This action of the Executive Committee, yes, of which Mr. Charles M. Ness is Chairman, made this report, and on motion was continued.

Q What's the latest action with respect to this case?

A Two thirty P.M., Monday February 22nd, the Executive Committee of the Lord's Day Alliance, met in the Drinkhouse Memorial Room, 516 N. Charles Street. Those present

were Joshua Levering; M. W. Gatch; Charles M. Ness; De-
 witt M. Benham, Dr. Chas. W. Baldwin, Dr. Leonard B.
 Smith, Rev. H.B.Hill; Rev.R.C.Meeks; C.H.Gundersdorff;
 F. Edwin Price, Dr. E. L. Watson, and Dr. W.W.Davis.
 On motion the report-- after prayer by Mr. Levering,

Mr. Ness, Chairman of the Special Committee, recommended
 the employment of Mr. William Milnes Maloy as counsel
 on the open Sunday case. On motion the report received
 unanimous approval, and the following resolution passed--
 want me to read that?

Q Not unless they want it. That's all I want him to
 answer. If you want him to answer more, I will object.

MR. JONES: You haven't proven yet this Com-
 mittee has the authority to institute this suit.

MR. MALOY: You say not, but I say we have.

THE WITNESS: This resolution goes on---

OBJECTED TO:

Q Dr. Davis, I hand you a paper---

THE COURT: Why not offer all the exhibits
 attached to the bill and replication?

MR. JONES: I would like to see the minute
 book on this. The paper attached to the exhibits has
 a lot of pencil marks on it, and we think we have the

right to see whether this is a correct copy of the resolution as attached.

MR. MALOY: Well, we will let him see it.

THE COURT: One thing at a time. You asked to see the exhibit he offered and you inspected it, and it hasn't been shown to the witness yet.

MR. JONES: It has a lot of pencil marks on it.

THE WITNESS: I do not think there's a lot.

MR. MALOY: There's nothing wrong with the resolution.

THE COURT: The status of the case before me is: The petitioner has offered to the witness an exhibit, and has tendered it to counsel, and it is still in the hands of the Attorney General's office for inspection. If you have inspected it, pass it back to the petitioner's counsel.

Q Doctor, I hand you a paper which is filed as an exhibit in this case, and ask you what it is?

OBJECTED TO:

OBJECTION OVERRULED:

EXCEPTION NOTED:

Q What is that, Doctor?

A This is the original resolution that was presented at the meeting of the Executive Committee of the Lord's Day Alliance.

Q Those pencil marks on there, were they on there at the time the resolution was passed?

A They were.

Q They were made in my office before you took the resolution up, were they not?

A The names of the Committee are in my hand-writing, but this other notation here, one other notation, is in your hand writing.

Q They were on there at the time the resolution was passed?

A They were on here when they signed.

Q By whom were they signed?

A Signed by Joshua Levering as Chairman of the Executive Committee, and W. W. Davis as Secretary.

Q And that's (indicating) your signature?

A Yes.

Q And that's Mr. Levering's signature?

A Yes.

Q Placed on there at the time of the passage of the resolution?

A Yes.

Q And brought back to my office afterwards?

A Yes.

MR. MALOY: If your Honor please, we offer that resolution.

THE COURT: Admitted.

MR. MALOY: It in express terms authorizes the institution of this suit.

Q Now, Doctor, your minutes, going back to that same meeting, what do they say?

A On motion the report was received with unanimous approval and the following resolutions are passed--

Q Which resolution is copied in there (indicating)?

A Yes.

Q In full?

A Yes.

THE COURT: Not necessary to read it if that's the original there.

Q And then, Doctor, what followed that? The Committee waited on me and employed me?

A Yes, sir.

Q And you authorized me to draw the Bill of Complaint?

A That's right.

Q The majority of the Committee acknowledged it, made affidavit to the Bill of Complaint and it has been filed?

A Yes, sir.

MR. MALOY: That's all I want to ask the Doctor.

CROSS EXAMINATION:

BY MR. JONES:

Q Doctor, go back to the meeting of the Alliance held on December 18, 1931. How many members were present at that meeting?

OBJECTED TO:

THE COURT: The previous testimony was, a paper signed by the majority of the Committee--

MR. MALOY: That's the Bill of Complaint.

MR. JONES: The Executive Committee has to be elected. That's the meeting at which they were elected, and we have the right to see if they were properly elected.

MR. MALOY: The minutes when they were elated-- If you really have anything in mind about it, I have no objection other than I just think it's fishing-- it's almost officious, not impertinent but akin to it for the Attorney General to ask an organization operating under a Charter to answer to them about their minutes and what happens behind the minutes. These are given with all verity and supposed to be correct, except he shows they are wrong. If there's any particular object other than simply to look into somebody else's affairs, I am perfectly willing for the Doctor to tell him who were present.

THE WITNESS: There's no objection on my part.

MR. MALOY: If you just simply want a lot of names--

MR. JONES: I don't want that.

MR. MALOY: You ought to say why you are doing it.

MR. JONES: I don't mind telling the Court why I want it. I think we have the right to know whether this meeting was held like the constitution---

MR. MALOY: He says he has no objection to it.

Q How many members were present at that meeting on December 18, 1931?

A I want to answer that by saying first of all I was not present myself. I was home sick in bed. Dr. Edward L. Watson was elected to act as Secretary pro tem., and I have the minutes here signed in his hand writing. He is here ready to attest to them. There were 12 men present.

Q And that was the meeting at which you elected the Executive Committee of 12 members?

A Yes.

Q What do the by-laws of the Alliance say as to the number of members required to constitute a quorum?

A Seven.

Q Seven members of the Alliance?

A No, seven members of the Executive Committee constitute a quorum.

Q How many members does the Alliance have?

A Oh, we have members all over the State.

Q How many?

A I don't know. And I don't think you know.

Q I certainly don't. I am trying to find out. As Secretary of the Lord's Day Alliance, do you tell the Court you don't know how many members the Alliance has?

OBJECTED TO:

THE COURT: He has already answered. He says he don't know.

THE WITNESS: May I say this: We have members in every County and every Legislative District of the City of Baltimore.

THE COURT: And in every Legislature?

THE WITNESS: Unfortunately, we haven't many members in the Legislature.

Q Have you paying members in all these localities-- do you keep a record of who they are?

A Yes. They pay their--

THE COURT: You have a financial record of them?

THE WITNESS: Yes, sir.

Q How many are there, about?

A I should say 500 or 600-- maybe a 1000. I don't know.

Q Five or six hundred or a thousand throughout the State?

A That is, who are contributing members.

Q Well now, you have no provision in your by-laws which would preclude seven members out of five or six hundred from electing an Executive Committee to bind the whole membership?

A I never said that.

Q Do you or don't you?

A The only provision about seven is, that there must be seven members of the Executive Committee to constitute a quorum. There is nothing said about how many members of the Alliance should be present when they are authorized to do business.

Q You mean at this meeting of December 18, 1931, however, that there were only seven members of the Alliance present?

A I didn't say anything of the kind. I said twelve.

Q Twelve members of the Alliance present?

A Yes.

Q Now, do you have any Trustees independent of the Executive Committee?

A No. Not so named.

Q Why is it that you have 15 members of the Executive Committee instead of 12 Trustees as specified in the Charter?

A It says including the President, Secretary and Treasurer, that makes three, and three from fifteen leaves

twelve.

Q Are they voting members or ex-officio members of the Executive Committee?

MR. MALOY: Don't ask him to construe it. It says they are ex-officio members. He don't have to answer that. It carries its own consequence.

Q Where is your resolution that says these other officers shall be ex-officio members of the Executive Committee?

A It says all vice presidents are ex-officio members of the committee.

Q Where is that?

A In the Constitution.

Q In the by-laws?

A Constitution and by-laws I suppose are the same thing.

MR. MALOY: Read your action to him, Section 3, Article 3?

THE WITNESS: "And all Vice-Presidents as ex-officio members, and shall at all times have full power to act for this Alliance".

Q Read that again?

A "And all Vice-Presidents as ex-officio members, and shall at all times have full power to act for this Alliance".

Q It's admitted, Doctor, that the Alliance does not pay any taxes?

MR. MALOY: I will not say that. He don't know.

Q I will ask him: Does the Lord's Day Alliance pay any taxes to the City of Baltimore or State of Maryland as a body corporate?

THE COURT: It may not be necessary, but it's one of the general allegations in the petition.

MR. MALOY: Do they, Doctor?

THE WITNESS: I have no knowledge they do.

Q Who is president of the Alliance?

A Joshua Levering. Only two Presidents. David was President and at his death, Joshua Levering.

Q Who is Treasurer?

A W. C. Wallis is Treasurer.

Q Would he know if there are any taxes paid?

A No. He has only been elected this year.

Q Who was Treasurer before that?

A Harry L. Price.

Q Don't you know yourself whether they pay any taxes?

MR. MALOY: Don't you know as Attorney General.

MR. JONES: My search showed they didn't
pay any.

THE WITNESS: I do not dispute your statement.

Q That's all.

EXAMINATION CONCLUDED:

Thereupon:

JOSHUA LEVERING: a witness of lawful age,
produced on behalf of the Petitioner, having been first
duly sworn according to law, testified as follows:

DIRECT EXAMINATION:

BY MR. MALOY:

Q What is your name, please?

A Joshua Levering.

Q You are a resident of the City of Baltimore?

A Yes, sir.

Q A taxpayer of the City of Baltimore?

A Yes, sir.

Q Mr. Levering, what office do you hold in the Lord's Day Alliance?

A President.

Q And with respect to the Executive Committee, what office?

A Chairman of that, yes.

Q The resolution that has been offered here bears your signature? Is that your signature on that resolution?

A Yes.

Q It was passed at a meeting of the Executive Committee held on that day, February 22?

A Yes.

Q And you identify it as the resolution signed by you?

A Yes.

Q Was there a meeting of the Lord's Day Alliance-- a meeting of the Executive Committee on that day?

A As far as I know. The minutes say so.

Q You were there that day?

A Yes.

NO CROSS EXAMINATION:

EXAMINATION CONCLUDED.

Thereupon:

CHARLES M. NESS,, a witness of lawful age,
produced on behalf of the Petitioner, having been
first duly sworn according to law, testified as
follows:

DIRECT EXAMINATION:

BY MR. MALOY:

Q Mr. Ness, your full name is what?

A Charles M. Ness.

Q You are a member of the Lord's Day Alliance?

A Yes, sir.

Q Have been for a number of years?

A Yes, sir.

Q What office do you hold? You are on the Executive

Committee?

A I am on the Executive Committee.

Q On this special committee which was appointed, which office do you hold?

A Chairman of that Committee.

Q And as Chairman, and by order of this Special Committee, this suit was instituted, was it not?

A Yes, sir.

CROSS EXAMINATION:

BY MR. JONES:

Q You are Chairman of the Committee?

A Yes, sir.

Q Can you tell the Court why the body corporate known as the Lord's Day Alliance, undertook to ask a Committee to bring the suit rather than bring the suit in its own name?

A It is customary, sir, in my experience that such things are delegated to a smaller body because they are more accessible and a larger body is unwieldy, and it is the custom of all organizations to detail to a special com-

mittee, special work.

Q Did you have any particular reason for not bringing the suit in the name of the Lord's Day Alliance?

A Purely a matter of my attorney's judgment.

EXAMINATION CONCLUDED.

Thereupon:

DR. EDWARD L. WATSON, a witness of lawful age, produced on behalf of the Petitioner, having been first duly sworn according to law, testified as follows:

DIRECT EXAMINATION:

BY MR. MALOY:

Q What is your full name, Doctor?

A Edward Louis Watson.

Q Are you a member of the Lord' Day Alliance?

A Yes.

Q You have been for quite a long while?

A Long time.

Q Are you a member of the Executive Committee? Not the special committee but the Executive Committee?

A Yes.

Q Were you the acting Secretary of the Annual Meeting in 1931?

A Yes, sir.

Q I show you the minutes and ask you if that's the record of the meeting at which you acted as Secretary?

A That's my signature.

Q Signed as acting secretary?

A As Secretary pro tem. Dr. Davis was ill and couldn't get out.

CROSS EXAMINATION:

BY MR. JONES:

Q Doctor, you acted as Secretary at that meeting in the absence of Dr. Davis?

A Yes.

Q What notice was given of the meeting?

A I suppose Dr. Davis could answer that question. We

all received notice of it. But I didn't send them out. I was only pro tem., came there at the time of the meeting.

Q When you say you are a member of the Lord's Day Alliance, you mean you are a member independently of being a member of the Executive Committee?

A Well, I suppose I am. I am thoroughly with the Lord's Day Alliance and its purposes.

Q What are the qualifications for membership in the Alliance?

A Well, to be a decent citizen, live the Lord's Day and pay your dues.

Q You have to make some application for membership, I suppose? Do you make some application for membership?

A I have been so long a time with it that I don't know whether I did or not. They may have made application to me for all I know. But to belong to it, I couldn't answer you that. I know I belong.

Q Do you know whether or not a member is required to pay his dues before he can vote at a meeting?

A I never investigated.

MR. MALOY: I don't think that's a very dignified thing for the Attorney General's office-- it's petty stuff.

MR. JONES: I want to find out if the proceedings have been regular.

THE COURT: We will make more progress if you gentlemen wont wrangle among yourselves.

MR. JONES: I want to ask Dr. Davis what notice was sent to the members.

THE COURT: You can ask him right there.

EXAMINATION CONCLUDED.

Thereupon:

WILLIAM W. DAVIS, a witness for the Petitioner, having been previously sworn, was recalled and testified as follows:

EXAMINATION BY MR. JONES:

Q Will you please tell the Court what, if any notice was given to the membership of the Alliance, warning

them of a meeting to be held on December 18, 1931.

A I can't give the exact date but the notice was sent out four or five days ahead, and at just the exact time I don't recall.

MR. MALOY: But notice was sent?

THE WITNESS: Yes, sir.

Q Did you send the notice?

A I did.

Q How many notices did you send?

A I don't recall.

Q About how many?

A I don't remember.

Q You just sent them to the Executive Committee?

A I sent them to people here in Baltimore. I didn't send them, for instance, to our members in Washington County where the Attorney General is, because they were far removed and I didn't think they would come.

Q About how many notices did you send out?

A I would say I sent out about 50 notices.

Q Out of a membership of 500 or a 1000, is that right?

A Yes. I say I sent about 50, I presume.

THE COURT: You are talking now about notices of the meeting of the Executive Committee?

THE WITNESS: No, sir. The meeting of December 18th, when the Executive Committee was elected.

Q Was any other notice given?

A No.

Q Is this the Annual Meeting of the members of the Alliance?

A This is known as the Annual Meeting of the Lord's Day Alliance of the State of Maryland.

Q Isn't it customary to give all of the members notice of the Annual Meeting?

A It is not.

Q You have never done that?

A No.

Q Who decides who is to get notices of the meeting and who isn't to get notice?

A Oh, there's no particular decision made about that.

Notices are sent in Baltimore and nearby and where people

will be able to attend. The management of affairs is in the hands of the Executive Committee.

THE COURT: Run something like the Bar Association of Baltimore.

MR. MALOY: Absolutely.

MR. JONES: We all get notices for that, your Honor.

EXAMINATION CONCLUDED.

Thereupon:

WILLIS R. JONES, a witness of lawful age, produced on behalf of the Petitioner, having been first duly sworn according to law, testified as follows:

DIRECT EXAMINATION:

BY MR. MALOY:

Q Your full name?

A Willis R. Jones.

Q What official position do you hold with reference to

the State?

A Deputy Attorney General.

Q I would like to know what are your duties as Assistant Attorney General? Defined by law, aren't they?

A Defined by law, yes.

Q Did you advise the City Council as Assistant Attorney General-- did you advise the City Council while this ordinance was pending before it?

A No, sir.

Q Did you give them an opinion, or give Mr. Sloman an opinion as to the form of the ordinance, whether it was in your opinion constitutionally and legally drawn?

A No. We never undertake to pass on ordinances as a whole.

Q Did you talk to him?

A We were asked about the provision with respect to the referendum, my recollection is. The opinion, however, that was given by the Attorney General rather than by myself, was given to the Board of Supervisors of Elections.

Q I didn't ask you that. I said, before it ever reached the Supervisors of Election, you were reported in the paper as having-- at least somebody in the City Council was reported as having said you told him the ordinance was valid?

OBJECTED TO:

OBJECTION SUSTAINED:

EXCEPTION NOTED.

Q May I ask this question: Did your office draw that portion of this ordinance which provides for the submission to a vote?

OBJECTED TO:

OBJECTION SUSTAINED:

EXCEPTION GRANTED.

THE COURT: It isn't a question of who drew it or how much talent it had. It is: How good it is after it's drawn.

MR. MALOY: When these other objections were made they were going through my client's books, and I didn't see why I couldn't examine their counsel.

Q May I ask Mr. Jones this question: Did you as Deputy Attorney General, did you convey that impression to the City Council prior to the passage of this ordinance?

OBJECTED TO:

OBJECTION SUSTAINED:

EXCEPTION NOTED.

THE COURT: Let it be put into the record that exceptions are considered as reserved to all adverse rulings, irrespective of whether counsel on either side formally take them or not.

MR. MALOY: Something in one of these cases says, you have to put it in writing if it is a jury trial.

THE COURT: We put them in writing.

Q Did you convey your impressions to the City Council or any of them, prior to the passage of this ordinance?

OBJECTED TO:

OBJECTION SUSTAINED:

EXCEPTION NOTED.

MR. LANE: May I note in the record that the Attorney General personally objects to that.

THE COURT: The objection is from the Attorney General's side. His office is trying the case. The Deputy actively in it is on the witness stand and somebody has to act in behalf of the Deputy when he is on the witness stand.

Q Mr. Jones, may I ask this question: Didn't you confer with the City Solicitor prior to the passage of this ordinance?

OBJECTED TO:

OBJECTION SUSTAINED:

EXCEPTION NOTED.

GENERAL LANE: For the information of Senator Maloy, I would like to make the statement as Attorney General, I have had no consultation with anyone other than with the Board of Election Supervisors through the opinion that I rendered to them with reference to their right to include this ordinance in the ballot in the primary election May 2, 1932.

MR. MALOY: Now, Mr. Attorney General, will you make that same statement---

GENERAL LANE: I make that as Attorney General.

MR. MALOY: Not in behalf of your office?

GENERAL LANE: My understanding is that I am the office, under the law.

MR. MALOY: Will you make that same statement that they had no conferences with the City Officials prior to the passage of the ordinance?

THE COURT: What's that got to do with the case?

MR. MALOY: None of this has.

THE COURT: All right. Let's go on.

MR. MALOY: I want Dr. Benham to take the stand.

Thereupon:

DR. DEWITT M. BENHAM, a witness of lawful

age, produced on behalf of the Petitioner, having been first duly sworn according to law, testified as follows:

DIRECT EXAMINATION:

BY MR. MALOY:

Q You are a member of the Lord's Day Alliance?

A I am.

Q Contributing member?

A Yes, sir. I am a life member.

Q Are you in accord---

A Contributing member in addition to that.

Q You are in complete accord with its purposes?

A Certainly I am. Always have been.

Q You attended the meeting of February 22?

A I did.

Q And this resolution which has been attached here, you voted for it?.

A Certainly.

Q And you are on the Committee?

A Yes.

Q And that Committee has instituted this suit?

A Yes.

Q On behalf of the Lord's Day Alliance?

A Certainly.

CROSS EXAMINATION:

BY MR. JONES:

Q Doctor, were you one of the original members of the Executive Committee?

A I have been for years. I don't know how long. I have been going down to the Alliance for years. People in this City know that. I have been around here for 34 years.

Q I was wondering if you could look at a copy of the Charter which was filed with the replication of the petitioner, and tell us how many of these original members of the Executive Committee or Board of Trustees named in the Charter, are now lining and members of the Board?

OBJECTED TO:

THE COURT: That's entirely beside the ques-

tion, whether certain people, charter members, are now living or dead. Are any of them alive?

THE WITNESS: Certainly: One of them is here, Joshua Levering is here, and Summerfield Baldwin is around here, splendid old man 92 years old--

THE COURT: Never mind that.

Q How many of the original 12 are living and how many dead?

A I really couldn't tell you that. I have the Charter in my church and I know this charter holds good.

THE COURT: I sustain any further discussion as to whether the original charter members are alive or dead. One of them has been on the witness stand.

OBJECTION SUSTAINED:

EXCEPTION NOTED.

MR. MALOY: I just want to say I think there has been enough of this inquiry. If there is any question in anybody's mind as to the regularity of this thing, here's the minute book that runs for 20 years, and every minute seems to be recorded. The most recent meetings

are also here.

EXAMINATION CONCLUDED:

THE COURT: I rule the Petitioner is legally entitled to bring the suit. Proceed with the case.

EXCEPTION NOTED.

MR. JONES: There is the Committee of the Lord's Day Alliance and a group of individuals. We don't object to the individuals--

THE COURT: You admit in your answer--

MR. JONES: We have no objection to that, but we object to a Committee of this body corporate.

THE COURT: That's the thing you are bring testimony for?

MR. JONES: Yes, sir.

THE COURT: The ruling is, They are proper parties to the suit and the suit is properly brought by the Committee on behalf of the Lord's Day Alliance.

MR. MALOY: Just to get the record regular,

I notice in these previous cases, General Straus appeared, he is a very careful student, and apparently he joins issue where the demurrers are filed. I don't know whether there is any particular efficacy in that or not.

THE COURT: Let the record show that on all issues raised on demurrer, issue is joined on demurrer. That applies to both sides.

MR. MALOY: In order to make doubly sure, would it be permitted for me to file the demurrer and another answer, so I might argue it in all its phases.

I will file the demurrer and the answer now and then go ahead with my argument. So that instead of just taking specific parts of the answer, I will demur to the whole business.

THE COURT: Treat that as filed nunc pro tunc in place of the replication. You file the demurrer before you replicate.
