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If I Were Mayor Phelan

I should not write an official communication to the manager of the Market Street Railway Company, commanding him to obey the law fixing the speed at which his cars are permitted to run through the public streets. I should reason that that law is as well known to him as to me, and that it is no part of my duty to instruct law-breakers regarding the laws that they choose to break. Nor should I threaten to enforce the law against him, or any man, if within a reasonable time (arbitrarily determined as one week) he does not cease to disobey it. The time to cease disobeying a law is now, and no officer of the law has any shadow of right to grant an extension. If it will be Mayor Phelan's right and duty to "proceed against" Mr. Vining after the eighth day of this month for continued infraction of the law, it is his right and duty to proceed against him today, and has been his right and duty to do so ever since the law was first violated with Mr. Phelan in office. What it is at any time Mayor Phelan's right and duty to do the people of this city who have put him into office have a right to expect him to do at once and without parleying and temporizing with misdemeanants and criminals. Fancy a constable saying to a thief: "I have today verified the report that you habitually steal. I therefore call upon you so to modify your conduct that it shall conform to the laws against theft, and request you to advise me of your intention in the premises and when you will consent to let the property of others alone."

The analogy is close: The point at which it fails is Mr. Vining's superiority to the thief in wealth, respectability and influence. I do not accuse Mayor Phelan of being consciously affected by that superiority: the custom of treating wealthy and powerful corporations with a consideration and tenderness not granted to obscure individual offenders is so general in our official life that one comes to observe it without a thought of its real character. But if I were Mayor Phelan I should give such matters a thought.

As an illustration of the place that this sycophantic practice holds in our municipal affairs, take the action of the Board of Supervisors in the matter of car fenders. The law as I recollect it (I haven't it before me) requires that the cars be provided with "suitable" fenders—if that is not the word used some word or words are used implying that the fenders shall be effective. The first time that a human life was crushed out under these cars evidence was afforded that fenders of that kind had not been provided. There was ground for arrest and trial, leaving to the court the question of the suitability of the fender, if there was any fender at all. Yet for years the supervisors have been parleying with the company as to the particular kind of fender to be used—requiring "tests" of various devices, and so forth. I am not complaining here that in the meantime the killing has gone on (that matter has been sufficiently treated by others) nor that the supervisors have not enforced the law by arrests—that is no more their duty than it is that of any private citizen, and not nearly so much as it is the duty of the mayor. What I wish to point out is that all this parleying between board and company is extra-official, has no legal *raison d'être*, and is merely the outcome (leaving out of consideration base motives of which we

have no proof) of our local reverence for “the rich, who are also the wise and good.” It is none of the board’s business what pattern, or whose make, of fender the company shall adopt when it chooses to adopt any. The company has a right to use any fender that meets the requirement of the law as it stands and the company knows it. It prolongs the consultation and experimenting only to give a color of justification to its misdemeanor in using none. That in the meantime the board can for many months suspend the company’s obligation to obey the law is a proposition as absurd as that of the mayor’s power to suspend it for a week. All this vicious nonsense results from the feeling ingrained in this sordid commercial community that a particular respect and consideration are due to offenders who happen to be banded together under “articles of incorporation” and operating under “franchises,” as distinguished from individual scoundrels working severally for a private thrift.

Not all: the law itself is in fault, or, rather a certain public sentiment that underlies it and in the supposed service of which it was drawn. In this we have an instance—by no means an uncommon one—of two antagonistic interests working brotherly together, each for its own advantage.

I quote from “The Examiner” of Wednesday:

“The running of cars on street railways at a greater speed than eight miles an hour is a misdemeanor. As the statute subjects the corporation to the penalty of a fine of \$100, it must be proceeded against, and not the particular individual who may be in charge of a car as motorman or conductor. The method of criminal procedure against corporations is prescribed by Sections 1,390 to 1,397 of the Penal Code. Upon complaint in the usual form the magistrate issues a summons, which must be served at least five days before the day fixed for appearance, upon the president, cashier or manager of the corporation.”

That, I take it, is a correct statement of the law. But how came the law to be that way? Indubitably through a sentimental tenderness toward “the workingman”—with the crafty assent of the “tyrant capitalist.” If Messrs. Huntington, Vining and Herrin are not satisfied with these sections of the Civil Code they must be hard to please. When a car is running at a perilous and unlawful speed (as when it is running without a fender) there are two rascals—the motorman on the car and the manager in his office. The former is easily accessible to the police, vulnerable to proof of his offense and to immediate conviction and punishment in a police court; the latter can be reached, if reached at all, only by tedious, costly and precarious processes of law, which he can fight off at every stage; and he is not particularly inconvenienced by a fine. To the merely human intelligence it seems the obviously right and efficacious thing to arrest the man in hand, rather than the man in the bush.

“O,” says the inspired intelligence of the demagogue, “the poor overworked and under paid motorman is only obeying orders—he is not to blame.”

He is to blame—his being overworked and underpaid is matter for separate consideration; that does not justify him in infraction of the law. A crime is a crime whether the criminal commits it of his own motion or in obedience to an order from another who had no right to make the order. It is a new principle of law that a man because he is poor can with impunity take, or even imperil, human life by obeying an unlawful instruction. Why should he be more exempt from the consequences of his act than the driver of a delivery wagon? No one sees any injustice in arrest and punishment for reckless driving, without regard to the question who owns the vehicle or told him to “hurry up.”

The law should hold the person responsible who is actually impelling the car at an unlawful speed. The police should be empowered to arrest him, and arrest his successor, and all his successors as fast as they offend.

That would stop the whole sanguinary business in an hour and relegate it to the police court where it belongs. Punish Vining and Huntington if you can, how you can and when you can; but first make it impossible for them to procure motormen willing to run cars at an unlawful and dangerous rate of speed. That being done, the “schedule” will right itself quickly enough and the bugaboo “problem” be solved. Then if sympathy for “labor” must have its way let it be manifested by giving the prosecuted motormen enough money to pay their fines and salve the wounds to their feelings—say about the one-hundredth part as much as it will cost to go after “the real criminals” by the circumlocution route so dear to the workingman, the railway managers and the lawyers.

The blood that has been shed under the present regime—so much of it that of the children of the poor cry out against the demagogues who drew that law and the “unions” that backed them up in demanding that it be so drawn. It is all an instructive example of legislation for a class, instead of legislation for right, reason and justice. As so commonly occurs, it has been most mischievous to the class in whose interest it was drawn. Had it not been for senseless, dishonest and needless immunity to the offenders actually committing the offense fifty-eight of the fifty-nine lives for which they are taught by it to think themselves morally irresponsible would have been saved, and grief would not now sit as a guest at the fireside in the humble home of the parents of little Hulda Johnson.