

safely entrusted to them, because they were not sufficiently eager to prosecute, and hence a system of state constabulary was adopted, until that time unknown in this country and in other republics, and borrowed from monarchical countries.

* * * Again it was believed that juries in various parts of the commonwealth, selected and empannelled in the ancient way, under a system entirely satisfactory until the enactment of the present law, would not sometimes convict in liquor cases upon proper evidence, through the opposition to the law on the part of some of their number. Accordingly, during many sessions of the Legislature, attempts have been made in several instances, well nigh successful, for the avowed purpose of procuring more convictions in liquor cases, to change the system of trial by jury either by excluding liquor dealers from the panel, or all whose opinions would prevent them from convicting or by giving to the prosecuting officer the right to challenge two peremptorily.

Finally the judges are not allowed to exercise the same discretion as to the punishment of these cases as they are allowed in almost all other criminal cases, but must impose the same penalty upon all offenders, disregarding the circumstances peculiar to each case which ordinarily influence, and which the law has generally said influence the judicial mind.

We have then, a State Police, whose chief duty it is to complain of violations of this law, district attorneys and judges, placed under unusual and arbitrary restrictions in the trial and disposal of cases under it; and an almost successful attempt to change the system of jury trial.

* * * The three facts to which we have alluded, viz.: the strength and character of the opposition to the present law, the steady increase of that opposition, and the extraordinary methods necessary, in the opinion of the friends of the law for enforcing it, tend to raise serious doubts as to whether the law is approved by the people, and if not approved by the people whether it is a just and proper criminal law.

THE THEORY OF THE LAW.

We have said that the prominent feature of the law was its *absolute* prohibition of the sale of all intoxicating liquors, including therein, wine, ale, beer and cider, to be used as beverages (excepting the sale by importers as above stated). An absolute prohibition of the sale for use, as a beverage, is of course, in effect, an absolute prohibition of the use as a beverage. Is such absolute prohibition of the use, right, wise, or expedient? Is it fairly within the domain of legislative action? Is it consonant with Republican notions of the rights of the citizens? Is it demanded by any imperative necessity? Does it in itself, or as a precedent for similar legislation upon similar subjects, accomplish, and promise to accomplish, a certain definite good so great as to justify a resort to its severe and arbitrary provisions?

* * * * * Some of the witnesses before the Committee testified